ORAL ARGUMENT NOT YET SCHEDULED

United States Court of Appeals
for the
District of Columbia Circuit

Nos. 18-1001 and 18-1036

CAYUGA MEDICAL CENTER AT ITHACA, INC.,

Petitioner,

– v –

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON REVIEW FROM THE NATIONAL LABOR RELATIONS BOARD

JOINT APPENDIX

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United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

February 20, 2018

Mark J. Langer, Esquire
Clerk, United States Court of Appeals
for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, N.W., Room 5423
Washington, DC 20001-2866

Re: *Cayuga Medical Center at Ithaca, Inc. v. NLRB*
D.C. Cir. No. 18-1001, 18-1036
Board Case Nos. 03-CA-156375, 03-CA-159354, 03-CA-162848, 03-CA-165167 and 03-CA-167194

Dear Mr. Langer:

I am filing electronically a copy of the certified list of the contents of the agency record in this case.

Very truly yours,

/s/Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570
(202) 273-2960

Enclosures

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CAYUGA MEDICAL CENTER AT ITHACA, INC.	)	
	)	
Petitioner/Cross-Respondent	)	
	)	
v.	)	Nos. 18-1001, 18-1036
	)	
NATIONAL LABOR RELATIONS BOARD	)	
	)	
	)	Board Case Nos.
Respondent/Cross-Petitioner	)	03-CA-156375, et al.

CERTIFIED LIST OF THE NATIONAL LABOR RELATIONS BOARD

Pursuant to authority delegated in Section 102.115 of the National Labor Relations Board's Rules and Regulations, 29 C.F.R. § 102.115, I certify that the list set forth in the attached Index, consisting of three volumes, fully describes all documents, transcripts of testimony, exhibits, and other material constituting the record before the Board in Cayuga Medical Center at Ithaca, Inc., Case Nos. 03-CA-156375, 03-CA-159354, 03-CA-162848, 03-CA-165167 and 03-CA-167194.

.

Gary Shinners

Gary W. Shinners
Executive Secretary
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570
(202) 273-2960

February 20, 2018

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CAYUGA MEDICAL CENTER AT ITHACA, INC.	)	
	)	
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	)	
NATIONAL LABOR RELATIONS BOARD	)	
	)	Board Case Nos.
Respondent/Cross-Petitioner	)	03-CA-156375, et al.

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2018, I filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for District of Columbia Circuit by using CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570

Dated at Washington, DC
this 20th day of February 2018

1 let me know and I'll be happy to rephrase.
2 The other issue that I want to address right now is that
3 there's a Court Reporter over here. He's trying to take down
4 everything we're saying so it would be in our best interest if
5 we don't try to cut each other off, just so that we can have a
6 clean record. Okay?
7 A. Yes.
8 Q. You work at Cayuga Medical Center, is that right?
9 A. Correct.
10 Q. And there are about 1,350 employees at the hospital, give
11 or take?
12 A. Approximately, yes.
13 Q. And about 200 different job titles?
14 A. Correct.
15 Q. And you have about 350 nurses, is that right?
16 A. Correct.
17 Q. You've worked there about 27 years?
18 A. Correct.
19 Q. And currently you're the Vice President in Human
20 Resources?
21 A. Yes.
22 Q. What are your responsibilities as Vice President of Human
23 Resources?
24 A. Responsible for everything related to staffing, benefits,
25 organizational development, training, health insurance.

1 Q. You're responsible for disciplines too, right?
2 A. Yes, responsible for the policy. Discipline is
3 implemented at the department level.
4 Q. So that would include suspensions?
5 A. Correct.
6 Q. And terminations?
7 A. Correct.
8 Q. Who else is involved in that process besides you?
9 A. It would be the actual directors of their departments and
10 in times in concert with their -- the person that they report
11 to who may be another Vice President.
12 Q. Anyone else?
13 A. Not that I'm aware of at this point.
14 Q. And as Human Resources the final decision rests with you?
15 A. Yes, it can.
16 Q. You don't have to get approval from anyone else on
17 disciplines, right?
18 A. At times it will be discussed with the President of the
19 organization.
20 Q. Now, I'd like to discuss that organizational structure at
21 the hospital. Who do you report to?
22 A. I report to John Rudd, the President and CEO.
23 JUDGE GOLDMAN: What was that last name?
24 THE WITNESS: Rudd, R-u-d-d.
25 JUDGE GOLDMAN: R-u-d-e?

1 THE WITNESS: R-u-d-d.
2 BY MS. NOTO:
3 Q. And you said that at times you discussed disciplines with
4 him. How often is that?
5 A. Not that often.
6 Q. So you'd agree with me that would be rare that you discuss
7 disciplines with the CEO of individuals?
8 MR. PASCUCCI: I object. He answered the question not
9 that often.
10 MS. NOTO: I didn't hear the objection. I'm sorry.
11 MR. PASCUCCI: I'm sorry?
12 MS. NOTO: I didn't hear the objection. I'm sorry.
13 MR. PASCUCCI: I object because he already answered the
14 question not that often and now you're asking him again using
15 different terminology.
16 JUDGE GOLDMAN: Yeah, overruled. You can ask that.
17 BY MS. NOTO:
18 Q. Is it -- would you agree with me that it's rare that the
19 CEO is involved directly in disciplines of employees?
20 A. Yes.
21 Q. So what does the CEO do? He's your boss. What does he
22 do?
23 A. The CEO is responsible for the entire running of the
24 operation.
25 Q. Is he involved in the daily operations within each

1 current version to you? I'm not sure how you would tell, but
2 maybe just based on your familiarity in general?
3 A. Yes, it is.
4 MS. NOTO: No objection.
5 JUDGE GOLDMAN: Okay. I'm going to receive it. Again, I
6 think that's something you could do by stipulation. If you
7 find something that indicates there's something with a
8 different date, I think we can deal with that.
9 MR. PASCUCCI: Thank you.
10 JUDGE GOLDMAN: Okay, this is received.
11 MS. NOTO: Yes, Your Honor.
12 (General Counsel's Exhibit 4 received.)
13 BY MS. NOTO:
14 Q. You would agree with me that employee addresses are
15 confidential?
16 A. Yes.
17 Q. And wages are confidential too, right?
18 A. We don't share them, correct.
19 MR. PASCUCCI: I didn't hear that.
20 BY MS. NOTO:
21 Q. Wages are confidential too?
22 MR. PASCUCCI: Wages, thank you.
23 Q. Because they're internal information, right, wages?
24 A. Correct.
25 Q. And you've been told -- you've told employees to keep

1 salary information confidential, haven't you?
2 A. I have not personally told employees to keep salary
3 information confidential.
4 Q. Is it a hospital policy that employees are not to discuss
5 their salary information because it's confidential?
6 A. It's a generally accepted practice.
7 Q. And you've included that in letters to staff, right?
8 A. I'm trying to think whether there has been anything to
9 that effect in the communications.
10 Q. So to the best of your knowledge have you included in
11 letters to staff that they should keep the contents of their
12 salary information confidential?
13 A. I can't recall whether I have sent a letter to staff that
14 says that specifically.
15 Q. If I showed you a copy of a letter that you sent would
16 that help you remember?
17 A. Certainly.
18 (Whereupon, Ms. Noto handed a document to the witness.)
19 MS. NOTO: Your Honor, again I have a similar issue. I
20 have something that I can't copy at the moment. I'll label
21 them separately as GC-5 and 6. When I'm able to make copies I
22 will do so.
23 JUDGE GOLDMAN: That's fine. Just show it to counsel
24 before you show it to the witness.
25 MS. NOTO: Yes, Your Honor.

1 right?
2 MR. PASCUCCI: I think the witness doesn't know what
3 issue you're talking about.
4 JUDGE GOLDMAN: Yeah, I agree.
5 BY MS. NOTO:
6 Q. You know that Anne Marshall was disciplined on June 26,
7 2015 and issued a suspension, right?
8 A. I know she was disciplined. I don't know the specific
9 date.
10 Q. You know that Anne Marshall was issued a suspension, is
11 that right?
12 A. Excuse me?
13 Q. That Anne Marshall was issued a suspension?
14 A. Yes.
15 Q. And you know that happened toward the end of June in 2015?
16 A. I don't know the specific date, but yes I know it happened
17 sometime in the summer.
18 Q. You made that decision, didn't you?
19 A. I did not make that decision.
20 Q. You were part of the meeting where that decision was made,
21 weren't you?
22 A. I may have been part of the meeting, but I did not make
23 that decision.
24 Q. And the CEO attended the meeting about this one ICU
25 nurse's suspension?

1 A. The CEO was involved in that conversation, yes.
2 Q. He attended the meeting, right?
3 A. He was there, correct.
4 Q. And the Medical Director attended as well?
5 A. Yes, he was.
6 Q. And the Vice president of nursing attended as well?
7 A. Yes.
8 Q. And you were at that meeting too, weren't you?
9 A. Yes.
10 Q. But you don't know how the ICU unit handles understaffing,
11 do you?
12 A. I do not.
13 Q. And the CEO, to the best of your knowledge, wasn't present
14 on the unit when these issues arose, was he?
15 A. He was not.
16 Q. How about the Medical Director, was the Medical Director
17 there to the best of your knowledge when it arose?
18 A. No, he was not.
19 Q. What about the VP of Nursing?
20 A. I do not know, but I don't believe so.
21 Q. But it was at this meeting where the decision to impose
22 the one and a half or one day suspension to Ms. Marshall
23 occurred, right?
24 A. That is correct.
25 Q. Because you believed that Anne had failed to make the

1 necessary calls to fill schedule gaps, is that right?
2 JUDGE GOLDMAN: Well, you have to repeat the -- I think
3 the question's unclear. He said he didn't make the decision so
4 -- -
5 MS. NOTO: Sure.
6 BY MS. NOTO:
7 Q. You were part of the meeting that made the decision,
8 right?
9 A. Yeah. I don't recall the reason why now as we're talking.
10 Q. Okay. You don't remember the reason why Anne was
11 suspended on June 26, 2015?
12 A. That's correct.
13 Q. But you were part of the meeting where that decision was
14 made?
15 A. That's correct.
16 Q. Do you remember providing an affidavit to the Board Agent?
17 A. Yes, I did.
18 Q. Do you remember -- I guess that was me. Do you remember
19 me swearing you in?
20 A. Yes.
21 Q. Do you remember me asking you to tell the truth, the whole
22 truth and nothing but the truth?
23 A. Yes.
24 Q. And you did tell the truth, right?
25 A. I absolutely did.

1 Q. And at that time you knew what had happened in that June
2 26th meeting, right?
3 A. That's correct.
4 Q. So if I show you a copy of that would that help you
5 remember?
6 A. That would be -- that would be great.
7 Q. This is the affidavit that we took on September 8th, 2015?
8 A. That's correct.
9 Q. Is that your signature on the last page?
10 A. Yes, it is.
11 Q. And take a minute to review this.
12 A. Um=hum.
13 (Whereupon, the witness reviewed the document.)
14 BY MS. NOTO:
15 Q. Are those your initials in the bottom right-hand corner of
16 each page?
17 A. Yes, they are.
18 Q. Is this affidavit the affidavit that you gave as best you
19 can recall?
20 A. Absolutely and it is correct.
21 Q. I'll let you direct your attention to Paragraph 9. Please
22 read Paragraph 9 to yourself.
23 A. "On or about June 26..." --
24 Q. Oh, no, read it to yourself, please?
25 A. Oh, I'm sorry.

1 Q. That's okay.
2 JUDGE GOLDMAN: Are you just refreshing his recollection?
3 It sounds like --
4 MS. NOTO: Yes, Your Honor.
5 JUDGE GOLDMAN: Just read the portion that is directed
6 and see if that refreshes your recollection.
7 THE WITNESS: I recall this now, correct.
8 BY MS. NOTO:
9 Q. Does that help your memory with what happened on June
10 26th?
11 A. Absolutely. That is helpful. Thank you.
12 Q. Your welcome. So at that June 26th meeting you attended,
13 right?
14 A. Yes, I did.
15 Q. And the CEO was there?
16 A. Yes.
17 Q. And the Medical Director was there?
18 A. Yes.
19 Q. And the VP of Nursing was there?
20 A. Yes.
21 Q. And at that meeting you determined that Anne Marshall
22 should be suspended?
23 A. Yes.
24 Q. Based on her conduct on June 26thh, 2015?
25 A. Yes.

1 Q. And that conduct was with respect to an issue of making
2 phone calls, right?
3 A. That's one of the issues, yes.
4 Q. And you believed that Anne recalls she made those calls to
5 fill in those gaps?
6 A. Yes.
7 Q. And that she lied about having made those calls?
8 A. Yes.
9 Q. But you didn't personally speak to Ann about what had
10 happened before that decision was made, did you?
11 A. That's correct.
12 Q. Did the CEO to the best of your knowledge?
13 A. No.
14 Q. Did the Medical Director?
15 A. No.
16 Q. You didn't check personally to see if she had made those
17 calls?
18 A. No.
19 Q. Did you -- you didn't even attend the meeting where Anne
20 was told about her suspension, right?
21 A. No.
22 Q. Did the CEO attend that meeting to the best of your
23 knowledge?
24 A. No.
25 Q. Or how about the Medical Director?

1 A. No.
2 Q. Or the VP of Nursing?
3 A. I don't -- I don't believe the VP of Nursing did.
4 Q. And a meeting was held with Anne when she returned from
5 her suspension too, right?
6 A. Yes.
7 Q. But you didn't attend that meeting either?
8 A. No
9 Q. Did the CEO attend?
10 A. No.
11 Q. The Medical Director?
12 A. No.
13 Q. VP of Nursing?
14 A. No.
15 Q. You've seen Union flyers in the facility, right?
16 A. Yes.
17 Q. You've seen Union leaflets in the facility?
18 A. Yes.
19 Q. And did you take some of those materials down?
20 A. I have not taken them down.
21 Q. But you've heard that supervisors in the facility have
22 taken them down, right?
23 A. Yes, I have.
24 Q. And you know that Joel Brown took some of those down?
25 A. Yes, I do.

1 Q. And you remember seeing Anne Marshall in the cafeteria in
2 early July 2015?
3 A. Yes.
4 Q. You were eating lunch with John Turner?
5 A. Yes.
6 Q. He's the VP of Public Relations?
7 A. Yes.
8 Q. And you were eating with John Rudd?
9 A. Yes.
10 Q. And he's the CEO, right?
11 A. Yes.
12 Q. And Anne was sitting at the entrance to the cafeteria?
13 A. Yes, correct.
14 Q. And she was sitting there with all her Union materials,
15 right?
16 A. Correct.
17 Q. And as the three of you got up to leave, you stopped by
18 Anne's table, didn't you?
19 A. Yes, I did.
20 Q. You were the only one who spoke though, right?
21 A. Correct.
22 Q. And the other two just stood by you?
23 A. Correct.
24 Q. You told Anne she really shouldn't be doing that here.
25 A. Correct.

1 Q. And you told her she shouldn't be sitting in the cafeteria
2 with her materials?
3 A. I did.
4 Q. After that -- after you said that to her she picked up her
5 materials and left. This happened again about a day or two
6 later, right?
7 A. Not with Ms. Marshall, but with another employee, yes.
8 Q. And that other employee was Scott Marshland?
9 A. Correct.
10 Q. And Aaron Bell, right?
11 A. Correct.
12 Q. And Scott's a nurse in the Emergency Department?
13 A. Correct.
14 Q. He had pulled two tables together, right?
15 A. Correct.
16 Q. And Aaron Bell's another nurse in the Emergency
17 Department?
18 A. Correct.
19 Q. And the paperwork they had was Union literature, right?
20 A. Correct.
21 Q. And you told them that they shouldn't be doing that here?
22 A. That's correct.
23 Q. And you threatened Scott, didn't you?
24 A. I was -- I was upset, yes. I wouldn't say I threatened
25 him.

1 Q. Did you tell him that you were going to call Security to
2 have him removed?
3 A. I don't recall saying that I was calling Security to have
4 him removed.
5 Q. So you didn't tell him that you were going to call
6 Security to have him removed?
7 A. I do not believe I said that.
8 Q. Did you tell him Security's going to take away their
9 materials?
10 A. No.
11 MS. NOTO: Could I just have one moment, Your Honor?
12 JUDGE GOLDMAN: Okay.
13 (Whereupon, there was a pause.)
14 MS. NOTO: No further questions for this witness at this
15 time though once I have these it's possible I may need him just
16 to -- or maybe we can stipulate to some kind of --
17 JUDGE GOLDMAN: Okay. We'll take that up as it comes.
18 In terms of cross, if you're recalling the witness -- I
19 guess I just don't want to cover the same ground twice, so if
20 you want I'm happy with you deferring until you call -- if you
21 are calling him on your own --
22 MR. PASCUCCI: I will be calling him and I was planning to
23 defer, but I was going to ask just a couple of things now.
24 JUDGE GOLDMAN: That's okay. I just don't want to plow the
25 same ground --

1 MR. PASCUCCI: Yeah, I understand.
2 JUDGE GOLDMAN: -- twice, okay?
3 MR. PASCUCCI: Yeah, I just want to cover just a couple of
4 points.
5 JUDGE GOLDMAN: That's good, okay.
6 CROSS EXAMINATION
7 BY MR. PASCUCCI:
8 Q. Did you call Security to have Mr. Marshland removed?
9 A. No.
10 Q. Did you ever call Security to have any employees who were
11 distributing Union literature removed?
12 A. No.
13 Q. Did you -- who did you call after that, after you saw
14 Marshland in the cafeteria with two tables?
15 A. I called -- I called my attorney.
16 Q. And it's my understanding that there were two tables pulled
17 together and there was a lot of materials spread out on those
18 tables, correct?
19 A. That's correct.
20 Q. And after you spoke with your attorney what was the
21 hospital's position with respect to the tabling, meaning the
22 distribution of literature at a table located in the cafeteria,
23 pro-Union literature?
24 A. I nor anyone else in the hospital ever challenged that
25 again.

1 Q. And did it continue?
2 A. Yes, for months and months and months.
3 Q. So how often each week?
4 A. Multiple times per week.
5 Q. And for how many months?
6 A. It continued on through -- I'm going to just say probably
7 the late fall.
8 Q. From July until the late fall?
9 A. Correct.
10 Q. And on a daily or almost daily basis?
11 A. Very frequent, not necessarily daily.
12 Q. And the hospital never -- no one from management ever
13 interfered or told them they couldn't do and they had to leave,
14 correct?
15 A. No.
16 Q. Do you know how many hours they -- these individuals who
17 were distributing literature in that manner spent doing that
18 each day?
19 A. I can't guess. I know that they typically were at least
20 in the cafeteria for a minimum of an hour.
21 Q. In other words at a time?
22 A. Um-hum. And then there was also leafletting that took
23 place on the night shift and there was some on the evening
24 shift also, but I wouldn't have a total time that I could tell
25 you.

1 this tabling to continue, but did you ever affirmatively inform
2 employees that they were permitted to table?
3 A. No.
4 MS. NOTO: No further questions.
5 JUDGE GOLDMAN: Okay. Thank you, you're excused.
6 THE WITNESS: Thank you.
7 (Witness excused.)
8 MS. NOTO: We have to take a minute to recall a witness.
9 At this time the General Counsel calls Florence Ogundele
10 to the stand.
11 JUDGE GOLDMAN: Is she here? Is she in town?
12 MR. PASCUCCI: She's at the hospital.
13 JUDGE GOLDMAN: Well, we'll have to call her and get her
14 down.
15 MS. NOTO: Under -- pursuant to 611(c).
16 JUDGE GOLDMAN: Okay. You don't have another short
17 witness while we wait for her come or --
18 MS. NOTO: I don't, no.
19 JUDGE GOLDMAN: Okay. All right. So we'll -- I just
20 want to mention one thing while you're -- as the representative
21 you're in the hearing. The sequestration order still applies
22 in the sense that you shouldn't talk about the testimony you've
23 given to anyone who could be a witness in the case.
24 MR. PEDERSON: Understood.
25 JUDGE GOLDMAN: Thanks. Okay, we'll take a break for ten

1 A. You're fine.
2 Q. Ms. Ogundele, you're employed by Cayuga Medical Center, is
3 that right?
4 A. Yes.
5 Q. And you've worked there since April of 2010?
6 A. Yes.
7 Q. As a house supervisor?
8 A. Yes.
9 Q. And you're a nurse too, right?
10 A. Yes.
11 Q. And part of your duties, you're responsible to help charge
12 nurses with staffing, is that right?
13 A. Yes.
14 Q. And that includes in the ICU?
15 A. Everywhere.
16 Q. So that does include the ICU?
17 A. Yeah.
18 Q. And you're not assigned to a particular department though,
19 are you?
20 A. No.
21 Q. So your job is to know what's going on in the whole
22 organization, right?
23 A. Yes.
24 Q. No one reports to you directly, do they?
25 A. No.

1 Q. After you read what he wrote, you unfriended him?
2 A. He was not my friend.
3 Q. Okay. So what happened after you read what he wrote while
4 you friended him?
5 A. I responded back.
6 Q. You responded back to what he wrote, right?
7 A. Yes.
8 Q. Because you're aware that on November -- on or around the
9 beginning of November, November 10th timeframe he made a post
10 asking people to support to Anne Marshall at that hearing?
11 A. Yes.
12 Q. And he specifically mentioned you in that post, right?
13 A. Yes.
14 Q. And that upset you, didn't it?
15 A. Well, yes, it does.
16 Q. So you wrote your own post reply back to his?
17 A. Yes.
18 Q. And in that post you told him that you can go from nice to
19 bitch in 20 seconds flat?
20 A. Yes, I did.
21 Q. And you told him -- and you posted --
22 MR. PASCUCCI: I'm sorry, you can go really fast. I
23 can't --
24 MS. NOTO: I'm sorry.
25 JUDGE GOLDMAN: Yeah, why don't you slow down the

1 questioning?
2 MS. NOTO: Sure.
3 JUDGE GOLDMAN: That will help the witness too.
4 BY MS. NOTO:
5 Q. You told him that you can go from nice to bitch in 20
6 seconds flat?
7 A. Yes.
8 Q. And you posted that if he wanted to fight you, you would
9 do it face-to-face?
10 A. Yes.
11 Q. You told him not to mess with you, right?
12 A. Yes.
13 Q. And you told him to tell his disciples the same?
14 A. Yes.
15 Q. And by disciples you meant those other people involved in
16 the Union campaign, right?
17 A. Whoever they are.
18 Q. Right. So that includes the people in the Union campaign?
19 A. Yup.
20 Q. If I showed you a copy of the post that Scott made would
21 you be able to identify it for us?
22 A. Yes.
23 (General Counsel's 7 identified.)
24 Q. Is that the post that you saw --
25 A. That's the one.

1 Q. -- that Scott Marshland made?
2 A. That's the one.
3 Q. Is it fair and accurate as best you can remember?
4 A. Yes.
5 Q. And you replied to that post, right?
6 A. Yes, I did.
7 Q. You shared his post, correct?
8 A. I didn't share it.
9 Q. You didn't share his post?
10 A. No.
11 Q. But you replied to what he said, right?
12 A. Yes.
13 Q. If I showed you a copy of your reply would you be able to
14 identify it for us?
15 A. Yes.
16 MR. PASCUCCI: Thank you.
17 (General Counsel's Exhibit 8 identified.)
18 MR. PASCUCCI: Are you representing that this all that he
19 posted, that her reply was only to what he said here?
20 MS. NOTO: Yes.
21 MR. PASCUCCI: You're representing he didn't post
22 anything else that was directly at fault?
23 MS. NOTO: Yes.
24 MR. PASCUCCI: Okay.
25 BY MS. NOTO:

1 Q. This is the post that -- this is the that you replied to
2 Scott, right?
3 A. Yes.
4 MS. NOTO: Your Honor, at this time I'd move GC Exhibit
5 8.
6 MR. PASCUCCI: Judge, I have voir dire.
7 JUDGE GOLDMAN: Yes.
8 JUDGE GOLDMAN: Well, actually the witness isn't going to
9 know. I mean -- I guess it's a question for counsel, for the
10 General Counsel. These are not appearing in the same format,
11 it's not appearing as a continuous printout. My understanding
12 there was a different person that she was referring to so I'm
13 wondering how these came to be in the form that they're in
14 since one doesn't show her comments underneath, this is
15 separate, larger. It's --
16 MS. NOTO: Your Honor, if I may?
17 JUDGE GOLDMAN: Well, you may, but I do think you have to
18 authenticate this in some way.
19 MS. NOTO: For the -- I'm sorry, I was moving GC-8, not
20 GC-7. GC-7 will be entered later. She can't authenticate
21 someone else's notes.
22 MR. PASCUCCI: Judge, I would object to entering this
23 exhibit without knowing what it was she was referring to,
24 without seeing what she was referring to.
25 MS. NOTO: Your Honor, if I may?

1 JUDGE GOLDMAN: Well, I mean the witness has identified
2 it as her own reply.
3 MR. PASCUCCI: Yeah, but reply to what was the question.
4 We don't have that here.
5 MS. NOTO: Your Honor, she testified that it was a reply
6 to the post I just showed her.
7 JUDGE GOLDMAN: See, the beginning of it, it is cut off.
8 I mean you wrote this?
9 THE WITNESS: Yes, I did.
10 JUDGE GOLDMAN: Okay. And you wrote it -- you wrote it
11 in reply to something the person identified as Charlie Green
12 wrote?
13 THE WITNESS: Yes.
14 JUDGE GOLDMAN: Do you know, was it this comment that
15 you've identified before, please send Anne Marshall your words
16 of encouragement, love and it continues. Is that what you
17 replied to?
18 THE WITNESS: Yes.
19 JUDGE GOLDMAN: I mean I'm going to receive it. I think
20 that if there are other relevant posts I'll take them. I guess
21 I'd put it that way.
22 MR. PASCUCCI: So I lost track on 7 and 8.
23 JUDGE GOLDMAN: I received 8. 7 isn't offered.
24 (General Counsel's Exhibit 8 received.)
25 MS. NOTO: 7 isn't offered at this time.

1 longer available to take.
2 JUDGE GOLDMAN: You took this one down too?
3 THE WITNESS: No.
4 JUDGE GOLDMAN: How long was this up before you took it
5 down?
6 THE WITNESS: Immediately.
7 JUDGE GOLDMAN: Immediately?
8 THE WITNESS: Yes.
9 JUDGE GOLDMAN: Well, the other one you took down, it's -
10 - you're referring here to taking another post down, right?
11 THE WITNESS: No, no. When I put this, when I put to my
12 boss about this --
13 JUDGE GOLDMAN: Yes.
14 THE WITNESS: -- and they said take it down, so I took it
15 --
16 JUDGE GOLDMAN: You're referring to General Counsel's 8,
17 that's the response to Mr. Green?
18 THE WITNESS: Yes.
19 JUDGE GOLDMAN: Okay. What about this one, is this still
20 up?
21 THE WITNESS: Nope.
22 VOIR DIRE EXAMINATION
23 BY MR. PASCUCCI:
24 Q. How long was this up?
25 A. Maybe two hours.

1 Q. Okay. Do we know when -- do you know when you put it up?
2 A. I don't remember.
3 Q. But it was after this one?
4 A. Yes.
5 Q. Do you know how long after, an hour, a week? Do you
6 remember?
7 A. No, because -- about two to four hours yes.
8 JUDGE GOLDMAN: I'm sorry, for the record refer to the
9 exhibit number when you're asking this witness?
10 MR. PASCUCCI: Sorry about that.
11 JUDGE GOLDMAN: General Counsel's 9, this one, this was
12 put up after this -- General Counsel's 8 was taken down,
13 correct?
14 THE WITNESS: Yes.
15 JUDGE GOLDMAN: How long did you leave General Counsel's
16 9 up?
17 THE WITNESS: Maybe two to four hours.
18 JUDGE GOLDMAN: And how long after you put up General
19 Counsel's 8 -- when did you put up General Counsel's 9 in
20 -- one related to the other?
21 A. I don't remember.
22 JUDGE GOLDMAN: Are you going to give us any testimony on
23 when these were up?
24 MS. NOTO: She doesn't remember. Not necessarily through
25 this witness, but I have other people who will testify that

1 Q. And when was Deb hired, the best you can remember?
2 A. November.
3 Q. So what happened in the intervening months? Who was --
4 who did the directors report to?
5 A. Me.
6 Q. What about the Emergency Department, who was -- who does
7 the Director of the Emergency Department report to?
8 A. Amy Matthews reported directly to me.
9 Q. Okay. But staff nurses don't report to you, right?
10 A. No.
11 Q. You're not involved in their daily comings and goings, are
12 you?
13 A. No.
14 Q. They report to their department directors, right?
15 A. Correct.
16 Q. And those directors perform the annual evaluations for
17 their staff nurses, right?
18 A. That's correct.
19 Q. Not you?
20 A. Not routinely, no.
21 Q. This year you were involved in the annual evaluations for
22 the staff nurses in the ICU?
23 A. Yes.
24 Q. You told the staff nurses in the ICU that their
25 evaluations would remain the same from last year, didn't you?

1 A. No.
2 Q. You didn't tell them that in a staff meeting?
3 A. I told them that they would have the same -- they would
4 start with the same rating that they had for 2014 and then we'd
5 do -- review the personal accountability section of the
6 evaluation and then we set goals for this year.
7 Q. And that person accountability section is the objective
8 like education requirements, right?
9 A. Your education, your attendance, yes. Your licensure.
10 Q. So that section includes, just so we're clear, your
11 education, right, you said?
12 A. Mandatory education, correct.
13 Q. The attendance policies, right?
14 A. Correct.
15 Q. And what was the last one you said?
16 A. Licensure.
17 Q. Okay. Is that it?
18 A. No, there's several other questions along there.
19 Q. Like what?
20 A. I can't think off the top of my head, I'm sorry.
21 Q. And that was because they didn't have an interim director
22 present long enough to perform those --
23 JUDGE GOLDMAN: What was because?
24 MS. NOTO: I'm sorry.
25 BY MS. NOTO:

1 Q. The reason that you performed those evaluations this year
2 is because the ICU didn't have a director present long enough
3 to do those evaluations, is that right?
4 A. That's correct, yes.
5 Q. You first became aware of the Union campaign in the spring
6 of 2015, right?
7 A. Correct.
8 Q. And at that time you knew Anne Marshall was involved,
9 didn't you?
10 A. Yes.
11 MR. PASCUCCI: At what time? When she first became what?
12 MS. NOTO: When she first --
13 BY MS. NOTO:
14 Q. Yes. At that time when you first became aware you knew
15 Anne Marshall was involved?
16 A. No, I can't say that I knew that Anne was initially, but I
17 knew pretty quickly thereafter.
18 Q. So right around the time the Union campaign began you knew
19 Anne Marshall was involved?
20 A. Yes, yes.
21 Q. And she's an RN in the ICU?
22 A. Correct.
23 Q. She was a team leader at that time?
24 A. Correct.
25 Q. And she was a charge nurse at that time?

1 asked to call staff to see if anyone could cover for a
2 particular shift?
3 A. Yes.
4 Q. Because the department was not fully staffed, is that
5 right?
6 A. Yes.
7 Q. But team leaders don't make the schedules, do they?
8 A. Some team leaders are involved in the schedules.
9 Q. Did Anne make the schedule for June -- for the issue that
10 arose on June 26th?
11 A. No, not to my knowledge.
12 Q. Anne isn't the only team leader in that department, is
13 she?
14 A. No, she's not.
15 Q. At that time there were four team leaders, is that right?
16 A. That's correct.
17 Q. There were two on days, is that right?
18 A. Right.
19 Q. And two on nights.
20 A. Right.
21 Q. And the schedules are made in advance, right?
22 A. Yes.
23 Q. About maybe two weeks in advance, give or take?
24 A. Or longer.
25 Q. It could be even longer than two weeks, right?

A. Yes.
Q. So the schedules are produced with holes in the schedule, is that right?
A. They're not intended to be -- have any holes in the schedule.
Q. But they do, don't they?
A. On occasion there have been.
Q. Now you had heard from Florence Ogundele, the house supervisor, that Anne had said she made phone calls to try to shore up staffing, right?
A. Yes.
Q. But that no one would come in?
A. Yes.
Q. And then you heard from Flo later that Anne admitted to her that she didn't actually call anyone, is that right?
A. That's correct.
Q. But you didn't witness any of this personally, right?
A. No.
Q. You heard it from Flo?
A. Yes.
Q. And when I say Flo, you know I'm referring to Florence Ogundele?
A. Yes.
Q. And you heard that from Joel too, right?
A. That's correct.

1 Q. And that's Joel Brown?
2 A. Yes.
3 Q. And he -- was the Director of the ICU at the time?
4 A. Interim director, correct.
5
6 JUDGE GOLDMAN: Whoa. What did we hear from Joel too?
7 MS. NOTO: That --
8 JUDGE GOLDMAN: Well, why don't you tell us?
9 THE WITNESS: That Anne had said to -- initially had made
10 phone calls and then she admitted that she had not made phone
11 calls.
12 JUDGE GOLDMAN: Okay, so you heard that from Flo?
13 THE WITNESS: From Flo.
14 JUDGE GOLDMAN: And you heard that from Joel?
15 THE WITNESS: Joel.
16 BY MS. NOTO:
17 Q. But you weren't personally there for any of that, right?
18 A. No, I was not.
19 Q. Well, later that day you had a meeting with Anne, right?
20 A. Yes, sir.
21 Q. To suspend her?
22 A. Yes.
23 Q. Flo attended that meeting?
24 A. Yes.
25 Q. Joel attended too?

1 A. Yes.
2 Q. And Anne as well, right?
3 A. Yes.
4 Q. And you were there too?
5 A. Yes.
6 Q. She was suspended about 3:00 p.m. on Friday the 26th?
7 A. Yes.
8 Q. She was taken off the schedule for her scheduled work day,
9 which was the next day, a Saturday?
10 A. That's correct.
11 Q. And you suspended her because she wasn't truthful when she
12 said she had called the staff, right?
13 A. Yes.
14 Q. Because you had heard that she later admitted that she
15 hadn't called any staff, right?
16 A. Yes.
17 Q. And that action wasn't truthful?
18 A. She wasn't truthful.
19 Q. And that was in violation of the Nursing Code of Conduct,
20 right?
21 A. Correct.
22 Q. And again, that admission was made to Flo?
23 A. Yes.
24 Q. Now, in that meeting Anne maintained that she made the
25 calls, right, in that meeting with you?

1 A. I don't really recall for sure.
2 Q. In that meeting Anne said that she made the phone calls?
3 A. No.
4 Q. Do you remember giving an affidavit to the Board?
5 A. Yes.
6 Q. In this investigation?
7 A. Yes.
8 Q. If I show you a copy -- do you remember that I asked you
9 to tell the truth in that?
10 A. Yes, yes.
11 Q. And you did tell the truth, right?
12 A. Yes.
13 Q. If I showed you a copy of that would that help you
14 remember?
15 A. Yes, it would. Thank you.
16 Q. Is that the affidavit that you gave to the Board?
17 A. Yes.
18 Q. Do you remember signing that on September 8th, 2015?
19 A. Yes.
20 Q. And that's your initial on the bottom right-hand corner of
21 each page?
22 A. Yes.
23 Q. Please review this document and make sure that's what you
24 remember giving to the agent.
25 (Whereupon, the witness reviewed the document.)

1 BY MS. NOTO:
2 Q. Is that the statement that you gave to the Board Agent?
3 A. Yes.
4 Q. I'd like to direct your attention to Paragraph 5. Please
5 read it silently to yourself.
6 (Whereupon, the witness read the portion of the document.)
7 A. Okay, yes.
8 Q. Do you now remember telling the Board Agent in that
9 affidavit that Anne maintained that she made the phone calls?
10 A. Yes.
11 Q. And she never said that she didn't make any calls?
12 A. That's correct.
13 Q. Is that the truth when you told it to the Board Agent?
14 Was that the truth?
15 A. Yes.
16 Q. And that's -- do you now remember that Anne, in that
17 meeting, said she didn't -- she made the calls?
18 JUDGE GOLDMAN: Do you?
19 BY MS. NOTO:
20 Q. Do you?
21 A. Do I remember?
22 JUDGE GOLDMAN: Yes.
23 THE WITNESS: No, not really.
24 JUDGE GOLDMAN: Okay. Well, then let's read the
25 statement into the record.

1 MS. NOTO: Yes, Your Honor.
2 "I also told her that she was not truthful when she said
3 that she had called staff when she admitted later that she had
4 not called any staff. She said that she did make the calls."
5 Late on you also say, "She maintained that she made the
6 calls."
7 BY MS. NOTO:
8 Q. Did I read that accurately?
9 A. Um-hum.
10 JUDGE GOLDMAN: Okay.
11 BY MS. NOTO:
12 Q. Is that a yes?
13 A. Yes.
14 Q. Do you remember Anne saying -- do you remember Anne saying
15 that it was not her job to make the calls in that meeting?
16 A. I don't remember her saying it, but I know that's how she
17 felt.
18 Q. But do you remember her saying it?
19 A. Yes.
20 Q. You remember her saying it?
21 A. No, what I said is I don't really recall that she said
22 that. What I remember is that that's how she felt.
23 Q. Okay.
24 A. And she had told that to Joel, I believe.
25 Q. But she didn't tell that to you, right?

1 A. Not that I remember. It's probably in here someplace.
2 Q. Again look at Paragraph 5. Do you remember telling the
3 Board Agent I don't recall her saying that it was not her job
4 to make the calls?
5 A. Yes.
6 Q. That's in the affidavit that you gave the Board Agent?
7 A. Yes.
8 Q. And at the time you gave that affidavit to the Board Agent
9 that statement was truthful?
10 A. Yes.
11 Q. Do you now remember whether or not she said that?
12 A. I don't recall that she -- just what the statement says.
13 I don't recall her saying that it was not her job to make the
14 calls.
15 JUDGE GOLDMAN: Wait, maybe I'm hearing wrong. I think
16 the statement that she just read was I don't recall her saying
17 that.
18 THE WITNESS: I don't recall her saying that it was not
19 her job to make the calls.
20 MR. PASCUCCI: That's the question that the witness was
21 being asked when the affidavit was being taken.
22 JUDGE GOLDMAN: Okay.
23 MS. NOTO: Yes, sir.
24 JUDGE GOLDMAN: Okay.
25 BY MS. NOTO:

1 MR. PASCUCCI: Are we calling it 12(b)?
2 JUDGE GOLDMAN: Yeah, let's call it 12(b). I'm not
3 worried about any implication. So I'll be considering that.
4 What is the 0730? Is that 7:30 a.m.?
5 THE WITNESS: Yeah, military time.
6 JUDGE GOLDMAN: Is that when you wrote this?
7 THE WITNESS: Yeah.
8 JUDGE GOLDMAN: Okay. 12(b) is received.
9 (General Counsel's GC-12(b) received.)
10 MS. NOTO: 12(a) as well, Your Honor?
11 JUDGE GOLDMAN: 12(a) as well.
12 BY MS. NOTO:
13 Q. This was the first time Anne had ever been disciplined for
14 conduct relating to making phone calls for staffing concerns,
15 right?
16 A. That I'm aware of. I don't have the file here in front of
17 me, so I don't -- that I have been involved with.
18 Q. Have you ever been involved with Anne being disciplined
19 for anything else?
20 A. Prior to this?
21 Q. Prior to this. In that meeting, the meeting on July
22 8th --
23 A. I don't --
24 JUDGE GOLDMAN: I think that's what we don't know.
25 BY MS. NOTO:

1 Center?
2 A. In 2011.
3 Q. What is your current role at the hospital?
4 A. Registered nurse.
5 Q. In what department?
6 A. ICU.
7 Q. Have you ever held any other roles there?
8 A. I have. I've been a charge nurse and a team leader.
9 Q. When did you become a charge nurse?
10 A. Shortly after I became full-time in 2011, I started
11 training.
12 Q. When did you become a team leader, if you remember?
13 A. Around 2013, I believe.
14 Q. Can you describe for the court the difference between a
15 charge nurse and a team leader?
16 A. Every team leader is a charge nurse, but not every charge
17 nurse is a team leader.
18 Q. So what's a team leader?
19 A. A team leader, when they are working, is in charge.
20 They're responsible for patients flow in and out of the ICU.
21 They are responsible for going to bed meetings. They are
22 responsible for the QA system and entries into that, as well as
23 Kronos for payroll.
24 Q. You mentioned a QA system. What does QA stand for?
25 A. Quality assurance.

1 efforts?
2 A. Yes. So I became involved in the current organizing
3 efforts at the end of April, beginning of May 2015. I was
4 working with another colleague, Scott Marsland.
5 JUDGE GOLDMAN: I think the relevant issue is the
6 hospital's awareness of her activity.
7 MS. NOTO: Yes, Your Honor. I only have one or two
8 more questions.
9 JUDGE GOLDMAN: That's fine.
10 BY MS. NOTO:
11 Q. What were the issues that you discussed with your
12 colleagues that made you want to look into this issue with the
13 ICU?
14 A. Basically, we wanted to be able to have more staff
15 available so that we could have better nurse-to-patient ratios
16 and better patient safety with outcomes.
17 Q. What is a nurse-to-patient ratio?
18 A. A nurse-to-patient ratio is how many patients a nurse
19 would be assigned.
20 Q. Is there a particular ratio that's used in your
21 department?
22 A. Two to one.
23 Q. Two to one what, sorry?
24 A. Two patients to one nurse. There are instances when
25 certain patients are critically ill or having certain

1 procedures that it would be one nurse to one patient.
2 Q. Are charge nurses or team leaders included in that ratio?
3 A. The thought was that the charge nurses and team leaders
4 would be unassigned, and when possible we do, do that. But
5 most of the time because we don't have enough staff, we have
6 patients.
7 Q. Why is that a problem, this issue with respect to the
8 charge nurses/team leaders having their own patients?
9 A. It's an issue because a lot of the times we are not
10 physically on the floor. We leave the floor twice a day, once
11 at 8:30, once at 2 o'clock to go to the bed meeting, which can
12 last anywhere from 15 to 20 minutes. We're also responsible
13 for any overhead calls that would go through the hospital,
14 whether it be a CAT call, a Stemi, a Code Gray, or an ABC
15 alert, and we would have to respond to those within the
16 hospital off of our floor. That can take anywhere from 15
17 minutes to 2 hours depending on what is going on, which means
18 that the charge nurse has then left the floor, nobody is
19 necessarily caring for her patients because everybody else has
20 patients of their own.
21 Q. Is this issue with respect to charge nurses and team
22 leaders having their own patients something that you discussed
23 amongst your colleagues?
24 A. Yes.
25 Q. Did you ever bring it to the attention of management?

1 A. Yes.
2 Q. In what way?
3 A. Multiple staff meetings where administrators, Alan was
4 there, John Rudd, who is the CEO, Susan Nolte at the time,
5 Linda Crumb.
6 Q. How is staffing handled in the ICU? Who handles the
7 schedule?
8 A. The schedule, ultimately that is the responsibility of the
9 director.
10 Q. How is it filled out?
11 A. Basically, we have a requirement where we have to work
12 every other weekend, one Friday, and one Monday. And then we
13 self-schedule the remainder.
14 Q. You say you self-schedule. How does that work?
15 A. So you're automatically filled in for what you need to
16 work your weekends and then people sign up for the days they
17 want.
18 Q. How many spaces are available for you to sign on for each
19 day?
20 A. Six.
21 JUDGE GOLDMAN: I don't understand that. You mean there's
22 six --
23 THE WITNESS: So there's six slots to sign up for nurses.
24 JUDGE GOLDMAN: Six individuals?
25 THE WITNESS: Yes, per shift.

1 MR. PASCUCCI: Six shifts, right?
2 MS. NOTO: Six nurses. Six nurses per shift.
3 MR. PASCUCCI: Per shift?
4 THE WITNESS: Yes.
5 JUDGE GOLDMAN: And it's first come, first serve?
6 THE WITNESS: We have like an A group and a B group, and
7 we alternate months. So first the A group will go and then the
8 next month the B group will go.
9 JUDGE GOLDMAN: About a month in advance or two weeks in
10 advance?
11 THE WITNESS: Usually about a month. We try.
12 BY MS. NOTO:
13 Q. Does there come a time when that schedule is approved for
14 final turnout?
15 A. Yes.
16 Q. Who approves that schedule?
17 A. The director.
18 Q. Are all the slots, all six slots filled when the schedule
19 is approved?
20 A. No.
21 Q. You're saying no. Has it ever been the case that all six
22 slots have been filled?
23 A. Maybe on a specific day. But for the entire month, no,
24 the slots are all not filled.
25 Q. So who is responsible for filling the holes in the

1 schedule?
2 A. Ultimately, it's the director, but we all try to help.
3 Q. What do you mean by we all? Who are you referring to?
4 A. The nurses who are working.
5 Q. How often would you personally have to try to fill holes
6 in the schedule when you were charge nurse and team leader?
7 A. Multiple times a week.
8 Q. How many times a week did you work?
9 A. Three.
10 Q. What shift do you work?
11 A. 7a to 7p.
12 Q. So that's the day shift?
13 A. Yeah.
14 Q. Would you only try to fill in the schedule for the day
15 shift then?
16 A. No. We would try to fill in all the holes. Normally, we
17 would look at the next shift coming on and try to fill those
18 holes first and then look for an individual --
19 Q. How many nurses a shift would you need for that shift to
20 be considered one that didn't have any holes in it?
21 A. Well, they have six slots. But if we have 16 patients
22 which we could hold, 6 nurses is not enough.
23 Q. So what methods would you employ, would you personally
24 employ to try to bring in nurses for those shifts?
25 A. We would text people and call people.

1 JUDGE GOLDMAN: I have a question. You said we. Is this
2 all the nurse would be doing this, just the charge nurses, or
3 the team leaders?
4 THE WITNESS: The charge nurse or the team leader for that
5 shift.
6 JUDGE GOLDMAN: Would make an effort to fill the upcoming
7 shift?
8 THE WITNESS: We would try to, yes.
9 BY MS. NOTO:
10 Q. Was this issue with respect to schedules not being fully
11 staffed an issue for nurses that you worked with?
12 A. Yes.
13 Q. How do you know that?
14 A. Because they would be asked to come in on their days off.
15 They'd be asked to switch one day for another if we had a
16 higher census on one day.
17 Q. Are there other ways to fill holes in the schedule other
18 than calling in your full-time or per diem staff?
19 A. There are ideas that we came up with. One would be to
20 hire travelers. Another one would be to initiate a float pool.
21 They've also pulled in nurses from other floors, although it's
22 not the best idea because they're not trained for our unit.
23 Q. So let's discuss this issue of travelers first. You
24 mentioned travelers. Have you ever had that conversation with
25 respect to -- what is a traveler, to start with?

1 A. That would be the director.
2 Q. Did the director, to the best of your knowledge, ever
3 attempt to fill in the holes?
4 A. Yes.
5 Q. What type of incentives could you personally as a team
6 leader offer nurses when you called?
7 A. I really couldn't offer an incentive. I could offer to
8 switch a day with them. Could the director offer something
9 that you couldn't offer, to the best of your knowledge?
10 A. Yes.
11 Q. Like what?
12 A. Monetary encouragement.
13 Q. How do you know that?
14 A. Because people were given incentive pay to come into work
15 more.
16 Q. What's incentive pay?
17 A. Extra money to work above and beyond your hourly salary.
18 Q. Directing your attention back to the union campaign, how
19 did you reach out to other nurses about the campaign?
20 A. We reached out through social media. We would make phone
21 calls. We would send mailings. We talked to people in the
22 parking lots, in the locker rooms, in the break rooms. We put
23 out all kinds of flyers and pamphlets in break rooms and locker
24 rooms, bulletin boards. We would table down in the cafeteria.
25 Q. Did you ever attempt to get cards signed during this time?

1 respiratory therapists and they wanted to sign a card. And
2 Sandra walked in while we were signing.
3 Q. When was that?
4 A. That would have been back in August of 2015.
5 Q. What else happened around that time?
6 A. Shortly thereafter, I was brought into a meeting and
7 demoted.
8 Q. Who was in attendance at that meeting?
9 A. That would have been myself, Linda Crumb, Sandra Beasley,
10 and Ken Pacquin, who is a social worker.
11 Q. You also mentioned that you would hang flyers in support
12 of the union. When did that begin?
13 A. I began hanging flyers back in April and May of 2015, as
14 soon as I started my work with the union.
15 Q. Where would you hang them?
16 A. We would hang them in the locker rooms, the break rooms,
17 and on the bulletin boards.
18 Q. Did those materials stay where you had posted them?
19 A. No.
20 Q. Do you know who took them down?
21 A. Yes.
22 Q. Can you give us a specific example?
23 A. Yes. I can give a specific example of back in June/July,
24 Joel Brown took one of my flyers down.
25 Q. How do you know it was him?

1 A. Because I hung it up. He walked passed me towards the
2 bulletin board. I walked through the doorway. He walked back
3 in, I walked back out. It was gone and nobody else was in the
4 hallway.
5 Q. Were employees permitted to post on the bulletin boards in
6 the hospital?
7 A. Yes.
8 Q. About non-hospital material?
9 A. Yes.
10 Q. How do you know that?
11 A. Because there's all kinds of things on the bulletin boards
12 besides hospital information such as information about salsa
13 dancing, items that may be for sale, parties.
14 Q. Were those flyers taken down when your flyers were taken
15 down?
16 A. They were not.
17 Q. Did you ever take a picture of the bulletin boards?
18 A. I did.
19 Q. When did you do that?
20 A. As soon as my flyers started coming down.
21 Q. If I showed you a copy of those pictures, would you be
22 able to identify them for the Court?
23 A. Yes.
24 JUDGE GOLDMAN: Where is this bulletin board?
25 THE WITNESS: There are two that I hung information on, on

1 my floor and the third floor. One is right by the elevators
2 and the back door to ICU, and the other one is in the main
3 corridor over by the OR area.
4 JUDGE GOLDMAN: Are these bulletin boards reserved for
5 employees to post things or does management also post?
6 THE WITNESS: Anybody can post things. There's stuff from
7 everybody.
8 JUDGE GOLDMAN: So management, too?
9 THE WITNESS: Um-hum.
10 JUDGE GOLDMAN: That's 16, 17, and 18?
11 MS. NOTO: Yes, Your Honor.
12 (General Counsel's GC-16 to GC-18 identified.)
13 BY MS. NOTO:
14 Q. Ms. Marshall, I'd like to specifically direct your
15 attention to begin with what's marked on the bottom as GC
16 Exhibit 16. What's that a picture of?
17 A. That is the bulletin board by the time clock, by the ICU
18 backdoor and elevator.
19 Q. About when did you take this picture?
20 A. In the spring of 2015, spring to summer.
21 Q. Is that a fair and accurate representation of the picture
22 that you took?
23 A. Yes.
24 Q. Or is that the picture that you took?
25 A. Yes.

A. I was told that by our former director, Sean Newvine, and Alan Pedersen had told us at one point it was inappropriate to be talking about it.

Q. When did you hear that from Alan?

A. That would have been in the fall of 2015.

Q. What happened at that time? Do you remember what you were talking about?

A. We were discussing what some of the new nurses who were being hired were making, what we were making based on experience. We couldn't kind of figure out why certain people were making so much less or more than others because it didn't match with experience necessarily. And we were talking at the nurses' station when he walked by and he said it was inappropriate.

Q. About how many nurses were standing there with you?

A. Probably four and myself.

Q. You also mentioned that you would put material on the table in the break room. When would you do that?

A. I would do it continually on the shifts that I work. I'd put it out in the morning. It would be gone. I'd put it out again. It would be gone. And other units, too, not just my own.

Q. Who had removed those, if you knew?

A. I'm assuming the same people that were removing all of them.

1 cafeteria?
2 A. July 8th.
3 Q. Of what year?
4 A. 2015.
5 Q. So I'd like you to direct your attention to that date.
6 Were you tabling that day?
7 A. I was.
8 Q. So what happened?
9 A. I punched out. I went to the cafeteria. I set up my
10 table with my cards and my flyers. And I was in the front part
11 of the cafeteria when you first walk in. I had been sitting
12 there for approximately 20 minutes.
13 Q. What happened?
14 A. Towards the back of the cafeteria, Alan Pedersen, John
15 Rudd, and Tony Votaw were sitting having lunch. In order to
16 hand back their trays, they had to walk by me.
17 Q. Who is Alan Pedersen?
18 A. Vice president of human resources.
19 Q. Do you see him here today?
20 A. I do.
21 Q. Where is he seated?
22 A. Right there.
23 JUDGE GOLDMAN: We've got him. We know who -- he's here.
24 MS. NOTO: I feel bad because you're right there. I don't
25 want you to feel left out.

1 BY MS. NOTO:
2 Q. Who is John Rudd?
3 A. He is the CEO.
4 Q. And who is Tony Votaw?
5 A. I believe he's vice president of information.
6 Q. What happened when they approached you?
7 A. They all three approached me. Alan spoke to me and told
8 me that I was not allowed to set up a table. I was not allowed
9 to be in there with my information and that I had to leave.
10 Q. So what did you do?
11 A. I sat there for a minute and they stood there for a
12 minute, and I felt pretty intimidated being by myself so I
13 packed up my things and went upstairs.
14 Q. Once Cayuga Medical Center management realized there was
15 an active campaign, did they ever reach out?
16 MR. PASCUCCI: Ever reach out? I object.
17 BY MS. NOTO:
18 Q. I'm sorry. Did you ever receive any emails from --
19 A. Yes.
20 JUDGE GOLDMAN: Well, hold on. Let her finish the
21 question. I know you're able to anticipate sometimes what
22 she's asking about.
23 THE WITNESS: Okay.
24 JUDGE GOLDMAN: But the record is not clear.
25 BY MS. NOTO:

1 A. Yes.
2 Q. Who approached you personally?
3 A. Joel Brown.
4 Q. When did Joel approach you?
5 A. Spring, April of 2015.
6 Q. What happened?
7 A. He set up individual meetings in his office with the
8 nurses.
9 Q. Were you called into his office?
10 A. He did ask for me to go into his office.
11 Q. So what did you do?
12 A. I kind of had a feeling about what it was going to be
13 about. I didn't feel comfortable. So myself and one of the
14 other nurses, Christy Lychock (ph.), approached him together
15 and said we'd like to meet together.
16 Q. What happened?
17 A. He said absolutely not, meet with you one at a time.
18 Q. So what did you do?
19 A. I went ahead and went first. I sat down in his office and
20 he basically told me that he knew I was the ring leader and I
21 was the one promoting all this union stuff, and if it didn't
22 stop he was going to get HR involved.
23 Q. Is ring leader his word or yours?
24 A. His word.
25 Q. What did you do?

1 A. I said this is something that I can't discuss with you,
2 and I got up and walked out.
3 Q. Have you ever seen anyone from Cayuga Center's -- Cayuga
4 Medical Center's management post on Facebook about the union
5 campaign?
6 A. I have.
7 Q. Can you specifically recall what happened?
8 A. One of my colleagues was wishing me well at a division of
9 human rights hearing.
10 Q. What happened?
11 A. One of the nursing supervisors posted something back.
12 Q. Who is that nursing supervisor?
13 A. Flo Ogundele.
14 Q. Are you friends with her on Facebook?
15 A. I am.
16 Q. And by her I mean Flo.
17 A. Yes.
18 Q. How long have you been friends with Flo, if you know?
19 A. Since she started working at Cayuga Medical Center. She
20 and I have always had a really good working relationship and
21 friendship.
22 Q. You mentioned that one colleague posted on Facebook and
23 wished you well. Do you know who that colleague was?
24 A. Scott Marsland.
25 Q. Do you know what Scott Marsland's name is on Facebook?

1 posted?
2 A. That would have been the following day.
3 Q. How do you know that?
4 A. Because I don't recall by memory, but I know the date of
5 my New York State proceeding.
6 JUDGE GOLDMAN: And what date --
7 MR. PASCUCCI: What? I'm sorry.
8 JUDGE GOLDMAN: Say it again.
9 THE WITNESS: I said I could be able to find you the date
10 from my New York State proceedings, what day it was.
11 JUDGE GOLDMAN: Do you remember the date of your New York
12 State proceeding?
13 THE WITNESS: I don't off the top of my head, but I can
14 find it for you. I mean they were there, too, so they may have
15 it. I can find it. I just don't recall it off the top of my
16 head.
17 JUDGE GOLDMAN: So what you're able to do is say that
18 these posts were made the day of your hearing and the last one
19 was made the day after?
20 THE WITNESS: Yes.
21 JUDGE GOLDMAN: You recall that?
22 THE WITNESS: Yes.
23 JUDGE GOLDMAN: Okay.
24 BY MS. NOTO:
25 Q. Prior to the start of that union campaign, had you ever

1 been disciplined at Cayuga Medical Center?
2 A. No.
3 Q. I'd like to direct your attention to June 26, 2015. Do
4 you remember working that -- do you remember what happened that
5 day?
6 A. Yes.
7 Q. What happened?
8 A. It was a very busy day in the ICU. We were short staffed.
9 I had patients myself. Upcoming shifts were short also.
10 Previous shifts had been short. It was a busy time of year.
11 Q. You said that you had patients, yourself. What was your
12 role that day?
13 A. I was team leader, charge nurse.
14 Q. You had mentioned that there were holes in the schedule.
15 Did you do anything about that?
16 A. We tried multiple different things. Emails had been sent
17 out prior, earlier in the week, phone calls earlier in the
18 week, texts earlier in the week that continued through that
19 day.
20 Q. When you say continued through that day, what did you do
21 that day to help staffing?
22 A. I made some phone calls to see if we could get some people
23 to come in.
24 JUDGE GOLDMAN: This is June 26th?
25 BY MS. NOTO:

1 MR. PASCUCCI: Alright. Thank you for the clarification.
2 CONTINUED DIRECT EXAMINATION
3 BY MS. NOTO:
4 Q Who's patient -- I know we had heard on this recording --
5 who's patient needed to be transported?
6 A Robert Styer's (ph).
7 Q Who is he?
8 A He's one of the nurses that I work with.
9 Q So what was the issue?
10 A The issue was that he had two patients that day, one of
11 which was critically ill on multiple infusions that needed 15
12 minute observation for titration. And in order to leave to
13 take the second patient he had down for a test that could last
14 for four hours, it wasn't feasible.
15 Q So what happened?
16 A So I had asked Joel if he could do it. Joel told me no.
17 So I had to take the patient down.
18 Q How did you know that Robert had this issue?
19 A He came to me and told me that he had asked Joel to do it.
20 Joel had told him no. So then I went on Robert's behalf to ask
21 again.
22 Q And also on this recording there was a conversation about
23 -- in this meeting there was a conversation about his making a
24 phone call. What was that about?
25 A Joel making a phone call?

1 A Yes.
2 Q So I had -- since he was not able to take the patient,
3 enter the orders or watch our other patients, while I went to
4 the testing, I asked him to please find a ward clerk, which is
5 basically a unit secretary, to answer the eight -- to enter the
6 eight pages of orders on the new admissions that were coming,
7 because to expect the nurse who is getting this critically ill
8 patient to be able to do both is unrealistic.
9 Q So where were you standing when he was making this phone
10 call?
11 A I was standing in the doorway to the kitchen.
12 Q And where was he standing?
13 A He was standing at the desk counter.
14 Q And where's the desk counter?
15 A In the back hallway.
16 Q Did you -- is there anything that could help you
17 demonstrate the distance between you and him --
18 A I took --
19 Q -- for the Court?
20 A -- a picture of the back hallway.
21 (General Counsel's GC-26 identified)
22 Q If I show you a copy of that picture would you be able to
23 identify it for us?
24 A I would.
25 Q What did you take that picture on?

1 A On my phone.
2 Q And how was it maintained?
3 A On my phone.
4 MS. NOTO: The picture was taken November 4th.
5 MR. PASCUCCI: Thank you. Oh, let's put that on the
6 record.
7 MS. NOTO: The picture was taken November 4th according to
8 the phone --
9 JUDGE GOLDMAN: These are fixed walls. So the date is
10 less important. Okay. Go ahead.
11 BY MS. NOTO:
12 Q Ms. Marshall, looking at the exhibit I handed you labeled
13 GC exhibit 26, where were you standing in that picture?
14 A I personally am not in the picture. But I would have been
15 where the woman is the doorway.
16 Q And what about Joel? Where would Joel have been?
17 A He would have been where the woman was standing on the
18 phone.
19 Q Okay. And who are those two people in the picture?
20 A One is a nurse that I work with. The other was a
21 housekeeper.
22 Q And where were you standing when you took this picture?
23 A At the end of the hallway.
24 MS. NOTO: Your Honor, I move to admit -- offer GC exhibit
25 26.

1 JUDGE GOLDMAN: Okay.
2 CONTINUED DIRECT EXAMINATION
3 BY MS. NOTO:
4 Q Just one more thing about this. Can you describe Joel's
5 build for the Court? His physical build.
6 A Joel was large. He was over six foot tall. He was
7 athletically built. Did many different kinds of triathlons,
8 Spartan type races.
9 Q And how tall are you?
10 A Four-11.
11 Q And I know at the end of that recording Linda mentioned
12 that there would be a follow up meeting. Was there a follow
13 meeting to this?
14 A Yes, there was.
15 Q Do you remember about -- I'd like to direct you -- do you
16 remember about when that happened?
17 A I believe it was few days later.
18 Q And what happened on that day?
19 A She called me back down into her office.
20 Q Why?
21 A To discuss the results of her investigation.
22 Q Did you record that meeting?
23 A I did.
24 Q Who was present for that meeting?
25 A Myself and Linda Crumb.

Q I would like to direct your attention to when Sandra Beasley became the interim director. Did you meet her on her first day?
A I did not. I was on vacation.
Q So when did you meet her?
A About a week after she had been there.
Q Can you remember the first interaction that you had with her?
A I can. I had come in about 6:30 in the morning to get charge report. And I was sitting in the back hallway getting report from Scott Goldsmith (ph).
Q So what happened?
A Sandra came in, introduced herself, we shook hands and I continued with my morning report with Scott.
Q Did you at any time, during this first interaction with her, give her the middle finger?
A I did not.
Q Did you talk to her again later that morning?
A I did.
Q What happened at that point?
A She had asked me to please come find her to go to the bed meeting at 8:30.
Q What's bed meeting?
A Bed meeting is something that occurs twice a day on my shift at 8:30 and 2:00 O'clock in the afternoon. It's

1 basically where all the charge nurses meet down in the PMRU
2 conference room and we discuss the staffing issue and patient
3 movement throughout the hospital for the day.
4 Q Is that 8:30 a.m.?
5 A Yes.
6 Q And 2:30 p.m.?
7 A 2:00 p.m.
8 Q 2:00 p.m. Is bed meeting held -- how often is bed meeting
9 held?
10 A Twice on a day shift, twice on a night shift.
11 Q Is it every day?
12 A Yes.
13 Q So what happened?
14 A So about 8:25 I realized I needed to get ready to head
15 downstairs. I looked in her office. I looked in the back
16 hallway.
17 I couldn't find her. So I didn't want to be late. So I
18 left for bed meeting.
19 Q Did she ever arrive at bed meeting?
20 A She did.
21 Q Who was with her when she arrived?
22 A Nobody.
23 Q So what happened after bed meeting?
24 A After bed meeting we were leaving walking back up to ICU.
25 She told me she was upset that I had not gone to find her to

1 take her with me. I said I looked for you. I didn't see you.
2 So I knew you'd been here before. You'd been brought
3 there before. You knew what time it was held every day. I
4 didn't want to be late, so I went ahead and went without you.
5 Q How did you know that she had been brought there before?
6 A On her first day Linda personally escorted her there and
7 she had gone multiple days with the charge nurses.
8 Q Did anything else happen that day?
9 A Yes. Later that day she asked me to go with her into the
10 small conference room, which I had been in prior. And in the
11 conference room was Kansas Underwood.
12 Q Who's Kansas Underwood?
13 A She's the director of the fourth floor.
14 Q Were you expecting to be called into a meeting?
15 A I wasn't.
16 Q Did you get a chance to record that meeting?
17 A I didn't.
18 Q So what happened at that meeting?
19 A At that meeting she sat me down with herself and Kansas
20 and basically explained how she was very upset that I didn't
21 take her to the bed meeting. That she didn't feel I was
22 friendly enough when we first met that morning. And that she
23 was upset with how our interaction had gone.
24 Q What did you say?
25 A I said I don't think this has anything to do about a bed

1 meeting or our interaction. I said I think I know what this is
2 about.
3 Q And then what happened?
4 A And she said well, this has nothing to do with the Union.
5 Q And what did you say?
6 A I said I wasn't the one who mentioned union. You
7 mentioned union. I said I can't talk to you about that. This
8 meeting is over. And I got up and left.
9 Q Were you eventually disciplined?
10 A Yes.
11 Q When did that happen?
12 A That happened a couple days later. The next time she and
13 I worked together.
14 Q Did you work in between?
15 A One day, but it was a weekend, so she wasn't there.
16 Q And who do you mean by she?
17 A Sandra.
18 Q So who attended the next meeting that you were present
19 for?
20 A The next meeting was myself, Sandra, Linda and a social
21 worker Kim Paquyn.
22 Q How did a social worker become involved?
23 A Because when Sandra asked me the next day to come with her
24 to a meeting in Linda Crumb's office, I was very uncomfortable.
25 I wasn't sure what was going to happen. And I wanted somebody

1 A Yes.
2 Q Okay. With respect to the cafeteria, my understanding of
3 your testimony is that the very first time that you set up a
4 table in the cafeteria near the front entrance -- first of all,
5 is the cafeteria a place where people -- where employees go to
6 have meal -- during their meal periods to have food?
7 A Yes.
8 Q Okay. And you positioned yourself at the entrance and you
9 used one of the tables that people would otherwise be able to
10 eat at, correct?
11 A Yes.
12 Q Okay. And you put union material on that table, and you
13 sat there and you engaged in maybe what's known as tabling?
14 A Yes.
15 Q Soliciting employees to support the Union, etc., correct?
16 A Yes.
17 Q Okay. And it's my understanding, correct me if I'm wrong,
18 that you've testified that the very first time you did that Mr.
19 Pedersen was having lunch and he said he didn't think you
20 should do that. You should -- that that wasn't permissible.
21 Do your recall that?
22 A I do.
23 Q Okay. And I think you testified that you were about --
24 you -- were you on a 30 minute meal period at that point?
25 A Yes.

1 Q I think you testified you had been there about 20 minutes
2 before Mr. Pedersen said anything?
3 A Approximately.
4 Q And he said that as he was leaving, after he had finished
5 eating his lunch?
6 A Yes.
7 Q Okay.
8 A I don't think he could see me from where he was sitting to
9 eat.
10 Q Okay. Well, he came in the -- through the main entrance,
11 right? I mean --
12 A He was there before I came in.
13 Q Okay. So -- and at that point you left, right?
14 A After he told me to leave, yes.
15 Q Okay. And then after that very first time, did you make
16 any subsequent attempts to engage in tabling at the cafeteria?
17 A After that, yes.
18 Q Okay. How soon after that?
19 A I honestly can't tell you.
20 Q Well, to the best of your recollection.
21 A I tabled multiple times.
22 Q I know that. But I'm asking you how soon after that first
23 time do you think you did it?
24 A I honestly can't recall.
25 Q Well, would it be six months? Would it be one month?

1 A I can't recall. I can't give you an exact --
2 Q Well --
3 A -- time.
4 Q -- I'm not asking for an exact time. So just listen to my
5 question. Would it have been as long as a month, or a week or
6 shorter?
7 A It was in within I would say at least maybe a month.
8 Within that --
9 Q So your testifying that you didn't make any further
10 attempts to table for a month, after that first time?
11 A It's possible. I --
12 Q I'm not asking --
13 A What I'm --
14 Q -- you what's possible --
15 THE WITNESS: Okay.
16 MS. NOTO: Objection, Your Honor.
17 JUDGE GOLDMAN: Yeah.
18 THE WITNESS: What I'd like to say is that I don't --
19 JUDGE GOLDMAN: Hold --
20 THE WITNESS: -- remember the exact --
21 JUDGE GOLDMAN: Yeah. When --
22 THE WITNESS: Sorry.
23 JUDGE GOLDMAN: -- there's objection -- I mean the witness
24 has made clear she doesn't remember. So she gives you --
25 MR. PASCUCCI: I'm trying to get an estimate, Judge.

1 JUDGE GOLDMAN: Yeah, go ahead.
2 MR. PASCUCCI: -- I believe happened.
3 JUDGE GOLDMAN: Why don't we move forward?
4 MR. PASCUCCI: Okay. So when you say you did it multiple
5 times after that, how many times do you think you did it?
6 THE WITNESS: I don't want to give an exact number --
7 CONTINUED CROSS EXAMINATION
8 BY MR. PASCUCCI:
9 Q I'm not asking --
10 A -- because I --
11 Q Okay.
12 A -- don't know. I don't want --
13 Q Would it be more than 10?
14 A -- to be nailed to something that --
15 Q Would it be more than 10?
16 A It could be more than 10.
17 Q Would it be more than 20?
18 A I don't believe so.
19 Q Okay. Somewhere between 10 and 20, is that correct?
20 A Possibly.
21 Q Okay. And on any of those occasions did Mr. Pedersen or
22 anyone else from management tell you that you were not
23 permitted to do that?
24 A Did he tell us again we could not?
25 Q Yeah. The question was -- we've just established that the

1 first time he said that. And then after that we've established
2 that you did it somewhere between 10 and 20 times after that.
3 And my question was at any point in time, after that first
4 time, did Mr. Pedersen or any other member of management tell
5 you that you were not permitted to engage in tabling in the
6 cafeteria?
7 A Nobody didn't tell us we could either.
8 Q That wasn't my question though was it?
9 JUDGE GOLDMAN: Yeah. Just answer the question --
10 THE WITNESS: No.
11 JUDGE GOLDMAN: The answer --
12 BY MR. PASCUCCI:
13 Q So the --
14 JUDGE GOLDMAN: -- is no.
15 MR. PASCUCCI: -- answer is no, right?
16 THE WITNESS: (No audible answer)
17 BY MR. PASCUCCI:
18 Q You can't -- the nodding --
19 A No.
20 Q Okay. Thank you. Well, actually that's going to look
21 like the answer is no, right? And then she said no. So --
22 JUDGE GOLDMAN: Well --
23 THE WITNESS: The answer is no.
24 JUDGE GOLDMAN: Ask the question again.
25 MR. PASCUCCI: Okay.

1 JUDGE GOLDMAN: I thought it was clearer to everyone here.
2 MR. PASCUCCI: I know. So the question was whether Mr.
3 Pedersen or any other member of management, after that first
4 occasion, ever told you that you couldn't -- you would not be
5 permitted to engage in tabling at the cafeteria?
6 THE WITNESS: No.
7 BY MR. PASCUCCI:
8 Q Okay. And then are you the only person who engaged in
9 tabling at the cafeteria?
10 A No.
11 Q On behalf of the Union?
12 A No.
13 Q Okay. Do you know how many of your coworkers also were
14 involved in that?
15 A Many of them.
16 Q Okay. Many coworkers. And did this continue for a period
17 for several months or has this continued for a period of
18 several months?
19 A We haven't done it in a long time.
20 Q Well, when did you stop doing it?
21 A In the summer, I believe.
22 Q Last summer?
23 A We haven't done a whole lot of it since late last summer.
24 Q Late last summer. Okay. So did any of your -- the -- I -
25 - there was testimony about a second occasion, which was a

1 couple -- a day or two after the first occasion --
2 A Uh-huh.
3 Q -- where it wasn't yourself, but it was a coworker named
4 Scott --
5 A Correct.
6 Q -- Marsland. You're aware of that situation?
7 A Yes.
8 Q Other than the situation that you experienced on the first
9 occasion and the situation that you may be aware of --
10 A Yes.
11 Q -- with Mr. Marsland, are you aware of any other instance
12 where you -- where any of your coworkers, who were tabling in
13 the cafeteria on behalf of the Union, were told not to do that
14 --
15 A No.
16 Q -- or to leave?
17 A No.
18 JUDGE GOLDMAN: Well, let him finish.
19 THE WITNESS: Oh.
20 BY MR. PASCUCCI:
21 Q Okay.
22 JUDGE GOLDMAN: I think -- well, I think --
23 THE WITNESS: Sorry.
24 JUDGE GOLDMAN: -- it's clear --
25 MR. PASCUCCI: Did you get -- I mean, yeah, we were trying

1 -- you were answering before I finished the question.
2 THE WITNESS: Oh.
3 MR. PASCUCCI: That's the problem. And the transcript can
4 get confusing. So the question -- I'll do it one more time.
5 The question was are you aware, other than the first instance
6 with yourself and the instance shortly thereafter with Mr.
7 Marsden, are you aware of any instance in which employees who
8 were tabling on behalf of the Union in the cafeteria were told
9 that they should not be doing that?
10 THE WITNESS: No.
11 BY MR. PASCUCCI:
12 Q Okay. And there was also testimony that Mr. Marsland,
13 when he -- on that first occasion that he engaged in tabling,
14 he pulled two tables together. So he was using two tables to
15 spread out union literature.
16 MS. NOTO: Objection, Your Honor.
17 MR. PASCUCCI: And my question is was that a set up that
18 you used on subsequent occasions?
19 JUDGE GOLDMAN: Hold on. What's the objection?
20 MS. NOTO: Withdrawn.
21 JUDGE GOLDMAN: Okay. Go ahead. You can answer.
22 THE WITNESS: I don't specifically remember if I used two
23 tables or not.
24 BY MR. PASCUCCI:
25 Q Okay. Because -- well, I'd like to know whether or not

1 you actually took up more table space on subsequent occasions
2 than you may have on the first occasion?
3 A I don't remember.
4 Q You don't remember. Okay. Do you know -- now, have you
5 seen -- other than when you were engaged in tabling, have you
6 seen when colleague -- coworkers who were tabling on behalf of
7 the Union, were engaged in that activity?
8 A Not when I wasn't one of the people tabling. I --
9 Q So anytime --
10 A -- didn't go when somebody else was.
11 Q So anytime you ever saw any of that you were
12 participating?
13 A Yes.
14 Q Okay. And none of those occasions you can't remember
15 spreading out across two tables?
16 A I don't recall that.
17 Q Okay. Now, you testified about the fact -- and I'm not
18 going to ask any specifics, but you testified about the fact
19 that you solicited a lot of your coworkers to sign union
20 authorization cards, right?
21 A I spoke with them about it, yes.
22 Q Right, right. And my only question on that is did -- at
23 any point in time did any manager or supervisor ever interfere
24 with your solicitation of coworkers to sign union authorization
25 cards?

1 position.
2 Q Alright. You're referring to the staff meeting when he
3 told you about his background in military rescue operations,
4 correct?
5 A I'm talking about the staff meeting where he showed a
6 sexually and violently explicit video.
7 Q Okay. Is that different from what I just asked you?
8 A Yes.
9 Q Okay. Isn't it true that in his first staff meeting, to
10 introduce himself to the staff he talked about his background
11 as a paramedic in the military? Is that true or not true?
12 A I may not have been at that first staff meeting. I don't
13 recall that. What I recall --
14 Q Well --
15 A -- the one --
16 Q -- wasn't that what the video was about?
17 MS. NOTO: Objection, the witness wasn't able to answer
18 the question.
19 MR. PASCUCCI: Excuse me?
20 JUDGE GOLDMAN: Well --
21 MS. NOTO: The witness wasn't finished.
22 JUDGE GOLDMAN: But she can try to answer that one if she
23 can.
24 THE WITNESS: So --
25 JUDGE GOLDMAN: So the question is --

1 MR. PASCUCCI: Isn't that what the video was about?
2 THE WITNESS: No. The video was a paratrooper war video
3 to Marilyn Manson music that was sexually explicit.
4 BY MR. PASCUCCI:
5 Q Okay. But the video -- the images in the video --
6 A Right.
7 Q -- were military rescue operations -- paramedic first
8 responder rescue operations, correct?
9 A To me it looked like a war video.
10 Q Okay.
11 A People running around with guns and jumping out of
12 helicopters.
13 Q And the people jumping out of helicopters were rescuing
14 other people. Do you remember that part of it?
15 A Not specifically.
16 Q Okay. And Mr. Brown was explaining that, you know, he is
17 -- he's been a dedicated healthcare professional interested in
18 helping people, serving people, and that his proudest military
19 record as a paramedic and some very extreme circumstances
20 engaging in rescue activities. Do you remember any of that?
21 A Mostly I remember the video --
22 Q No, the question was do you remember any of that?
23 A Not really.
24 Q No? Okay. So you really have no idea what the purpose of
25 that video was, other than there was music to the video, which

1 was from youtube that Mr. Brown had not created that involved a
2 Marilyn Manson song, who's a well known artist who uses
3 profanity in his lyrics?
4 A (No audible answer)
5 Q You have to answer verbally.
6 A Yes.
7 Q So the only thing you noticed was the music?
8 A And the video.
9 Q Well, I keep trying to find out from you what it was about
10 the video. If you remember --
11 A I personally found the video with the music, regardless of
12 whether he paired it or not, he played it together and
13 presented it as something that was his persona, and I found it,
14 as well as other people, abhorrent.
15 Q Okay. So let me ask it this way. Are you aware that, in
16 order to introduce himself and talk about his background to the
17 staff, he chose to show a video from youtube military rescue
18 operations, yes or no?
19 A I didn't view it as military rescue operations as much as
20 a war video.
21 Q Okay.
22 A To me that's what it looked like.
23 Q Alright. And it's undisputed that the video had -- it was
24 to a song, to music by Marilyn Manson, correct?
25 A Yes.

1 Q Okay. Now, was there anything in the images in the video
2 that was sexual in nature?
3 A In the video was it sexual?
4 Q In the images in the video.
5 A The images in the video were not sexual. The music was --
6 Q Right.
7 A -- that he played with.
8 Q In other words there were lyrics that had some bad words
9 in them, right?
10 A Yes.
11 Q Okay. And when he showed that, would you agree that when
12 he showed that video he was trying to talk about his past
13 experiences in the military and he was not trying to --
14 MS. NOTO: Objection.
15 MR. PASCUCCI: Well, no, no. What do you mean objection?
16 Let me finish the question. So excuse me.
17 JUDGE GOLDMAN: She just didn't want to miss it. Go
18 ahead.
19 MR. PASCUCCI: Alright. I'll start over. Would you agree
20 that the reason he was showing that video was to describe his
21 background in the military, not to expose people to a -- maybe
22 some offensive lyrics in a Marilyn Manson --
23 MS. NOTO: Objection.
24 MR. PASCUCCI: -- song?
25 JUDGE GOLDMAN: Yeah.

1 MS. NOTO: Objection, speculation.
2 JUDGE GOLDMAN: Sustained.
3 MR. PASCUCCI: Okay.
4 JUDGE GOLDMAN: She doesn't know what his --
5 MR. PASCUCCI: Well --
6 JUDGE GOLDMAN: -- motive was.
7 BY MR. PASCUCCI:
8 Q Well, you were there for the presentation, right?
9 A Yes.
10 Q And do you remember anything about what Mr. Brown said
11 about why he was showing the video?
12 A Honestly, after I saw the video, that's the main thing
13 that stuck in my head.
14 Q Okay. So the only thing that ever stuck in your mind was
15 some offensive words in a Marilyn Manson song, correct?
16 A And the video.
17 Q Which --
18 A I --
19 Q -- did not have anything sexual in it?
20 A No, but it was a war depiction video, which I found not
21 lovely to look at.
22 Q And you didn't complain about that at the time, did you?
23 A Actually, I complained about it a few days later.
24 Q Was it more like two weeks?
25 A It could have been a few weeks later.

A Not off the top of my head.
Q Do you remember what month it was?
A I believe it may have been in April.
Q Okay. And is it true that you filed a sexual harassment complaint against Mr. Brown with The New York State Division of Human Rights several months later?
A I don't believe it was several months later.
Q Was it -- how long do you think it was?
A I couldn't -- I'd have to look at my paperwork from that.
Q Well, I'm asking you, you have no recollection again? It might have been the next day? Is that what you're telling me?
A I don't think it was the next day, but I don't remember the exact chronologic time order.
Q Does June 19th sound familiar?
A When I would have formally filed something?
Q When you filed a complaint with The New York State Division of Human Rights accusing him of sexual harassment. Mr. Brown.
A It could be, yes.
Q Okay. For a meeting -- based on a meeting that happened in April?
A Yes.
Q Okay. Is there a reason why you waited so long?
JUDGE GOLDMAN: Sustained
MR. PASCUCCI: Why?

1 JUDGE GOLDMAN: What's the relevance?
2 MR. PASCUCCI: Well, the relevance is she testified --
3 there's -- it's very relevant, because when she -- she made a
4 big point of saying that Mr. Brown threatened -- after asking
5 her to back off, and stop violating his personal space, and
6 stop coming into his office, after he had asked her to leave,
7 and she kept coming in, that he then threatened to throw her
8 out by security. And this was after she had filed the sexual
9 harassment complaint --
10 JUDGE GOLDMAN: Yeah, but --
11 MR. PASCUCCI: -- against him, actually twice, which we
12 haven't gotten to yet, but I'm getting to that.
13 JUDGE GOLDMAN: Yeah, but her motives in filing the suit,
14 I mean what are you arguing? What -- I don't see the relevance
15 of why she waited to file this suit or this complaint with the
16 state.
17 MR. PASCUCCI: You know what? I'll withdraw that part of
18 it.
19 BY MR. PASCUCCI:
20 Q So you ended up filing two complaints with The New York
21 State Human Rights Division against Mr. Brown for alleged
22 sexual harassment, correct?
23 A I filed one and then I think I -- they asked -- they sent
24 me a letter and said do you have anything else to add? Has
25 anything else happened in the mean time? And I sent them

1 another.
2 Q So you filed two, right?
3 A I sent them two different. One was a file and then I had
4 a follow up --
5 Q You made two --
6 A -- to that filing.
7 Q You made two complaints to the Human Rights Division,
8 correct?
9 A Okay. I guess they would have -- I don't know if they're
10 two separate or if they're -- one was considered a follow up to
11 the first one I did.
12 Q Okay. And both --
13 A I didn't go through an attorney. I just did it myself on
14 the computer.
15 Q Okay. And both of those complaints were found by the
16 Human Rights Division to unfounded, correct?
17 A Yes.
18 MS. NOTO: Objection, relevance.
19 JUDGE GOLDMAN: Well, I'll allow it.
20 MR. PASCUCCI: Okay.
21 BY MR. PASCUCCI:
22 Q So the answer is yes?
23 A That's what they found.
24 Q Okay. And is it true that the Medical Center, when you
25 made those allegations against Mr. Brown, conducted a prompt

1 A The team leader, the director and the charge nurse.
2 Q I'm asking about the team leader. I haven't asked about
3 the others. I'm asking whether the team leader has
4 responsibility to try to secure additional staffing, in a
5 situation like that?
6 A We try, yes.
7 Q Okay. And you were team leader on June 26th, right?
8 A Yes.
9 Q Okay. And so is it true that Mr. Brown asked you to make
10 calls, because of the -- there was an incoming critical
11 patient, there wasn't adequate staff, to see if you could get
12 other nurses to come in?
13 A Yes, and I did do that.
14 Q Okay. No. So the answer is yes, right?
15 A Yes.
16 Q He did ask you to do that, right?
17 A (No audible answer)
18 Q And did you tell him that you had already made calls and
19 nobody was willing to come in?
20 A I did tell him that.
21 Q Okay. And were you referring to the fact that you had
22 made calls the previous day?
23 A Not at -- I told him I had done that yesterday and I had
24 done it that day also.
25 Q Okay. Did you say that to him?

1 A Yes, and I had --
2 Q Right.
3 A Well, something --
4 Q Well, wait. That's just a yes. Okay.
5 A Yes.
6 Q Okay. So she asked you to make phone calls to try to help
7 get staff --
8 A Yes.
9 Q -- for the weekend, right? And you were team leader at
10 the time and charge nurse --
11 A Yes.
12 Q -- right? Okay. So you didn't do that though, right?
13 You then said Crystal Root was responsible for that and you
14 told Root to go talk to Beasley. Is that correct?
15 A No, I had made phone calls.
16 Q No, no. That's not the question. When Beasley asked you
17 to make phone calls, was your response to not make phone calls,
18 but to tell Crystal Root to go talk to Beasley about the holes?
19 A I did tell Crystal to go talk to Sandra about the holes,
20 because I had already made calls and had nobody who was willing
21 to come in. There was nothing more I could do.
22 Q And the calls you had made were the previous day, correct?
23 A No, I had made some that morning too. This is a
24 continuous thing with these phone calls.
25 Q Alright. Well, let's look at paragraph five of your

1 September 22nd affidavit.
2 A I had made them the day before --
3 Q Okay. I'm just going to --
4 A -- and I made --
5 Q I just want to --
6 A -- them again.
7 Q I just want to review what you said in your affidavit
8 about this. I was -- alright. I'm reading on the very bottom
9 of page two. "I was charge that day. I told her I was --"
10 wait a minute. Let me start at the front, so it'll be -- we'll
11 understand the context. "Another nurse, Crystal Root, is in
12 charge of managing the schedule and putting it on the
13 timesheet."
14 A Uh-huh.
15 Q Okay. But you were charge nurse. She wasn't charge
16 nurse, right?
17 A She was charge nurse.
18 Q Okay. "At around 10:00 a.m. Crystal pointed out to me
19 that there were holes in the weekend schedule, because there
20 was not enough staff. I was charge that day. I told her I was
21 well aware of it, that Sandra was well aware of it, because
22 Christine Monacheli (ph) pointed it out. People had already
23 been called, and asked to see if they would switch and pick up
24 another shift.
25 In fact, I had called and talked to several people and no

1 one was interested. I told Crystal to bring the schedule to
2 Sandra and there was any anything else I could do. That was
3 the end of the conversation." The calls you had made were the
4 day before, correct?
5 A And I had made some that morning too. There was nothing -
6 -
7 Q But you didn't tell Ms. Beasley that you made calls that
8 day, did you?
9 A I didn't bring her back the schedule. Crystal did.
10 Q Right. But she asked you to -- but Ms. Beasley, who was
11 your brand new supervisor, that same day that you left without
12 going to bed meeting with her, when you asked her -- when she
13 asked you to make calls, you --
14 A I --
15 Q -- didn't tell her that you had already made calls that
16 day. You simply went to Crystal and told Crystal --
17 A No Crystal --
18 Q -- to talk Beasley --
19 A -- came to me.
20 Q Wait a minute. Let me finish the question. You simply
21 went to Crystal and told Crystal to go talk to Beasley about
22 the holes --
23 A Yes.
24 Q -- right?
25 A Because I had already made calls and I --

1 Q Okay.
2 A -- couldn't do anything else.
3 Q But you didn't say that to Beasley, did you?
4 A Crystal went to her.
5 JUDGE GOLDMAN: Do you recall what you said to Beasley?
6 MR. PASCUCCI: That's not the question though, Judge. I
7 mean --
8 JUDGE GOLDMAN: Well --
9 MR. PASCUCCI: I mean I think she's acknowledging,
10 although she's dancing around it.
11 JUDGE GOLDMAN: Well --
12 MR. PASCUCCI: But I think she's acknowledging that she
13 did not tell Beasley --
14 JUDGE GOLDMAN: Okay.
15 MR. PASCUCCI: -- that she had already --
16 JUDGE GOLDMAN: First of all --
17 MR. PASCUCCI: -- made calls.
18 JUDGE GOLDMAN: -- that out of order.
19 MR. PASCUCCI: I apologize.
20 JUDGE GOLDMAN: And you've cross examined very closely.
21 And, you know, I'll weigh what these discrepancies amount to.
22 But I asked her what she said to Beasley.
23 MR. PASCUCCI: I apologize.
24 JUDGE GOLDMAN: And I think that if she answers that it
25 will sort of answer your question too.

1 MR. PASCUCCI: Okay.
2 JUDGE GOLDMAN: It'll tell what she didn't say to Beasley.
3 MR. PASCUCCI: Thank you.
4 JUDGE GOLDMAN: So what did you say to Ms. Beasley when
5 she made this staffing request to you?
6 THE WITNESS: I had told her I had already made calls and
7 I was not able to get anybody else to come in. And she asked
8 me to make them again and I did.
9 JUDGE GOLDMAN: Okay.
10 CONTINUED CROSS EXAMINATION
11 BY MR. PASCUCCI:
12 Q You're testifying you said that to Beasley?
13 A Yes.
14 Q Even though it doesn't say that in your affidavit?
15 A I'm pretty sure it does.
16 Q "I told Crystal to bring the schedule to Sandra and there
17 was nothing else I could do. That was the end of that
18 conversation."
19 A Well, there's either more in that affidavit or in the last
20 transcript.
21 Q Was Ms. Beasley upset about the bed meeting situation and
22 the -- what she regarding as you being unhelpful, with respect
23 to filling the holes in the schedule? Did she tell you that
24 she was upset about those two things?
25 A Yes.

1 MS. NOTO: Your Honor, if I may?
2 JUDGE GOLDMAN: Sure. You may.
3 MS. NOTO: Documents that are turned over, during the
4 course of an investigation, aren't automatically an entitlement
5 to opposing counsel to review.
6 JUDGE GOLDMAN: I understand that.
7 MR. PASCUCCI: I didn't say they were automatically an
8 entitlement.
9 JUDGE GOLDMAN: But he's asking for them now.
10 MR. PASCUCCI: Because the witness gave testimony about
11 what he allegedly said to her in those meetings. And there's -
12 - she has contemporaneous notes from those meetings that we are
13 now requesting, since we just learned today that they exist.
14 JUDGE GOLDMAN: I mean he could subpoena them now.
15 MS. NOTO: He can subpoena them now.
16 MR. PASCUCCI: Then if that's what we have to do, I guess
17 that's what we have to do.
18 JUDGE GOLDMAN: I mean is that what we have to do?
19 MS. NOTO: I don't even know that I -- I don't even know
20 the last time I saw those.
21 JUDGE GOLDMAN: I mean then I'd have to say --
22 MS. NOTO: I mean my --
23 JUDGE GOLDMAN: -- it's too late to subpoena them, but I
24 mean after all if she's turned over a statement and there's
25 notes of a meeting that she --

1 MS. NOTO: But those statements aren't Jencks statements,
2 Your Honor.
3 JUDGE GOLDMAN: I'm not saying you did anything wrong.
4 That's -- I mean --
5 MR. PASCUCCI: Nor am I.
6 JUDGE GOLDMAN: -- I understand your position they're not
7 Jencks. I -- he's not even saying that.
8 MR. PASCUCCI: No. I'd like to try to get to the
9 evidence. That's all.
10 MS. NOTO: Your Honor, I don't know that I am actual -- I
11 feel -- I wouldn't feel comfortable making a position on behalf
12 of the Board, with respect to something that was turned over in
13 an investigation. I would prefer, if we're allow it --
14 JUDGE GOLDMAN: It's on her phone.
15 MS. NOTO: Oh, I understand that, Your Honor. I
16 understand that, Your Honor.
17 JUDGE GOLDMAN: I mean --
18 MS. NOTO: But this was something that was turned over in
19 the course of the investigation. The reason he knows it was
20 available to the Board is because it was turned over, during
21 the course of a Board investigation. Those investigations are
22 confidential and I don't --
23 MR. PASCUCCI: And because the witness just admitted it.
24 I just asked her before it --
25 JUDGE GOLDMAN: Yeah --

1 MR. PASCUCCI: -- got to this.
2 JUDGE GOLDMAN: Let's -- let me -- I'm going to reserve
3 ruling on that. I'm going to take a look at some authorities.
4 MR. PASCUCCI: Okay.
5 JUDGE GOLDMAN: I'm not --
6 MR. PASCUCCI: Okay.
7 JUDGE GOLDMAN: Do you have anything else?
8 MR. PASCUCCI: Yes.
9 JUDGE GOLDMAN: You're going to be here tomorrow, right?
10 MS. NOTO: She's sequestered. She hasn't been attending.
11 THE WITNESS: I -- only if I'm here --
12 MS. NOTO: I mean she's in town. She's not --
13 JUDGE GOLDMAN: Yeah. Okay.
14 MS. NOTO: -- leaving the area.
15 JUDGE GOLDMAN: Well, we can -- then we can -- I'd be -- I
16 want to review the authorities. I think it's --
17 MR. PASCUCCI: Okay.
18 JUDGE GOLDMAN: I hear your arguments and --
19 MR. PASCUCCI: So I think it's clear, but just to be -- to
20 confirm my understanding, I'll continue my cross, but I'll
21 reserve the opportunity to revisit this if and when --
22 JUDGE GOLDMAN: Ms. Noto, you will make her available if I
23 -- I mean I guess you can oppose it, but if the notes end up
24 being produced --
25 MR. PASCUCCI: Right.

1 A He walked by and said what we were talking about was
2 inappropriate.
3 Q Well, were you on the -- were any of you supposed to be on
4 the clock at that point?
5 A We were at work, yes.
6 Q You were supposed to be working?
7 A (No audible answer)
8 Q Did he tell you that you weren't supposed to be discussing
9 wages -- your wages?
10 A He said what we were talking about was inappropriate.
11 Q Right, but you testified that what you were talking about
12 was your wages.
13 JUDGE GOLDMAN: You asked her what he -- whether he said
14 something and she told you what he said.
15 MR. PASCUCCI: I know. And it's in relation to what they
16 were talking about. I'm just trying to get that out. It's
17 hard to get things out sometimes. I'm trying to get out the
18 fact that when you claim that Mr. Pedersen said that, what you
19 and the other nurse were talking about was your salaries,
20 correct?
21 THE WITNESS: We were talking about our salaries and he
22 said that was inappropriate.
23 BY MR. PASCUCCI:
24 Q Okay. And so what you're alleging is that you've been
25 told my management that you are not allowed to talk about your

1 salaries, correct?
2 MS. NOTO: Objection, Your Honor.
3 JUDGE GOLDMAN: Yeah. Sustained.
4 MR. PASCUCCI: Alright.
5 BY MR. PASCUCCI:
6 Q Are you -- is it -- are you saying that there was a
7 general rule that nurses or any other staff were not allowed to
8 talk about their salaries?
9 A I don't like the rule. Can you --
10 Q Okay.
11 A -- rephrase it?
12 Q A general policy?
13 A A general asking that we weren't allowed to, yes.
14 Q No, was there a general instruction let's say that you
15 were to not -- not to talk about your wages?
16 A Yes.
17 Q Okay. It says in your affidavit to the Board that within
18 the past six months, but no dates provided, Pedersen said that
19 you're not supposed to talk about your wages.
20 A Yes.
21 Q So do you have any idea when that happened?
22 A When he said it was inappropriate.
23 Q When? Like when on the calendar?
24 A I would say it was fall of 2015 to early winter '16.
25 Q Okay. But do you know when it was?

1 MS. NOTO: Objection, Your Honor.
2 MR. PASCUCCI: You don't know the date, correct?
3 THE WITNESS: I don't know the date.
4 BY MR. PASCUCCI:
5 Q Do you know the month?
6 A No.
7 Q Okay. Do you know the year?
8 A Not specifically. I think --
9 Q Okay.
10 A -- it could have bridged or spanned a time.
11 Q Alright. You also -- and you also testified that your
12 prior director --
13 A Sean Newvine.
14 Q ICU director Sean Newvine said something like that,
15 correct?
16 A Yes.
17 Q Okay. And that would have been -- that had to have been
18 sometime in early 2015 at the very latest, correct?
19 A He was let go in April of '15.
20 Q Right --
21 JUDGE GOLDMAN: So it was before that?
22 THE WITNESS: It was before that.
23 JUDGE GOLDMAN: Okay.
24 MR. PASCUCCI: Do you know when he said that or when
25 you're saying he said that?

1 JUDGE GOLDMAN: -- then she'll come back.
2 MR. PASCUCCI: Okay, thank you.
3 MS. NOTO: And that examination would be to the notes.
4 MR. PASCUCCI: Right.
5 JUDGE GOLDMAN: Yeah.
6 MS. NOTO: With a limitation to the notes. Like I don't
7 really --
8 MR. PASCUCCI: I have no problem with that.
9 JUDGE GOLDMAN: Yeah. Okay.
10 MS. NOTO: Okay.
11 JUDGE GOLDMAN: Let's not invent problems. We've got
12 enough.
13 MS. NOTO: I just wanted to make it clear.
14 JUDGE GOLDMAN: Okay. Yeah. I understand.
15 CONTINUED CROSS EXAMINATION
16 BY MR. PASCUCCI:
17 Q I believe you had testified earlier about a meeting you
18 attended with management where you wanted a coworker, a nurse
19 to accompany you and someone suggested Mr. Pedersen. Remember
20 that testimony?
21 A (No audible answer)
22 Q And then you said --
23 COURT REPORTER: Yes?
24 MS. NOTO: Is that a yes?
25 THE WITNESS: Yes. I'm sorry. Yes.

1 elevator. I was headed downstairs to get a cup of coffee, and
2 I had just walked out the ICU doors, and Jackie Barr, who is
3 patient relations, was standing at the elevator and looked and
4 saw my poster, took the tack out, folded it up and put it in
5 her hand. I said to her, Jackie, you can't take that down.
6 She said this bulletin board is only for hospital
7 sponsored events. And I said Jackie, salsa dancing is not a
8 hospital event. So then she took the salsa dancing one down.
9 And then she took the Jehovah's Witness card down.
10 Q And you also, on cross examination, mentioned that Patty
11 Florentino had done something, with respect to this flier
12 issue. Can you talk about when that happened?
13 A That happened the following day on Friday of last week.
14 Q What happened?
15 A Patty, the new director, went into the break room and
16 pulled my flier down off the board in the break room, folded in
17 half and slipped into the recycling bin. I went and got the
18 recycling bin key, took it out, and brought it to her office
19 and told her she couldn't take it down.
20 Q I want to direct your attention to the instance where you
21 were tabling in the cafeteria and you were approached by Alan
22 Pedersen. Do you remember that?
23 A Yes.
24 Q You also testified on cross examination that you had
25 tabled after that time.

1 Q Are you aware that there's an active campaign at the
2 hospital for a union?
3 A Yes.
4 Q Were you ever approached by a Member of Management about
5 the Union?
6 A Once, it was the Initial Interim Director Joel Brown.
7 Q Can you explain to the Court what happened?
8 A Joel put a Bay Sign Up List on his door. He said that he
9 wanted to have an individual meeting with the Staff.
10 When I went to the meeting he asked me if I had -- if
11 I knew about the Union Campaign.
12 And I said, "Yes."
13 He asked me if I had been approached about it at work.
14 And I said, "No."
15 He asked me if I had felt pressured or bullied about
16 the Union in any way.
17 And I said, "No."
18 He wanted to make sure that I was aware that if you
19 sign a card for the Union that you're actually advocating to
20 bring the vote in for the Union.
21 And I said, "Yes, I was aware of that."
22 And then he just kind of did a little -- you know --
23 he said, "The Union is not what you think that it is. It's a
24 business. They're here to make money, just like every other
25 business. They're not -- someone from the Union is not going to

1 JUDGE GOLDMAN: Thank you -- your witness.
2 MR. PASCUCCI: May I request to see the affidavit?
3 MS. NOTO: Yes.
4 MR. PASCUCCI: May I have about 10 minutes?
5 JUDGE GOLDMAN: Off the record; 10:10:17 a.m.
6 (Discussion off the record.)
7 JUDGE GOLDMAN: On the record; 10:14:09 a.m.
8 CROSS EXAMINATION
9 BY MR. PASCUCCI:
10 Q Ms. Ellis.
11 A Hi.
12 Q My name is Ray Pascucci. I'm an Attorney for the Medical
13 Center. I just have a couple of questions.
14 A Okay.
15 Q This meeting that took place with Mr. Brown, did you make
16 any notes at the time or any statements?
17 A Statements?
18 Q Statements about what transpired at that meeting?
19 A No.
20 Q Did you talk to anyone else in Management about the
21 contents of that meeting?
22 A No.
23 Q Do you recall giving an Affidavit to the Board about this?
24 A Yes.
25 Q And that was very recent. Wasn't it like last week?

1 Q And about how long had Sandra been there before Ann got
2 demoted?
3 A Approximately two weeks.
4 Q How did you first get involved with the Union?
5 A I was approached by one of the Nurses in the Emergency
6 Department, who asked for some of my time to explain sort of
7 movement to push forward with trying to get the Union into
8 Cayuga Medical Center.
9 Q Were there any specific concerns that you discussed with
10 your colleagues that you thought that a Union might resolve?
11 A Yes.
12 Q What concerns were those?
13 A Specifically staffing, mainly Nurses, and the Nurse to
14 Patient ratio.
15 Q Can you explain what your staffing concerns are or were?
16 A Yes, we frequently almost always chronically function with
17 not enough Nurses to the Patient ratio.
18 Q And how are schedules in the ICU created?
19 A For quite some time we have done self-scheduling, there's
20 a template that gets posted for a certain period of time and
21 Nurses are able to sort of write their requests in for the days
22 and the shifts that they wish to work. And then ultimately that
23 sort of gets filled to the best that it can with that and
24 perhaps Per Diem Nurses or other sort of situations, then that
25 schedule gets posted in its finality.

1 Q And who posts the schedule in its final form? Who approves
2 it?
3 A The Unit Director.
4 Q Are the schedules, based on your observation, ever filled
5 out completely filled in?
6 A They are rarely ever completely filled in.
7 Q And how is that schedule filled? What are the methods for
8 filling that schedule?
9 A So, after there are -- you know -- open shifts it can be
10 offered -- sometimes there have been incentive programs, which
11 is where in a certain period of time if a Nurse fills extra
12 shifts he or she may get extra money at the end of that time
13 period. Sometimes overtime is authorized. Other times Nurses
14 from other units can float to our unit and take care of our
15 Patients, which is obviously not ideal.
16 Q Who can offer the incentive program?
17 A The Director, the Unit Director.
18 Q Can the Team Leader offer it?
19 A No.
20 Q What about this overtime authorization? Can a Team Leader
21 authorize overtime?
22 A Ultimately no, the Director has to tell us that it's okay
23 to call anybody and everybody to fill shifts.
24 JUDGE GOLDMAN: I didn't understand the question. Maybe I
25 didn't hear your question. If the Director tells you to call and

1 fill shifts?
2 THE WITNESS: Well, I think that you asked me about --
3 JUDGE GOLDMAN: Incentive.
4 THE WITNESS: Right, incentive or overtime.
5 JUDGE GOLDMAN: So, as a Team Leader you couldn't call and
6 offer incentive on your own.
7 THE WITNESS: Correct.
8 JUDGE GOLDMAN: Or overtime on your own.
9 THE WITNESS: Correct.
10 BY MS. NOTO:
11 Q You could or couldn't? I'm sorry.
12 A Could not.
13 Q Okay, you mentioned a safe ratio. What's a safe ratio?
14 What is that?
15 MR. PASCUCCI: Object, Your Honor, we're not litigating
16 staffing.
17 JUDGE GOLDMAN: Well, what is that? I mean -- I think that
18 we've accepted that staffing protected issue --
19 MS. NOTO: Okay, I can move forward. It's okay.
20 JUDGE GOLDMAN: Thank you.
21 BY MS. NOTO:
22 Q Have you ever personally tried to fill holes in the
23 schedule?
24 A Yes.
25 Q But as far as you know, was that part of something that

1 MR. PASCUCCI: No, no, no, that's what I'm objecting.
2 JUDGE GOLDMAN: Yes, I sustain it.
3 MS. NOTO: Okay, I mean, Your Honor, I think that I'm
4 entitled to inquire as to --
5 MR. PASCUCCI: You could have called her.
6 MS. NOTO: I mean -- I could have -- actually, I just
7 found out her number, so I couldn't have called her. But I think
8 that it's relevant to explore where or not this was a general
9 practice that she received.
10 MR. PASCUCCI: Ask her if Anne ever called her or how many
11 times Anne called her.
12 MS. NOTO: Okay, that's even better.
13 BY MS. NOTO:
14 Q Has Anne ever called you?
15 A Yes.
16 Q How many times --
17 JUDGE GOLDMAN: To fill holes
18 THE WITNESS: To fill holes, multiple times.
19 BY MS. NOTO:
20 Q How often would you say when she was still a Team Leader?
21 A Right, on the -- and also may I add that we had a text
22 message kind of group, as well. And I received frequent text
23 messages from her. So, either a text message or a phone call on
24 the average I would say once or twice a week.
25 JUDGE GOLDMAN: From Anne?

1 THE WITNESS: Yes.
2 JUDGE GOLDMAN: When she was the Team Leader.
3 THE WITNESS: Yes, and especially I can remember frequent
4 calls last summer. Our census was extremely high and we were
5 extremely short staffed.
6 JUDGE GOLDMAN: I have a question. So during this period
7 of time where you're estimating one or two calls a week from
8 Anne, were you also receiving calls from the Director to fill
9 holes?
10 THE WITNESS: Yes.
11 JUDGE GOLDMAN: In addition to the calls from Anne.
12 THE WITNESS: Not on the same -- do you mean in general?
13 JUDGE GOLDMAN: Well, like I said, I'm interested in both.
14 Not on the same normally, but maybe within the same two week
15 period, you might receive calls from Anne but also from others.
16 THE WITNESS: Sure, yes.
17 JUDGE GOLDMAN: And those would be maybe the Director or
18 the Acting Director or whoever was in charge at that point.
19 THE WITNESS: Yes.
20 JUDGE GOLDMAN: And anyone else?
21 THE WITNESS: In desperate times, the Secretary, if it was
22 very, very busy and nobody else could -- you know -- make the
23 phone calls, yes.
24 JUDGE GOLDMAN: Alright, go ahead.
25 BY MS. NOTO:

1 A Email.
2 Q And who did you receive an email from?
3 A Alan Pedersen.
4 Q Does Cayuga Medical Center typically communicate with its
5 Employees via email?
6 A That's one method, yes.
7 Q If I showed you those emails could you identify them for
8 us?
9 A Yes.
10 JUDGE GOLDMAN: I thought that we agreed that we got this
11 nailed down with the emails.
12 MS. NOTO: Okay.
13 BY MS. NOTO:
14 Q Do you know anything about campaign postings that have
15 been put up throughout the hospital?
16 A Yes.
17 Q What kinds of materials are posted on hospital bulletin
18 boards?
19 A It can be anything, depending on where it is in the
20 hospital: job openings, health fairs or something like that
21 which have been by the hospital, and then specifically in other
22 areas it can be car washes of Staff children or Girl Scout
23 Cookie sales or various things like that.
24 Q Did you ever see anything from a Member of Cayuga Medical
25 Center's Management post on Facebook about the hospital?

1 Q You're employed by Cayuga Medical Center?
2 A Yes.
3 Q As the Director of the Emergency Department?
4 A Yes.
5 Q A position that you've held since October 2009?
6 A Yes.
7 Q The Emergency Department is broken up into different
8 sections. Right?
9 A Yes.
10 Q One of those sections is fast track?
11 A Yes.
12 Q Fast track is the department where the lower acuity aid
13 Patients are sent?
14 A Most often.
15 Q In the Emergency Department part of your job involves
16 scheduling. Right?
17 A Correct.
18 Q One of your Unit Managers was Kevin Harris. Is that right?
19 A Correct.
20 Q When did he join your department?
21 A The date I'm not exactly sure of.
22 Q He was a season or a year, just for the record?
23 A I don't even recall the actual last month -- I mean, the
24 month. But he had been there several -- I would say close to a
25 year because he had his probationary eval and everything and

1 BY MS. NOTO:
2 Q This is the email that you sent to Alan?
3 A Yes.
4 (General Counsel's GC-30 identified.)
5 MS. NOTO: Your Honor, I offer GC Exhibit GC-30.
6 MR. PASCUCCI: No objection.
7 JUDGE GOLDMAN: It's received.
8 (General Counsel's GC-30 received.)
9 BY MS. NOTO:
10 Q Ms. Matthews, you're aware that a Complaint was filed with
11 the Department of Labor about the ability of your Nurses in your
12 department to be able to take their breaks?
13 A I am aware.
14 Q And you're aware that was filed by Scott Marsland. Right?
15 A No, I'm not aware that -- for sure that Scott would be the
16 one that would file it. I know that there was one filed. I don't
17 know that anybody knows who filed it. I don't know if that
18 information is available.
19 Q And you know that allegation is that it alleged that
20 Nurses in the Emergency Department weren't able to take their
21 breaks. Right?
22 A Yes.
23 MR. PASCUCCI: Judge, could I inquire as to the relevance
24 of this line of questioning on this?
25 JUDGE GOLDMAN: Well, I'm assuming that --

1 MS. NOTO: Protected Activity.
2 JUDGE GOLDMAN: -- it's Protected Concerted Activity.
3 MR. PASCUCCI: But there's no dispute that it's protected.
4 But that's not relevant to what happened. Is it?
5 MS. NOTO: The knowledge is relevant.
6 JUDGE GOLDMAN: Well -- I mean -- I think that they're
7 arguing that was a basis for action, adverse action, was this
8 Protected Concerted Activity and she has to establish knowledge.
9 MR. PASCUCCI: I guess that I misunderstood your theory
10 because I thought that your theory was that he was complaining
11 about the confidence level of the Nurses and/or that he was a
12 known Union Supporter, as opposed to that he filed a DOL
13 Complaint.
14 MS. NOTO: I mean -- I don't know that I have to --
15 JUDGE GOLDMAN: Well, I think that the Complaint is broad
16 enough to --
17 MR. PASCUCCI: No, the Complaint is broad enough. I didn't
18 understand that the DOL Complaint was -- I didn't understand
19 that was part of the theory of retaliation. But if that's -- if
20 it is, then it's relevant, I guess.
21 JUDGE GOLDMAN: Okay, go ahead.
22 BY MS. NOTO:
23 Q You knew that Nurse in your department would -- before,
24 even prior to the Department of Labor Charge being filed, you
25 knew that Nurses in your department had complaints about breaks.

1 Right?
2 A Yes.
3 Q You know it as far back as June 2015. Right?
4 A I believe, yes.
5 Q Because you got an email from Susan Nolte about it?
6 A It could be. I don't recall an email from Susan.
7 Q Who is Susan Nolte?
8 A Our old Vice President of Patient Care Services.
9 JUDGE GOLDMAN: Seasoned.
10 THE WITNESS: Seasoned -- well, I didn't mean old as to
11 age.
12 (Laughter.)
13 THE WITNESS: Past.
14 BY MS. NOTO:
15 Q Ms. Matthews, is this the email, looking at GC Exhibit 31
16 marked for identification, that way that you received from Susan
17 Nolte?
18 A I would say yes. It's sent to my email address.
19 Q And the date on that email is June 11th, 2015?
20 A Yes.
21 (General Counsel's GC-31 identified.)
22 MS. NOTO: Your Honor, I offer GC Exhibit GC-31 into
23 evidence.
24 MR. PASCUCCI: No objection.
25 JUDGE GOLDMAN: Okay, and so -- I take it that it's not

1 offered for the --
2 MS. NOTO: The top of it.
3 JUDGE GOLDMAN: The sort of added message of 'from no
4 reply litigation'.
5 MS. NOTO: That's how it was produced to me according to
6 the subpoena.
7 JUDGE GOLDMAN: So, it's the original message is what
8 you're offering.
9 MS. NOTO: That's correct. I didn't want to try and delete
10 stuff again.
11 MR. PASCUCCI: Judge, if I could understand that. It's an
12 IT thing.
13 JUDGE GOLDMAN: It's fine. I'm just not refuting it. I
14 just noting that's not relevant, but it's received.
15 (General Counsel's GC-31 received.)
16 BY MS. NOTO:
17 Q You would agree with me that Scott Marsland typically
18 worked in Beds 11 to 14 in the department.
19 A He works in that section a lot, but he works all over it.
20 Q Sure, but that particular section, the 11 to 14 section,
21 is the corner with the highest acuity Patients, typically?
22 A Typically, but they can be -- as they come in they can be
23 anywhere through the department.
24 Q You hold bi-weekly staff meetings.
25 A I do.

A I began the meeting under and I used the hospital pillars and began the meeting under people. And part of that is people, meaning the Staff and us and yes.

Q So, to direct you back to answer my question, you started that meeting by starting talking about the people category, which was lunches.

A Yes, it's about taking care of each other.

Q And you would agree with me that a lunch is a break -- right -- in that context?

A A lunch is a break.

Q And you would agree with me that getting Nurses to take breaks has been a constant struggle.

A Yes.

Q Because Nurses hadn't been taking their daily breaks. Right?

A Yes.

Q And it was on the agenda for that staff meeting because Nurses need to able to step away. Right?

A Yes, it's on the agenda for multiple staff meetings.

Q So this is something that you had discussed even before this meeting. Right?

A We talked about caring for each other a lot in our staff meetings.

Q So, essentially with reference to breaks.

A Yes.

1 MS. NOTO: That's right. I read it out loud.
2 JUDGE GOLDMAN: Well, your question was didn't you write -
3 - didn't you tell the Board anything. Doesn't your Affidavit
4 say? I think that was the --
5 MS. NOTO: That's okay.
6 JUDGE GOLDMAN: Just go ahead and finish please. We're
7 wasting time.
8 BY MS. NOTO:
9 Q Deb offered to cover him. He said that in that meeting.
10 Right -- that Deb had offered to cover him? Scott said in that
11 meeting that Deb had offered to cover him.
12 A Yes.
13 Q And he also mentioned in that meeting that Deb wasn't a
14 competent Nurse to cover his Patient. True?
15 A Yes, he did.
16 Q And that he didn't take a lunch. Correct?
17 A He refused to take a lunch.
18 Q Now you viewed his comments as violating the Nursing Code
19 of Conduct. Right?
20 A Correct.
21 Q Because the Nursing Code of Conduct specifically prohibits
22 criticizing Co-Workers or Staff in the presence of others in the
23 workplace. Right?
24 A Correct.
25 Q And he was openly verbalizing that he refused to take a

1 break because of the competency of this Nurse. Correct?
2 A He was saying in front of a group of a total of 11 people,
3 plus Providers that were sitting nearby that this Nurse is
4 incompetent. So he wasn't going to take a break.
5 Q And that is a violation of your Code of Conduct. Correct?
6 A Correct -- I mean -- he's publicly ridiculing her
7 competence in front of other people. And -- I mean -- if he had
8 a concern, he should have come and addressed it privately, not -
9 - you know -- openly ridicule her in front of other people that
10 they don't know whether it's real or not.
11 JUDGE GOLDMAN: Can I ask a question? You used that word
12 that this was in front of a group of 11 people and Providers.
13 Who are the Providers?
14 THE WITNESS: We have -- where the Nurses' Station is we
15 have Doctors that sit right nearby too. And so we have
16 Physicians and at that hour there would have been a Physician in
17 the mid-level, like a Physician Assistant.
18 JUDGE GOLDMAN: So, that's who you're referring to. When
19 you use the word 'Provider' that's who --
20 MS. NOTO: Yes.
21 JUDGE GOLDMAN: -- the Doctors or the mid-level position -
22 -
23 MS. NOTO: Yes.
24 JUDGE GOLDMAN: -- who would be in the area for work
25 purposes.

1 A F T E R N O O N S E S S I O N

2 (1:15:18 p.m.)

3 JUDGE GOLDMAN: On the record. Counsel, you can call your

4 next witness.

5 MS. NOTO: Your Honor, at this time the Counsel for the

6 General Counsel calls Mr. Scott Marsland to the stand.

7 Whereupon,

8 SCOTT MARSLAND

9 having been first duly sworn, was called as a witness and

10 testified herein as follows:

11 DIRECT EXAMINATION

12 BY MR. PASCUCCI:

13 Q Could you please spell and state your first and last name

14 for the Court?

15 A Scott: S-C-O-T-T; Marsland: M-A-R-S-L-A-N-D.

16 Q Where do you work?

17 A I work to Cayuga Medical Center.

18 Q How long have you worked Cayuga Medical Center?

19 A I was hired in February of 2011.

20 Q Do you still work there?

21 A I do.

22 Q What is your current role at Cayuga Medical Center?

23 A I am a Staff Nurse in the Emergency Department.

24 Q And how long have you worked in the Emergency Department?

25 A I think that I was transferred to the Emergency Department

1 Patients, but Room 6 and 5 often have Mental Health Patients
2 because they're across from the Charge Desk, where Mental Health
3 Patients can be easily observed.
4 Rooms 7 thorough 10 tends to have Mental Health Patients
5 and 7 and 8 for the same reason. Room 9 is the only room in the
6 ED that has its own bathroom. So, it tends to have Oncologic
7 Patients or Patients for SA Exams, Sexual Assault Exams.
8 Rooms 11 through 15 tend to have the most Critical
9 Patients because Room 14 is the biggest room. It's got a lot of
10 equipment that we would use. In the case that someone that was a
11 Trauma Patient or a Burn Patient or someone that's imminently
12 going to give birth.
13 And then Room 16 through 19 is generally kind of a mixed
14 bag of who ends up in that.
15 Q When you say acute, what do you mean?
16 A In the context of Emergency Nursing Acute Patients are
17 Patients that need immediate intervention to be stabilized. So
18 someone that's actively having a heart attack or a stroke or an
19 elderly person who's actively bleeding with a GI bleed.
20 Q Where are you typically assigned in that breakdown?
21 A Historically most of the time I'm in the corner 11 to 15.
22 Q And you mentioned something called fast track. What is
23 fast track?
24 A As I said, fast track is like an Urgent Care setting. It's
25 where people who have like ankle sprains or lacerations or

1 limited upper respiratory infections or things like that or
2 someone that just needs a medication refill. Kind of like you
3 would see if you went to an Urgent Care downtown.
4 Q And how many Nurses are there from the Emergency
5 Department?
6 A We have 40 Nurses on the scheduled if you count per diem
7 and part time and full time.
8 Q And how many Nurses work at any given time?
9 A The number of Nurses working at any given time ranges from
10 four to -- it can go up to nine or ten. I think that the lowest
11 number would typically be in the middle of the night, like
12 between 3 a.m. and 7 a.m.
13 Q Are you at all involved in the union campaign?
14 A Yes, I am.
15 Q What's the name of the Union that you are currently
16 working with?
17 A SEIU 1199 United Healthcare Workers East.
18 Q And who was the Director at the time that you began
19 working with the current Union that you're working with -- the
20 Director in your department?
21 A The Nursing Director is Amy Matthews.
22 Q Did you ever talk to Amy -- what issues proceeded this
23 current union campaign? What issues in the department preceded
24 that campaign for you?
25 A Well, having worked at the Medical Center for 15 years I

1 would say that the biggest issue that's persisted through that
2 time has been the difficulty of Nurses in all departments
3 getting breaks consistently.
4 Q Did you ever at anytime address that issue with Amy?
5 A Yes.
6 Q When did you do that?
7 A Well, over the course of my employment in the ED under her
8 directorship I discussed it with her informally. I formally met
9 with her after a meeting that I had with John Rudd.
10 Q And who is John Rudd?
11 A John Rudd is the Chief Executive Officer of Cayuga Medical
12 Center.
13 Q So about when did you begin the campaign for 1199?
14 A I joined the campaign in March about a week after four
15 Nurses from the Emergency Department met with a different Nurses
16 Union from New York City, different from 1199.
17 Q March of what year?
18 A 2015.
19 Q And what concerns did you specifically discuss amongst
20 your colleagues with respect to this union campaign?
21 A Well, we had concerns about Patient safety.
22 JUDGE GOLDMAN: I don't think that it's appropriate.
23 MS. NOTO: Okay.
24 JUDGE GOLDMAN: It's private to the Union Employees and
25 there's no Union Counsel here to object. But I don't know how

1 it's relevant to your case. It's internal -- the Union's
2 internal communications with each other.
3 MS. NOTO: I'm sorry. Perhaps my quseion wasn't clear.
4 JUDGE GOLDMAN: I think that's what he's answering. What
5 is your question?
6 BY MS. NOTO:
7 Q Amongst your colleagues in the Emergency Department, what
8 issues were you discussing?
9 A We were discussing not getting breaks. We were discussing
10 what we felt were unsafe staffing ratios.
11 Q About how long are your shifts in the Emergency
12 Department?
13 A Many Nurses work 12 hour shifts. Some work 8. Some
14 occasional work 4, but most of us work 12 hour shifts.
15 Q How often would you get a break?
16 A Historically, I would say less than 50% of the time.
17 Preceding the unionization attempt I would say less than 75% of
18 the time. More recently I get breaks more than 50% of the time.
19 Q Have you ever been contacted at all by Hospital Management
20 about the union campaign?
21 A Yes.
22 Q In what way?
23 A Well, email is the most widely used form of communication
24 in the hospital. And Alan Pedersen, the Vice President of Human
25 Resources sent out emails regarding the Union starting in May. I

A Yes.
Q What happened?
A Well, there was a time in July of 2015 when I went to the cafeteria during lunch to table with Erin Bell, who is also a Nurse in the Emergency Department. And as we were setting up the table -- and the cafeteria was filled with people -- and as we were setting up the table there was a woman, who I don't know who she is, but she was wearing business causal clothing, had a name badge, and like within 30 seconds of us starting to set the table, she jumped up and ran out of the cafeteria.
Q What happened next?
A Well, shortly thereafter, Alan Pedersen came into the cafeteria and was at my side. And Alan basically said, "Scott, you can't do this. You can't set up a table here in the cafeteria. You can't set up a fixed base. You're going to have to leave."

And he and I went back and forth. And I said, "Well, it's my understanding that it's within our Federal Rights to do this."

And we basically kept saying the same thing back and forth to each other. And after a few minutes, he left.
Q Did he ever come back?
A He did.
Q And did you record that first interaction with Alan?
A No.

1 A Well, Joyce Blywise is a Nurse, who has since retired, and
2 she was part of the unionization attempt in 1998. And I
3 approached Joyce as a trusted confidant and talked about what we
4 might be able to do together. And we agreed to contact the
5 Tompkins County Workers Center several years ago.
6 Q What about more recently?
7 A Well, I wrote a long letter, like a three or four page
8 letter to John Rudd in 2013.
9 Q And more recent than that?
10 A I wrote a letter to the New York State Department of Labor
11 in June of 2015.
12 Q Before you approached the Department of Labor did you
13 discuss with your colleagues about this issue of breaks?
14 A I think that the discussion of not getting breaks is part
15 of the air that we breathe in at Cayuga Medical Center. You know
16 -- I think that after hard shifts when Nurses haven't gotten
17 breaks we -- that's kind of what we grumble to each other about
18 while we're drawing up meds or at the end of the shift in the
19 break room.
20 Q How are those shifts typically covered, if you're able to
21 take them?
22 A In the Emergency Department a Fast Track Nurse comes on at
23 11:00. And often there aren't Patients in Fast Track yet. And so
24 we might be able to get one or two people covered on breaks with
25 Fast Track.

1 And then if Fast Track starts to fill up and the acuity
2 isn't high, it's possible for a Charge Nurse to cover a break or
3 two. And then the least often, least sensible way, would be if a
4 Nurse in one section asked a Nurse in another section to cover
5 his or her group.
6 Q Who typically works in the Fast Track Section?
7 A Historically the Nurses the work in the Fast Track Section
8 are Nurse that are either kind of burnt out and coasting towards
9 retirement or Nurses that are neophytes that don't have a high
10 level of critical skill. And they're kind of getting gup to
11 speed in the Emergency Department.
12 Q I'd like to direct your attention to one of your
13 colleagues Deb Scott. What's her role in the department?
14 A Deb is formally a Staff Nurse. She has taken on an
15 informal role as a Nurse Educator.
16 Q Where does she typically work in the department?
17 A I'd say at least 50% of the time she's in Fast Track.
18 Q How long has Deb worked in the Emergency Department?
19 A I believe that Deb was hired at the same time as Erin
20 Bell, which is about two years ago.
21 Q Has this issue of -- how frequently, if at all, would you
22 discuss Deb's responsibility to cover your Patients on a break
23 in the Department?
24 A Well --
25 Q Prior to September 24th, 2013?

1 A Right -- I would say that decision of disgruntlement about
2 Deb's abilities and whether or not she was capable of covering
3 breaks was something that we often spoke to each other about at
4 least on a weekly basis.
5 Q Were your concerns ever brought to Management's attention
6 prior to September 24th, 2013?
7 A I know from speaking with Cheryl Durkee that Cheryl
8 brought her concerns in the capacity of Charge Nurse to my
9 Director Amy Matthews multiple times before the meeting on
10 September 24th.
11 Q I'd like to direct your attention to one more Nurse, Gayle
12 Peck. Who is Gayle?
13 A Gayle is a Nurse, who was -- she was not in the Nursing
14 Workforce for a period of time. She recently came out of -- I
15 mean -- Nurses do this. Nurses have children and raise families.
16 And they come back into nursing.
17 So, she came back into nursing. She was working on the
18 Short Stay Surgical Unit. She began floating down to the ED when
19 we had -- when we needed extra Staff or we were short. And I
20 believe at this point she in on the Per Diem part of the
21 scheduling of the Emergency Department.
22 Q When did Gayle start floating down to the Department?
23 A I'm not sure exactly. My sense is it's been at least a
24 year.
25 Q Where does Gayle typically work in the Department?

1 MR. PASCUCCI: Your Honor, could I request clarification,
2 a year from now? It's been at least a year since when?
3 THE WITNESS: It's been at least a year from today.
4 MR. PASCUCCI: Okay, thank you.
5 JUDGE GOLDMAN: From when Gayle Peck starting floating?
6 THE WITNESS: That's my recollection.
7 MR. PASCUCCI: About a year ago from now.
8 THE WITNESS: Yes.
9 MR. PASCUCCI: Thank you.
10 BY MS. NOTO:
11 Q Where does Gayle typically work in the Department?
12 A She typically works in the Fast Track section.
13 Q Were there conversations with your colleagues about
14 Gayle's ability to cover for breaks?
15 A There were a couple, certainly not as much as Deb, because
16 Gayle doesn't get used to cover breaks very much.
17 Q I'd like to direct your attention to September 24th, 2015.
18 Did you attend a staff meeting that day?
19 A Yes, I did.
20 Q How many Nurses were in attendance at that meeting?
21 A Ten or eleven.
22 Q What happened at that meeting?
23 A Well, Amy Matthews, my Director, introduced the meeting
24 with discussion of covering breaks and was stating with some
25 satisfaction that the day before that breaks had been covered by

1 assigning times for Nurses. And that Deb Scott had been in Fast
2 Track with Gayle and had gone around and covered several people.
3 Q Did you know anything about what had happened that day
4 before?
5 A I did because I was tabling in the cafeteria the day
6 before and at 11:00 or 11:30 Louisa, who is another Nurse that I
7 work with, came down and sat with me at the table in the
8 cafeteria.
9 And she -- one of the first things that she said -- well,
10 I said, "Wow! You're down here on a break."
11 And she said, "Yeah, and I'm really uncomfortable because
12 Deb Scott is covering my group."
13 I think that she was in 11 to 15 group and she had several
14 unstable Patients. And she was concerned about Deb's capacity to
15 care for those Patients.
16 Q So I'd like to direct your attention back to this meeting.
17 After Amy brought up Deb, what did you say?
18 A I just blurted out that I'm not comfortable with Deb
19 taking care of my Patients, that I didn't think that she was
20 competent to care for Critical Patients.
21 JUDGE GOLDMAN: That's what you said?
22 THE WITNESS: In essence, yes.
23 JUDGE GOLDMAN: As best that you can recall.
24 THE WITNESS: Yeah -- I mean -- I like to use the phrase
25 apples or apples, oranges for oranges. I said, "You know, if

1 you're going to have Nurses cover breaks, they need to be
2 capable of handling critical unstable Patients."
3 And I have had previously at that time I had experiences
4 where Deb had
5 JUDGE GOLDMAN: I want to make sure. I want to know what
6 you said in the meeting.
7 THE WITNESS: I said that I didn't think that she was
8 competent to cover my Critical Patients.
9 JUDGE GOLDMAN: Okay.
10 BY MS. NOTO:
11 Q Did you say anything else besides that?
12 A Well, I elaborated. I said --
13 Q What did you say?
14 A I said that I've had her. She's covered my group a couple
15 of times before. I've come back. There were things that were
16 attended to and important things that should have been done that
17 weren't. And I just -- and she also brought up Gayle Peck's
18 name.
19 And I said, "You know -- Gayle Peck is like a Nursing
20 Student. And she should not be by herself in Fast Track. She
21 doesn't even know how to mix up a banana bag," which is IV bag
22 with vitamins added that's probably one of the first things that
23 you learn as an Emergency Nurse. It's a medication that you give
24 to a person with alcohol additions.
25 Q Was anything else said at that meeting that you remember?

A Amy tried to shut down my comments. And I persisted and she tried to shut it down.

And before I stopped talking I said, "You know, we're all aware that there is a complaint within the New York State Department of Labor about breaks at this point. And sooner or later the hospital is going to have to follow New York State Labor Law."

Q Was Gayle in attendance at this meeting?

A No, neither Gayle nor Deb Scott were at that meeting.

Q Were you ever disciplined as a result of this meeting?

A Yes, I was.

Q When was that?

A Well, Amy approached me during a shift about a week later.

Q And what did she say when she approached you?

A She said that she needed to talk with me.

And I said, "Well, if this is about the Union, I am not going to go talk to you anywhere."

And she said, "No, it's not about the Union. It's about what you said during the staff meeting the other day."

I said, "Okay."

Q So what did you do?

A I had my phone with me. and -- you know -- out of awareness of how other Nurses had been pulled into Manager's meetings and kind of caught off grand, I turned on the audio recording section of my phone and put it in the inside pocket of

1 filled out in relation to me.
2 Q Did you sign the Written Verbal Warning?
3 A No, I did not.
4 Q If I showed you a copy of that would you be able to
5 identify it for us?
6 A Yes, I would.
7 Q Is that the Written Verbal Warning that you were given at
8 that meeting?
9 A Yes.
10 Q And is that General Counsel's Exhibit GC-32?
11 A I'm sorry?
12 Q Is that GC Exhibit GC-32?
13 A Yes.
14 Q Scott, do you have a social media account?
15 A Yes.
16 Q What do you have?
17 A A Facebook account.
18 Q What's your Facebook account name?
19 A Charlie Greene.
20 Q Have you ever posted on Facebook about your union
21 activities?
22 A Yes.
23 Q Do you specially remember a post that you made about Ann
24 Marshall with respect to her hearing that she was attending?
25 A Yes.

1 Q Can you talk to us about that? When was that -- was that
2 post made?
3 A Ann was attending a hearing for the New York State
4 Commission on Human Rights. And I think that it was November
5 10th. Q And so what did you do? What happened?
6 A Well, Ann text me from the meeting about 2:00 to let me
7 know that Flo Ogundele, the Supervisor from CMC, had arrived at
8 the meeting, in addition to, Alan Pedersen and Linda Crumb.
9 Linda Crumb is an Assistant VP of Patient Care at CMC.
10 And she was distraught because up until that point both
11 Ann and myself had considered Flo to be a friend and at least a
12 neutral party in relation to the Union organizing.
13 JUDGE GOLDMAN: Excuse me -- aren't we far field from the
14 allegation? Isn't the allegation on this issue just the Facebook
15 posting?
16 MS. NOTO: Your Honor --
17 JUDGE GOLDMAN: You're alleging it's an unlawful -- the
18 posting is unlawful. There's nothing else. Is there?
19 MS. NOTO: That's right, Your Honor, but GC Exhibit GC-7
20 hasn't been admitted yet. He would be the witness --
21 JUDGE GOLDMAN: So, show it to him. It's his Facebook
22 posting --
23 MS. NOTO: It's his Facebook posting.
24 JUDGE GOLDMAN: Isn't that all that we need -- all that
25 you need for your case? There's nothing -- I mean --

1 JUDGE GOLDMAN: You might want to -- go ahead. You can
2 answer that.
3 THE WITNESS: No.
4 BY MR. PASCUCCI:
5 Q You had multiple posts on that same subject?
6 JUDGE GOLDMAN: What do you mean by the subject?
7 MR. PASCUCCI: Well, about the Human Rights Meeting, about
8 Flo's participation.
9 THE WITNESS: No, I have one -- there was one post that I
10 put on November 10th.
11 BY MR. PASCUCCI:
12 Q About what?
13 A About the Human Rights Hearing that Ann was on.
14 Q So this is not a complete representation of what you
15 posted about that hearing or about Flo?
16 A I think that is the only post that I had that day about
17 that hearing.
18 Q Well -- so there's another post from the day before and
19 the day after about this?
20 A I don't remember. I think that I removed myself from that
21 Facebook conversation after that original post.
22 Q I don't follow you. I'm trying to figure out. Is this
23 everything that you said on Facebook about Flo's participation
24 in that hearing or not?
25 A Yes.

1 Q But you just said a minute ago that there was another
2 post.
3 MS. NOTO: Okay, I think --
4 MR. PASCUCCI: I guess that's cross examination.
5 JUDGE GOLDMAN: It is. Well, it is, but I don't know that
6 it's relevant. He may have had other posts about the New York
7 State Hearing.
8 MR. PASCUCCI: What I asked was about Flo's participation
9 --
10 JUDGE GOLDMAN: That he's answered. That's the only -- I
11 mean -- that's your answer.
12 MR. PASCUCCI: Well, I think that he went back and forth a
13 little bit. But, I'll show that.
14 JUDGE GOLDMAN: Yeah, in any event.
15 MR. PASCUCCI: If this is not a complete representation of
16 what he said, then I object. I think that we should have the
17 whole thing.
18 MS. NOTO: Your Honor, if you want me to give the
19 background of the --
20 JUDGE GOLDMAN: No, I'm going to receive it. I mean -- the
21 witness said that was the post that he made about Flo.
22 MR. PASCUCCI: I'm not sure that's what the witness said.
23 But I understand your peril.
24 (General Counsel's GC-7 received.)
25 DIRECT EXAMINATION

1 BY MS. NOTO:
2 Q Scott, I'm just going to ask you one more question on this
3 because there seems to be some confusion. Is this the post that
4 Flo later shard and commented on?
5 A Can I see what you're holding?
6 Q Of course, GC Exhibit GC-7 and then GC Exhibit GC-8?
7 A Yes.
8 Q So, GC Exhibit GC-7 is the post that Flo later shared and
9 then commented on top of?
10 A Yes.
11 Q Did you make any more posts about responses from Flo?
12 A No.
13 MS. NOTO: I have nothing further at this time, Your
14 Honor.
15 JUDGE GOLDMAN: Okay, your witness.
16 MR. PASCUCCI: Could I have any Affidavit that you may
17 have?
18 MS. NOTO: Of course.
19 MR. PASCUCCI: Could I have a few minutes, Judge, to do
20 that?
21 JUDGE GOLDMAN: Yes, how long is it?
22 MS. NOTO: Just one, it's less than 10 pages.
23 JUDGE GOLDMAN: We'll start with 10 minutes. If that's not
24 enough, we'll go with a little bit more. Stand in recess for 10
25 minutes. Off the record.

1 (Whereupon, at 2:48:44 p.m., a recess was taken.)
2 JUDGE GOLDMAN: On the record; 3:05:47 p.m.
3 CROSS EXAMINATION
4 BY MR. PASCUCCI:
5 Q Mr. Marsland, my name is Ray Pascucci. I'm an Attorney for
6 the Medical Center. I just have a couple of questions.
7 After the interaction with Alan Pedersen in the cafeteria
8 you stayed there for an hour and continued to table. Correct?
9 A Correct.
10 Q And nobody told you to leave or no Security came or
11 anything like that. Correct?
12 A Correct.
13 Q And then after that day did you subsequently engage in
14 tabling in the cafeteria?
15 A Yes, I did.
16 Q And how often and how frequently did you do that?
17 A Personally, I think that I might have gone back at least
18 four times.
19 Q Over what kind of a time frame?
20 A I think that the last time that I tabled there was
21 probably in December.
22 Q And you only did that four times between July and
23 December?
24 A Personally, yes.
25 Q Are you aware of other Employees, who engage in tabling on

1 behalf of the Union in the cafeteria?
2 A Yes.
3 Q And do you know how regularly of an occurrence that was?
4 A Not clearly.
5 Q I'm sorry?
6 A I don't clearly know.
7 Q Well, what's your best estimate of how regular that was?
8 A I'm really not sure.
9 Q Weekly, daily?
10 JUDGE GOLDMAN: If you know -- I mean -- the witness is --
11 THE WITNESS: I'm really not sure.
12 BY MR. PASCUCCI:
13 Q Okay, was it on many occasions? Is that fair?
14 JUDGE GOLDMAN: It's vague, given his earlier statements.
15 BY MR. PASCUCCI:
16 Q Multiple occasions?
17 JUDGE GOLDMAN: More than once?
18 THE WITNESS: Probably at least a dozen times by myself
19 and other people in total between July and December.
20 BY MR. PASCUCCI:
21 Q Okay, and you were never -- in the times that you engaged
22 in that activity after that first interaction with Mr. Pedersen
23 did he or any other Member of Management tell you to stop doing
24 that or that you were inappropriate or things like that?
25 A No.

1 Q Are you aware of whether any other Employees were engaged
2 in that activity after the first occasion with Ms. Marshall and
3 the second occasion with yourself in which Employees that were
4 tabling on behalf of the Union were told to stop that activity?
5 A No.
6 Q And is it -- oh, I wanted to show you -- I wanted to ask
7 the witness to take a look at General Counsel's Exhibit -- the
8 Verbal Warning.
9 MS. NOTO: His Verbal Warning?
10 BY MR. PASCUCCI:
11 Q GC-32.
12 JUDGE GOLDMAN: Please hand that to the witness, GC-32.
13 Q Mr. Marsland, if you could look under 'Reason for
14 Counseling' in that document, the first paragraph, it's a short
15 paragraph. Could you just read that? And my question is there
16 anything inaccurate in that paragraph?
17 JUDGE GOLDMAN: I need an explanation. Do you mean -- do
18 you mean that it's not true or it's not the reason? I'm' not
19 sure of what you mean by inaccurate.
20 BY MR. PASCUCCI:
21 Q Is there anything that's not factually correct about
22 what's in that first paragraph?
23 JUDGE GOLDMAN: May I see it before he --
24 THE WITNESS: I'm not sure which paragraph that you mean.
25 MR. PASCUCCI: I'm sorry. I'll explain it. Judge, it's the

1 one right under 'Reason for Counseling'. It starts 'in the
2 07/15'.
3 JUDGE GOLDMAN: Okay, now that I just read it I think that
4 the question is appropriate. He's asking whether the factual
5 recitation of what occurred is accurate or if there's anything
6 inaccurate about it?
7 MR. PASCUCCI: Yes.
8 JUDGE GOLDMAN: A factual recitation that is set forth
9 there.
10 MS. NOTO: In that very first sentence?
11 BY MR. PASCUCCI:
12 Q Yes, I was going to do each of those three paragraphs. But
13 starting with the first short paragraph, if you could just tell
14 me whether there's anything factually incorrect about that.
15 A In the 07/15 meeting -- that paragraph?
16 Q Yes.
17 A I think that's actually correct.
18 Q And how about the next paragraph in front of 11 etc.?
19 A I disagree with the language bullying, but it's correct
20 that there were 11 Team Members. It's correct that Deb Scott
21 wasn't present. It was correct that I said that she was not a
22 Competent Emergency Department to care for my Patients.
23 Q Okay, how about the last paragraph under that section?
24 A I disagree with the statement or the characterization that
25 I was ridiculing somebody. But it's correct that I was told that

1 my comments were inappropriate. It's correct that I was told to
2 stop. It's correct that I spoke also about Gayle.
3 Q So the only thing that you disagree with in that paragraph
4 is the reference to ridicule?
5 A Correct.
6 Q And it's my understanding that after this staff meeting
7 you spent a half hour composing an apology to Deb Scott?
8 A That's correct.
9 MR. PASCUCCI: No further questions.
10 JUDGE GOLDMAN: Redirect?
11 MS. NOTO: Very briefly.
12 REDIRECT EXAMINATION
13 BY MS. NOTO:
14 Q You were on cross examination just now asked whether or
15 not to your knowledge any else was stopped from tabling. To your
16 knowledge did anyone ever tell you that you were permitted to
17 continue to table?
18 A No.
19 Q And just to clarify for the record, if you don't get
20 breaks how did you have time to go down and table that day in
21 July?
22 A Anytime I tabled it was on my day off.
23 Q And what about that day in July?
24 MR. PASCUCCI: I object. This is beyond the scope.
25 JUDGE GOLDMAN: Yes, it is beyond the scope.

1 defend the case by saying that this indicial -- there was no
2 cause for concern. They're not going to do -- right?
3 MS. NOTO: Okay.
4 JUDGE GOLDMAN: Right?
5 MR. PASCUCCI: Right.
6 MS. NOTO: I mean -- I guess -- I understand what you're
7 saying, but there's going to be some leading when I say, "So you
8 discussed amongst your colleagues that x, y, z thing happened,
9 if I can't lay the foundation that it was something that they
10 talked about.
11 JUDGE GOLDMAN: We'll start. I'm not sure that I follow
12 that.
13 MS. NOTO: Okay.
14 JUDGE GOLDMAN: Go ahead.
15 MS. NOTO: Just to inquire or to do?
16 JUDGE GOLDMAN: No, no, go ahead.
17 MS. NOTO: Okay.
18 BY MS. NOTO:
19 Q Have you ever discussed the issue of the competency with
20 break coverage with your Co-Workers?
21 A Yes.
22 Q In what way?
23 A In what way, like where?
24 Q Like who would you talk to and what would you talk about.
25 A Just my other fellow Co-Workers, the Charge Nurses, Nurses

1 at the Charge Nurse desk.
2 Q And what would you discuss?
3 A I'm sorry.
4 Q It's okay. What would you -- when you and your colleagues
5 would talk the issue with respect to the competency during
6 breaks, what specifically would you discuss?
7 A Oh, what we would discuss is that this Nurse that would
8 work in the Fast Track most of the time -- that she was working.
9 And we had a concern with the fact that she wasn't in the other
10 areas of the Emergency Room that had more Critically-ill
11 Patients. Therefore, she was not as familiar with taking care of
12 Critically-ill Patients and that was a concern to us.
13 Q How often would that come up?
14 A Oh, several times a week.
15 Q What about Management? Have you ever made that same
16 discussion -- have you ever had that same discussion with
17 Members of Management at Cayuga Medical Center?
18 A Yes.
19 Q Who specifically?
20 A Kevin Harris, I know.
21 Q And who is Kevin Harris?
22 A He was our Unit Manager.
23 Q What did Kevin say when you told him that?
24 A He said that he didn't have any control over where she
25 worked because he did not do the daily scheduling, just the

1 She continued to talk. Then at the end said, "And this is
2 all that I have to say about this."
3 And then she kind of clapped her hand.
4 And I said, "Good because I have Patients to take care
5 of."
6 And I stormed off and went back into Patient's Room. She
7 continued to talk at the Nurses' Station with the other Nurse at
8 that point but I left because I needed to take care of my
9 Patients.
10 MS. NOTO: Your Honor, I have nothing further for this
11 witness at this time.
12 JUDGE GOLDMAN: Thank you -- your witness.
13 MR. PASCUCCI: May I inquire for any Affidavits?
14 MS. NOTO: Yes, I do. It's very brief.
15 JUDGE GOLDMAN: We'll go off the record for about five
16 minutes for you to review the statement.
17 MS. NOTO: It's about five pages.
18 JUDGE GOLDMAN: Off the record.
19 (Whereupon, at 3:13:20 p.m., a break was taken.)
20 JUDGE GOLDMAN: On the record; 3:27:22 p.m.
21 CROSS EXAMINATION
22 BY MR. PASCUCCI:
23 Q Good afternoon, I'm Ray Pascucci. I'm an Attorney for
24 Cayuga Medical Center. I just have a couple of questions.
25 With respect to that mid-day safety huddle was that

1 prompted because of a discussion between a Pro-Union Employee
2 and another Employee, where the other Employee started crying
3 saying that she would leave for the rest of the day because she
4 felt so uncomfortable?
5 A Yes.
6 Q That's how that started?
7 A Yes.
8 Q And so then Flo called the huddle. And is it true that Flo
9 said, "It doesn't matter if you're Pro-Union or not, what
10 matters is no bullying"?
11 A No, she said, "I don't care if your Pro-Union -- I don't
12 care if you're for the Union or not, there will be no
13 bullying."
14 Q How about it doesn't matter -- I'm looking at your
15 Affidavit. "
16 It doesn't' matter if you're Pro-Union or not."
17 Did she say that?
18 A She --
19 JUDGE GOLDMAN: Just testify to the best of your
20 recollection.
21 THE WITNESS: The best of my recollection is she pulled us
22 together to tell us there would be bullying regarding the Union.
23 BY MR. PASCUCCI:
24 Q Well, but my question is did she also say, "It doesn't
25 matter if you're Pro-Union or not"?

1 JUDGE GOLDMAN: But I mean -- it's -- the redirect was
2 very minor.
3 MS. PASCUCCI: Yes, but context, this is all about
4 context.
5 JUDGE GOLDMAN: Well, but you've already asked this
6 question.
7 MS. PASCUCCI: I just want to make sure that I cover the
8 point, just one question.
9 BY MS. PASCUCCI:
10 Q Am I correct that this whole discussion is prompted by
11 some conversation between two Employees in which a Pro-Union
12 Employee talked to another Employee and the other Employee began
13 to cry and said she was leaving?
14 A A Pro-Union Employee, which one are you talking about?
15 Q I believe that it was -- according to your Affidavit I
16 think that I read that it was Mr. Marsland who was talking to
17 another Employee about the Union --
18 MS. NOTO: Objection, is that scope?
19 MS. PASCUCCI: -- and she began to cry?
20 JUDGE GOLDMAN: Well, I'm going to let him ask about what
21 he --
22 THE WITNESS: When she was yelling are you talking about
23 or the part that she was --
24 MS. PASCUCCI: No, right before this meeting was called
25 that's what happened.

1 THE WITNESS: Oh, I just remember the conversation of the
2 one Employee yelling at the other one. And then after that she
3 started crying, yeah.
4 BY MS. PASCUCCI:
5 Q And the Employee started crying was the one who --
6 A Who was doing the yelling, yeah, and then she cried
7 afterward.
8 Q Who was not in favor of the Union, but was being taunted
9 by someone else.
10 A Yes, she's not in favor, absolutely.
11 MS. PASCUCCI: That's all.
12 JUDGE GOLDMAN: Alright.
13 MS. NOTO: Sorry.
14 JUDGE GOLDMAN: No, no.
15 REDIRECT EXAMINATION
16 BY MS. NOTO:
17 Q If you would look back at that again, I know that we
18 talked about what the initial thing that Flo said before you
19 reasoned to her -- the last sentence reads, 'If you don't want
20 the Union you should not be bullied because of that.'
21 Is that correct?
22 A Correct.
23 MS. NOTO: No further questions.
24 RECROSS EXAMINATION
25 BY MS. PASCUCCI:

1 A Depending on the types of Patients that are there, so it's
2 everybody that's been reported off to. And the Charge Nurse
3 oversees the whole department, as well.
4 Q So you were telling us about that meeting. Can you
5 continue? I'm not sure exactly. I know that you were talking
6 about taking care of one another and taking breaks.
7 A Yes, we -- you know -- the health of the Staff is
8 important that they feel well and they are able to get out is
9 very important. So --
10 JUDGE GOLDMAN: Let me just interrupt. To the extent that
11 you can, just tell us what you said at the meeting because it's
12 sometimes not clear whether you're telling --
13 THE WITNESS: Sure.
14 JUDGE GOLDMAN: -- background.
15 THE WITNESS: No, no -- so we were talking about breaks.
16 And I said that it's important that we take care of one another,
17 as well. That people get out to breaks can take a break. And
18 there's no one cookie cutter method that's going to work,
19 depending on the given day because of the way that Patients have
20 been flowing in and out of the department, acuity that happens.
21 So it's going to be -- you know -- it's a plan.
22 Nurses are fantastic. We talked about that. Nurses are
23 great at problem solving. I mean -- they're very good at it,
24 especially ED Nurses. And we need to look at it everyday and see
25 what the best compliment is to get people out to break,

1 essentially.
2 Do you want me to continue on?
3 JUDGE GOLDMAN: Keep going, yes.
4 THE WITNESS: So, as an example, I said that people have
5 been doing pretty well this last week. And there's one day in
6 particular that worked very well. And I gave the example of how
7 the Nurse in Fast Track, who was covering Fast Track that day,
8 was able to help cross cover and people were able to get out and
9 have breaks.
10 BY MS. PASCUCCI:
11 Q And why would she have been in a position to do that?
12 A Because of the Patients, there wasn't that many Patients
13 there.
14 Q In Fast Track?
15 A Right, it's lower acuity. It's a lower acuity area that
16 rotate people through. And, if anything, that person for the
17 most person is a helper, can help.
18 Q Right.
19 A It just worked out that day that she wasn't flooded with
20 people.
21 Q Okay.
22 A So that's the example that I gave. And I was actually --
23 you know -- saying, "You guys are doing -- you did great. That
24 was a really great example of it."
25 And that's when Scott spoke up about well, he refused to

1 take his break. And then he started tearing into the competency
2 of --
3 Q To the best of your recollection, I know this is
4 difficult, can you tell us what he said?
5 A Yes, he said, "Well, I was off," something like, "I was
6 offered to take a break and I refused. I don't think that Deb
7 Scott is competent to care for my Patients."
8 And I said, "You know -- I don't think is the right," --
9 this is the first time that I'm hearing this -- "I don't think
10 this is the right forum for this to be addressed. If you have
11 concerns you should come see me. You know -- I have an open
12 door. You should come see me."
13 Q Okay, and then what?
14 A "And let me know of your concerns."
15 And Scott persisted on. He persisted on to say that she
16 wasn't competent to do her job, which isn't true. And he
17 persisted on in front of everybody that was there, damaging --
18 trying to damage her character there in front of people --
19 MS. NOTO: Objection.
20 JUDGE GOLDMAN: Just tell us what he said. There needs to
21 be a distinction between your view of what he was doing.
22 THE WITNESS: Well, he carried on that she wasn't
23 competent to perform her job and he wasn't going to let her give
24 him a break.
25 And I asked him to stop. That it wasn't the right forum.

1 And like I said, that he could come see me. and he continued on,
2 speaking up once again loudly, wanting to discuss why he felt
3 Deb Scott wasn't competent to be the one to round on his
4 Patients or do break. I asked him to stop.
5 BY MS. PASCUCCI:
6 Q When you were asking him to stop what was it that he was
7 saying that you were asking him to stop saying?
8 A He was saying that he didn't feel she had the skill set or
9 that she wasn't qualified to -- it -- I don't remember the exact
10 words at that time, unless I would read my update, but it was
11 all in reflection. Like, she wasn't qualified. Like, she don't
12 have the skill set or the competence to care for his Patients.
13 And he's just trying to talk over. And I'm trying to move it
14 along and not in front of a big audience because I have not been
15 brought that.
16 Q Were you trying to have him stop talking about the need to
17 take breaks?
18 A No, just about the damaging statements about the character
19 that I did not think was respectful or fair in that group of
20 people, wide group of people that were there and the Providers,
21 the Doctors and the PA there. I didn't think that was an
22 appropriate forum to bring out and -- you know -- say damaging
23 things about whether somebody is competent or not.
24 Q And so you asked him to stop more than once?
25 A Yes, I think that it was like three times.

1 And I said, "We're going to move on because we have a big
2 agenda to do. I'd be happy to hear whatever it is that you have
3 to say."
4 And then he went onto speak about Gayle Peck.
5 Q Just before we get to Gayle, did he -- when did he stop
6 talking about the competency of Deb Scott. After the third
7 request to stop. How did that sort of come to an end, if it did?
8 A It's kind of -- I ended up -- I feel like I ended up
9 trying to say, "We are moving on," and tried to over talk it.
10 "We are moving on. This isn't the place."
11 Q Okay.
12 A And then Gayle Peck came up.
13 Q Well, what was said and by who?
14 A Scott said that he didn't think that Gayle Peck was
15 competent either. She had been there a day, maybe two, just
16 starting to cross train under the supervision of another Nurse,
17 not long enough to even make at that point a -- you know -- a
18 decision or even a judgment.
19 JUDGE GOLDMAN: I'm sorry. He was saying that?
20 THE WITNESS: He was saying that. Not long enough to make
21 a decision or a judgment -- you know -- it just wasn't --
22 BY MS. PASCUCCI:
23 Q Did you say anything after he said that?
24 A I said that it's inapp -- we need to move on. It's
25 inappropriate.

1 Q What were you referring to when you said that it was
2 inappropriate?
3 A That the conversation saying that these people shouldn't
4 be here. They're not competent. They're not qualified.
5 Q And then how did he respond when you said, "Let's move on.
6 This is not appropriate," after he talked about Gayle Peck?
7 A I'm just -- I'm trying to remember because I had to just
8 move the conversation on. I said, "That's it. That's enough.
9 This isn't the place. It's -- we need to move on."
10 And I just switched to the next place on the list.
11 Q And was that the end of the discussion about either Deb
12 Scott or Gayle Peck?
13 A At that point that was the end of the discussion that I
14 remember, yes.
15 Q And as a result of what transpired, what did you do after
16 the meeting?
17 A I had thought about it for the situation that happened.
18 And what was bad was that I had gone back to the office and no
19 sooner had I gotten to the office because I had rounded a little
20 bit and then gone back into my office, the phone was ringing.
21 And it was Deb Scott, upset, crying on the other end of the
22 phone because she had heard about what happened at the staff
23 meeting, that I am just getting back to my office from.
24 Q Do you remember what she said to you?
25 MS. NOTO: Objection, hearsay.

1 JUDGE GOLDMAN: Well, I don't think that it's offered for
2 the truth. Is it?
3 MS. PASCUCCI: No.
4 JUDGE GOLDMAN: It's offered for what she was told. And it
5 may be part of the motivation. I think that it's to be part of
6 the motivations for Respondent's actions, so overruled.
7 Go ahead.
8 THE WITNESS: She was upset. She was crying. She was upset.
9 She had been called, and I don't know by who, and informed about
10 what happened. And she was just beside herself. She was
11 embarrassed. She was upset that she was attacked that way in
12 front of a group of people. This is what I'm being told. Like I
13 said, I don't' know who talked to her.
14 JUDGE GOLDMAN: Yes, just tell us what you were told.
15 THE WITNESS: And I tried to just say, "Deb, you know that
16 I have -- I'm just getting back here from this. I'm sorry. I'm
17 sorry that you're upset."
18 And -- you know -- there was really nothing that I could
19 do, except for say that I'm really sorry that you're upset. I
20 can't go into great detail. I'm not going to fuel her more and
21 make her more upset and give her a blow by blow. That's not
22 appropriate either, you know.
23 JUDGE GOLDMAN: Can I ask you a question? I'm sorry to
24 interrupt. But about timing -- you described you were at this
25 meeting.

1 evening shift that felt like -- you know -- the days go and the
2 nights go and the evening people -- there's so few of them that
3 sometimes they might be overlooked and -- you know -- or people
4 just wouldn't consciously think about it. So they'd have to
5 bring it up.
6 Q When you said that you had an open door what did you mean
7 by that?
8 A Well -- oh, anybody can come back at any point and time
9 and talk to me if they have a concern about anything.
10 Q Has anyone come to you and talked to you about concerns
11 with other working conditions, besides being able to take breaks
12 or not?
13 A Let me think about that for a minute. They'll talk to me
14 about the schedule.
15 Q That's staffing schedules.
16 A Right, they'll talk to me about a Patient Care scenario --
17 you know -- that they've experienced. They'll talk to me about -
18 - you know -- we have an EMR System -- an Electronic Medical
19 Record -- they'll talk to me about challenges with that,
20 potential improvements with that. Pretty much anything --
21 they'll talk to --
22 Q A variety of issues.
23 A They'll talk to me about wanting to go back to school.
24 They'll talk to me about --
25 Q But I mean more like complaints of what's going on in the

1 unit, like maybe the medical record issue or other issues.
2 That's what I'm really asking.
3 A Yes, they'll talk to me about pretty much anything. How
4 long does it take to get orders to get a Patient to the floor.
5 They'll talk to me about Mental Health Patients -- you know --
6 on holds.
7 Q Have you ever disciplined an Employee for complaining to
8 you about an issue like that?
9 A No.
10 Q Have you ever counseled an Employee for complaining to you
11 about an issue like that?
12 A No, became I need to hear it.
13 Q Has it ever changed your relationship with an Employee?
14 A No.
15 Q With respect -- back to the break issue for a minute. Have
16 you ever disciplined an Employee for saying that they're
17 concerned about not being able to take breaks?
18 A Absolutely not.
19 Q Have you ever counseled an Employee about that?
20 A About not taking a break?
21 Q About campaigning about the inability to take breaks?
22 A No.
23 Q Have you ever treated someone differently because they
24 voiced their complaint about that?
25 A No.

1 Q And did you become aware at some point that the Department
2 of Labor had received a complaint about the breaks?
3 A Yes, I did because --
4 JUDGE GOLDMAN: Hold on. Next question?
5 MS. PASCUCCI: Okay.
6 BY MS. PASCUCCI:
7 Q When was that?
8 A It was quite awhile ago because I believe I was asked
9 about breaks in the ED and what are the challenges. And I
10 believe that came through our VP's to look at that say, "You
11 know, the Staff is complaining about breaks. You need to work on
12 it."
13 Q So quite awhile ago. Can you help me to understand when
14 that was to the best of your recollection?
15 A Maybe Susan Nolte was here. I would say anywhere from
16 eight months to a year ago.
17 Q So, that would be when -- the spring or summer of 2015?
18 A I don't know exactly, sir. It's probably -- you know --
19 maybe the spring of 2015 maybe?
20 Q And when you became aware that there was a Department of
21 Labor complaint about breaks. Was it specifically on your unit
22 or was it hospital wide? Do you know?
23 A I don't know specifically if it was hospital wide because
24 it focused on my department.
25 Q Did you make any attempt to find out what Employee had

1 made the Complaint to the Department of Labor?
2 A No, what I did do was bring it to a staff meeting and say,
3 "Alright, we have a problem. This is a problem. How do you guys
4 -- what do you think? How do you think that we can solve this?
5 What are your ideas? What can we do?"
6 Q And do you remember when that Staff meeting happened? How
7 long after the issue?
8 A Well, it would have been -- I usually jump on things, so
9 it would have been --
10 Q In the spring of 2015.
11 A It would have been the next staff meeting.
12 Q Okay -- and with respect to your regular staff meetings
13 the first item on the agenda is always called people?
14 A Always.
15 Q And what does that mean?
16 A It's just --
17 MS. NOTO: Objection, relevance?
18 JUDGE GOLDMAN: Well, it's been brought up that it was at
19 this meeting that resulted in discipline. So and it was just
20 part of the meeting that resulted in discipline.
21 THE WITNESS: People just means -- like for me, it's
22 anything that's under the people category. I usually like to
23 focus that on our unit. I usually go over the staffing -- you
24 know -- open positions or -- you know -- any kind of our people
25 related things like that.

1 Q Would it cover what people, who work on the unit, have --
2 about conditions on the unit?
3 MS. NOTO: Objection, leading.
4 JUDGE GOLDMAN: Sustained -- concern -- when you say
5 people it concerns Staff or Employees usually? In other words
6 it's not about other people outside of the hospital.
7 THE WITNESS: No, it's specific to us as a team. And
8 there's actually two areas where it can be addressed. And that
9 is under the people and then it's under the round table. If
10 anybody has anything under the round table --
11 JUDGE GOLDMAN: Is that a separate agenda item?
12 THE WITNESS: Yes, it's like that's the last one. There's
13 a whole bunch of them. There's people, quality, Staff Patient
14 safety, financial. We go down through all of the pillars. That's
15 the way that I've always set them up.
16 JUDGE GOLDMAN: Okay, questions?
17 BY MS. PASCUCCI:
18 Q In the staff meeting that we've been talking about in
19 September of 2015 --
20 A Okay.
21 Q Was that the first time in a staff meeting any of your
22 Staff have complained about conditions on the unit?
23 MS. NOTO: Objection, leading.
24 MS. PASCUCCI: No.
25 THE WITNESS: That they've complained about --

1 BY MS. PASCUCCI:
2 Q That any of your Staff Members in a staff meeting
3 complained about an issue in the unit, like scheduling, breaks,
4 or anything?
5 A No.
6 Q It wasn't the first time?
7 A No.
8 Q How often does that happen during the staff meetings?
9 A The staff meeting is pretty -- I expect feedback and I
10 expect for us to talk about certain things in the department.
11 Things that can make it better. Challenges that we have.
12 Q How often does it happen?
13 A Well, it's every staff meeting. We have the ability for --
14 to have dialogue with each other.
15 Q And have you ever disciplined an Employee for voicing a
16 legitimate concern in this staff meeting?
17 A No, I haven't disciplined anybody in the past for voicing
18 a legitimate concern. But nobody has voiced a concern that has
19 torn down another person in front of a group of people.
20 Q Well, my next question was going to be why did you decide
21 to give a Verbal Warning to Mr. Marsland?
22 A Because it was disrespectful. It was damaging to that
23 person's credibility, who wasn't there to defend themselves. And
24 you're portraying somebody in a very bad light. I had not -- it
25 hadn't been brought to me. If you have a concern, bring it to

1 me. I'll look into it. I'll -- you know -- I will go through and
2 I'll have a discussion. I'll investigate it. But that's not the
3 forum to be tearing somebody else apart. I wouldn't let them do
4 it to him. I wouldn't let them do it to anybody else.
5 Q I'd like to direct your attention to General Counsel's
6 Exhibit GC-32.
7 MS. PASCUCCI: Judge, if you could provide her with a copy
8 of that?
9 JUDGE GOLDMAN: I'm handing her GC-32.
10 BY MS. PASCUCCI:
11 Q If you could take a minute to look over that.
12 A Sure.
13 Q Do you recognize it?
14 A Absolutely, I wrote it.
15 Q That was my question. Who wrote it?
16 A I did.
17 Q And you wrote that by yourself?
18 A Absolutely.
19 Q Do you know when you did that? I know that it's dated.
20 Well, it's dated 9/24. That's the date of the conduct. But do
21 you know when it was written?
22 A That would be the date that I would have written it.
23 Q The same day?
24 A Correct.
25 Q And is this the Verbal Warning that you issued to Mr.

1 Q I want to discuss with you the September 24th, 2015 staff
2 meeting.
3 A Okay.
4 Q The concerns that Scott voiced to you in that meeting were
5 related to breaks. Correct?
6 A That's how it started out, yes.
7 Q In fact, he was specifically talking to you about who is
8 able to cover for those breaks. Correct?
9 A He was specifically talking about the example that I had
10 used on how the breaks had worked and refusing to accept from
11 the person who was covering at that point, yes.
12 Q So he was responding to something that you had said about
13 the breaks. Correct?
14 A Yes.
15 Q And according to you that was the first time that you had
16 heard that there was a concern in the unit about the competency
17 of the Nurses covering for breaks. Correct?
18 A Yes.
19 Q Now in the October 5th, 2015 meeting that you had with
20 Scott, where you issued him that Verbal Written Warning, you
21 only orally mentioned Gayle's name. Correct?
22 A I only orally mentioned Gayle's name?
23 Q Did you ever mention Deb Scott in that meeting explicitly?
24 A I don't recall that specifically. It was very clear that
25 the write up was about his behavior and disrespectfulness in

1 Pascucci saying that you told -- you told Scott, quote, "This is
2 specifically about your behavior at that staff meeting about Deb
3 Scott in an open forum"?
4 A Yes.
5 Q Did you say that in that meeting with Mr. Marsland on
6 October 5th, 2015?
7 A Yes, I believe that I did.
8 Q Would you agree with me that in the meeting that you had
9 with Mr. Marsland on the 5th you mostly talked about Gayle Peck?
10 Is that true?
11 A I don't recall that I mostly talked about Gayle Peck, no.
12 I don't recall that -- I don't recall that I mostly talked about
13 Gayle Peck.
14 Q But you would agree with me that just a few moments ago
15 you said that Scott's statements about Gayle, they were a brief
16 statement. Correct?
17 A In the staff meeting because I didn't let it go on.
18 Q Right, so the majority of what Mr. Marsland talked about
19 in that staff meeting was in relation to Deb, not Gayle. True?
20 A The majority, yes.
21 Q You testified that you were also held to the Nursing Code
22 of Conduct too. Correct?
23 A Correct.
24 Q You send out the results of monthly patient surveys.
25 Right?

1 A Correct.
2 Q And you circulate those to the entire department?
3 A Correct.
4 Q To all of the Nurses?
5 A Actually, Doctor Cooke and I send them out globally to all
6 Nurses, all Doctors, all -- everybody gets them because an Aide
7 could be involved in the care, even mid-level Practitioners get
8 it. We all get it.
9 Q And you would agree with me that in those Patient surveys
10 you circulate Nurse's performance is criticized. Correct?
11 A We send out all comments from Patients.
12 Q And that includes the criticizing of Nurses. Correct?
13 A It includes all comments that come in, yes.
14 Q And their names also on occasion. Correct?
15 A We're all held accountable, yes.
16 Q Have you ever been discipline for sending out all of those
17 monthly patient surveys to all of the Nurses?
18 A No.
19 Q And just so the record is clear in that staff meeting on
20 September 24th, 2015 you specifically mention Deb Scott by name.
21 Correct?
22 A Yes.
23 MS. NOTO: I have no further questions for this witness at
24 this time.
25 JUDGE GOLDMAN: Okay, thank you -- anything to follow up?

1 was a problem?
2 A In every shift, we have all bed meeting. At that meeting
3 is one we have all the team leaders, the charge nurses. We all
4 come together.
5 And the nurses they meet twice. At 8:30 in the morning
6 and 2:00 in the afternoon.
7 So what I do in that bed meeting is every unit would tell
8 us how many patient they have, so that we have any beds
9 available.
10 And then we go around again, do the staffing, if we have
11 enough staff. And we don't have enough staff and they have too
12 much, that unit doesn't have enough good work.
13 But that day after we left, the bed meeting, it's 4:00. I
14 got a call from my Anne Marshall.
15 Q From, I'm sorry.
16 A From Anne Marshall.
17 Q Okay. You got a call from Anne Marshall.
18 A She was the team leader in ICU that day.
19 Q Okay. Team leader in ICU. What did she say when she
20 called you?
21 A She said to me, which one you did? But she doesn't want
22 to take that admission. And I said, "Why?" She said, "Well,
23 they don't have enough staff for the night shift."
24 Q I'm sorry, I don't want the name, but what patient are you
25 referring to?

1 A No, the patient was in the ED room. Which bed, which ICU?
2 JUDGE GOLDMAN: Which room was the patient in?
3 THE WITNESS: I don't know which ED.
4 JUDGE GOLDMAN: ED.
5 Q Okay. I'm sorry, that's what I couldn't hear.
6 So there was an ED patient who needed to go to ICU and she
7 called and said we can't take the patient.
8 A Yes.
9 Q Okay. Then what?
10 A And then I tell, I asked her if her boss is still around.
11 She say, "Yes." I say, "Okay, I'm coming now. I want to talk
12 to her." I say, "Did you call anybody." She say, "Nobody's
13 coming in."
14 Q So is this all the same conversation just between you and
15 Anne?
16 A Yes, yes.
17 Q Okay.
18 A Then I said, "Okay. Let's go to Joel's office."
19 Q I need you to go slower.
20 A Okay.
21 Q Because it's important what you said and what she said.
22 So you asked her - -
23 A I asked her and I say, "Have you call anybody?" She said
24 no.
25 Q Okay.

1 A And that's right at that moment, okay, but you want the
2 night shift to come. We don't have enough nurses to take care
3 of the patient. So I said, "Okay."
4 So I came to our unit. Myself and Anne we went to Joel's
5 office to - -
6 Q Joel, and who's Joel?
7 A - - Joel which is the interim director of ICU.
8 Q And the full name?
9 A Joel Brown.
10 Q Joel Brown, thank you.
11 A And I explained to him what was going on. I said, "Of
12 course I don't want to leave before we know what to do."
13 Because sometimes if we come up to the patient, we contact
14 the administration and see where she go somewhere else. If we
15 don't have the staff.
16 Q Okay. So there was a - - so this ED patient, if he
17 couldn't be placed in the ICU, he or she, then that person may
18 have had to go to the hospital.
19 A Go somewhere else, yes.
20 Q Okay.
21 A So we were talking about it, so - -
22 Q So who's talk - - so then now - -
23 A It was me, Anne and Joel now in Joel's office.
24 Q Okay. I'm going to slow you down, thank you. So the
25 first conversation just between you and Anne - -

1 A Yes.
2 Q - - where did that take place?
3 A It took place on the phone.
4 Q Oh, on the phone, right.
5 MR. PASCUCCI: Sorry.
6 JUDGE GOLDMAN: Sorry, the conversation between you
7 and Anne what time was that approximately? You said it, I just
8 didn't catch it.
9 THE WITNESS: It was at that 2:00 bed meeting.
10 JUDGE GOLDMAN: Okay. And when you - - and you said
11 that Anne's concern was that there wouldn't be staff for the -
12 -
13 THE WITNESS: For the night shift.
14 JUDGE GOLDMAN: For the night shift.
15 THE WITNESS: Yes.
16 JUDGE GOLDMAN: When you say night shift, you mean
17 the shifts starting at - -
18 THE WITNESS: From 7:00 p.m.
19 JUDGE GOLDMAN: From 7:00 p.m.
20 THE WITNESS: To 7:00 a.m.
21 JUDGE GOLDMAN: Okay.
22 THE WITNESS: Yes.
23 BY MR. PASCUCCI:
24 Q So after the phone conversation, did you go the ICU unit?
25 A Yes, I went to the ICU.

1 Q All right. And then you had a conversation in Joel's
2 office with the - -
3 A No, not.
4 Q Okay.
5 A When I got to ICU we both look at the board.
6 Q What is the board?
7 A The board they have, announces who's coming in.
8 Q Can you just get us a description of what the board means?
9 A The board means that we not enough nurses coming in. The
10 number of patient that is in ICU.
11 Q Okay.
12 A So that would give us how many beds we have available and
13 how many nurses that will come in to work.
14 Q So tell me if I'm wrong about this. But I think I know
15 what you're describing. Is it like a white board - -
16 A Yes.
17 Q - - on the wall?
18 A Yes.
19 Q And there's patient names and information about each
20 patient?
21 A Yes.
22 Q And that's how you figure out - -
23 A Well, not too much information about a patient. It's a
24 white board.
25 Q Yeah.

1 A That puts every staff for 24 hour shift.
2 Q I see.
3 A That some of it 3:00 to 11:00, 7:00 to 7:00 on the board.
4 Q Okay.
5 JUDGE GOLDMAN: So you can see who's scheduled to
6 come in.
7 THE WITNESS: Who's scheduled to, yes.
8 JUDGE GOLDMAN: And you can see if there were holes
9 in the schedule?
10 THE WITNESS: Yes, yes.
11 Q Okay. So you went to the board or just yourself or were
12 you with Anne or?
13 A I was with Anne.
14 Q You and Anne, okay.
15 A So we - -
16 Q So what happened there?
17 A So we start talking about it. She said she had to call
18 everybody and nobody would come in. And I say, "Okay. And
19 let's go to Joel Brown office."
20 So I went there and I say, we're in famine. I said, "We
21 have a patient in ED, I don't know what we're going to do if
22 we're not going to be able to take the patient."
23 Q And at this point the three of you are talking.
24 A We are talking.
25 Q Okay.

1 A And I say that Anne told me she call everybody but nobody
2 call her back or say that they will come in.
3 So then me, Joel Brown, and Anne Marshall, we went back
4 outside to where the board was.
5 Q She left Joel's office and went to the board.
6 A Yeah, three of us.
7 Q Right.
8 A So as we were talking, she asked Anne, so nobody want to
9 come in. She say no.
10 Q Did you say he asked Anne meaning, Joel?
11 A Yes, he did.
12 Q Okay.
13 A She say, no. Then she took the charge nurse book. In the
14 charge nurse book, there were the staff phone number in there.
15 Q Okay.
16 A So Joel took the book with him to his office to make a
17 phone call to see who could come in. But when he went to his
18 office, I went with him.
19 Because I don't want him to leave. So - -
20 Q Just so I understand, you're the house supervisor.
21 A Yes.
22 Q And you've got responsibility for all the units.
23 A Yes.
24 Q He's got responsibility for that unit.
25 A Yes.

1 Q You want him to leave.
2 A I don't want him to leave without - -
3 Q Until the problem in his unit is solved.
4 A Yes.
5 Q So it doesn't land on you, I guess, so to speak, right?
6 A Well, because I want it to resolve that way. That the
7 physician is still in the building.
8 We can all come together and figure out what to do.
9 Q Okay. So he takes the charge nurse book and where does he
10 go?
11 A He went to his office and I follow him to his office. So
12 I pick up the phone. He calls Scott. I don't know Scott's
13 last name. He worked my shift.
14 JUDGE GOLDMAN: You picked up the phone or he picked
15 up?
16 THE WITNESS: No, no, he - -
17 JUDGE GOLDMAN: He.
18 THE WITNESS: - - pick up the phone to call the
19 staff. So the first staff he call was Scott.
20 I don't know Scott last name. He only work night. I
21 don't work, I don't know many night people.
22 Q Right. Okay. So there's a nurse named Scott.
23 A Yeah.
24 Q Yeah.
25 A So Scott say yes, we are coming.

1 Q Okay.
2 A So after he made that phone call, he left the book there
3 and went outside. I follow him again. Went outside and he
4 turned around.
5 He goes okay, give me the first, the list that you call,
6 so that I have to call them again.
7 Q Now, were you there for this part of it?
8 A Yes.
9 Q So were you told - -
10 A I was there for the whole time.
11 Q So you and Joel were going together when you left the
12 office to go talk to Anne?
13 A Yeah.
14 Q Okay.
15 A And he said to her, he goes, "Give me the list of people
16 that you call, so that you have to call them again."
17 Q Okay.
18 A And she say, "I didn't call anybody." He say, "But you
19 said you did." I didn't call anybody. It's not my job.
20 Said, okay. So after we got Scott, there were no - - we
21 have enough staff for that night. And that's when I left.
22 Q Okay.
23 JUDGE GOLDMAN: I want to ask you. Anne, I didn't
24 call any you testified. And then - -
25 THE WITNESS: Then she say, it wasn't my job.

1 JUDGE GOLDMAN: Well, the first someone said you did.
2 THE WITNESS: Yeah.
3 JUDGE GOLDMAN: Who said that? Was that you or Joel?
4 THE WITNESS: No, that was Joel.
5 JUDGE GOLDMAN: Okay. I got it.
6 Q I was going to do the same thing. 'Cause I wanted to
7 break it down just to be sure.
8 JUDGE GOLDMAN: I think we got it. It becomes
9 leading when you - - if this is the problem.
10 MR. PASCUCCI: No, no.
11 BY MR. PASCUCCI:
12 Q When you went back out.
13 A Yes.
14 Q After you called Scott and Scott agreed to come in.
15 A Yes.
16 Q And you went back out, tell me one more time who said what
17 and in the order in which they said it.
18 A When I went back out, they said to - -
19 Q Use names instead of pronouns. So when you say he, tell
20 us the name.
21 A Okay. Well, Joel, when Joel and I went back out - -
22 Q Right.
23 A - - after phoned Scott, says he's going to come in.
24 Q Yeah.
25 A So we told Anne that Scott is coming in. And he said, "So

1 give me the list of the other people that you called." Then I
2 have to call them back.
3 Q Okay.
4 A She said, "I didn't call anybody."
5 Q The she is?
6 A Anne Marshall.
7 Q Okay.
8 A Said she did not call anybody. Then Joel said, "But you
9 said you called people, nobody come in."
10 Then Anne said to Joel, "That's not my job to do that."
11 Q And then did the conversation end there or did Joel
12 respond to that part when Anne said that's not my - -
13 A Joel didn't - - Joel said to her, "You are the team
14 leader, that's your job to find staff."
15 Q Wait a minute. Can you repeat that slowly? Joel said
16 what?
17 A Joel said, "You are the team leader. It is part of your
18 job to find staff."
19 Q Okay.
20 A Anne going that's not my job. That's your job. So Joel
21 left the nurses' station. Went back to his office. And I
22 guess left because like at all - -
23 Q Was there any more words between Anne and Joel that you
24 heard or between you and Anne?
25 A No, no.

1 Q Or between you and Joel?
2 A That's it.
3 Q From that point from your perspective, because the one
4 nurse said he'd come in, that the immediate issue was resolved.
5 Is that right?
6 A Yes.
7 Q Okay. Did anything else happen that day or that evening
8 that was relevant to this?
9 A Well, that evening, we started getting some discharge
10 nurse from fourth floor. And I've told them they cannot call
11 anybody off with that three floors.
12 JUDGE GOLDMAN: I'm sorry, you told who that?
13 THE WITNESS: I told every department.
14 JUDGE GOLDMAN: Every department?
15 THE WITNESS: Yeah. They cannot call anybody off.
16 Q So wait a minute. I want to go back to the beginning.
17 You said something about what - -
18 A What the fourth floor.
19 Q Oh, fourth floor, fourth floor.
20 A Now, they getting all discharges.
21 Q Okay.
22 A So we are short nurses.
23 Q I see.
24 A So when they are short nurses, they are to ask what do you
25 want us to do with the nurses? And we send them, what do we

do? Do we call them off?
Q Right.
A And I said, "Do not call anybody off. Let me show who's going to ED.
They were really busy, but I know Joseph and Anne Martin, we show in ICU, I tell that to Ben, the nurse. Have the nurse come to ICU to float.
Floating mean the persons on the shift they could have them on the floor.
Q Right.
A That's what I want my shift before I left at 7:00.
Q Okay. Now, did you end up documenting this incident?
A I think I sent email to Linda Primer, I think. I don't remember.
Q Okay.
MR. PASCUCCI: I'd like to - - there's an ALJ Exhibit M, ALJ 1(m), that's I'd like to make Respondent's Exhibit 3.
(Respondent's Exhibit R-3 identified)
Q Take a look at that and then tell us what that document is.
A Yes, I just got it the time wrong.
Q First tell us what it is.
A This is the email I sent because in the comment is my boss.
Q Okay.

1 A And I just want to talk to him about what is going on.
2 Q This - -
3 A I look at it. So I sent out this email.
4 Q Let me ask you just a couple of questions. This email is
5 dated June 26th. Is that the day that we've been discussing?
6 A Yes.
7 Q Okay. So this is that day.
8 A Yes.
9 Q And this is the email that you sent to Joel, right? Who
10 is Norman J., goes by Joel Brown, is that correct?
11 JUDGE GOLDMAN: Did I hear you say the time was
12 wrong?
13 THE WITNESS: Yes.
14 JUDGE GOLDMAN: What time was it about?
15 THE WITNESS: It was at 12:30. I was it was 3:30.
16 It says 12:30.
17 MS. NOTO: I missed that. What just happened?
18 THE WITNESS: I said the time was wrong.
19 MS. NOTO: In the email itself?
20 THE WITNESS: No, no. This is the right time.
21 JUDGE GOLDMAN: What's wrong?
22 THE WITNESS: When I left I thought it was 2:00.
23 JUDGE GOLDMAN: Yes.
24 THE WITNESS: So what I'm saying, this is the right
25 time. When I testified say 2:00. But it's past 2:00.

1 MR. PASCUCCI: She thought it was after 2:00, but now
2 she sees it was earlier.
3 THE WITNESS: Yeah. It's 12:30. Remember I went
4 straight to my office, I wrote that.
5 JUDGE GOLDMAN: So you believe this is accurate
6 what's in this exhibit - -
7 THE WITNESS: Yes, yes, that is correct.
8 JUDGE GOLDMAN: The time of the exhibit.
9 THE WITNESS: Yes, that is I believe. The only thing
10 they find is the time, that's it.
11 BY MR. PASCUCCI:
12 Q So just to close, does the time that's reflected in
13 Respondent's Exhibit 3 refresh your recollection about what
14 time the incident happened?
15 A Yes.
16 Q And what time do you now believe the incident happened?
17 A It's 12:30. I was thinking it was 2:30.
18 Q Okay. So you believe now that it was when it happened.
19 So then you wrote this email to Mr. Brown.
20 Tell me why you wrote it and why you copied the people
21 that you have here.
22 MS. NOTO: Objection. Relevance as to why she wrote
23 it.
24 JUDGE GOLDMAN: I'm going to allow it overruled.
25 THE WITNESS: I wrote it because there be problem

1 to come to work, they are afraid what's going to happen at
2 work. They don't want - -
3 MS. NOTO: Objection, speculation.
4 THE WITNESS: That was - -
5 MS. NOTO: Hearsay.
6 THE WITNESS: That is what broke me on that.
7 JUDGE GOLDMAN: It is hearsay. So she's explaining
8 this is why you posted.
9 THE WITNESS: Yes.
10 JUDGE GOLDMAN: Let's move on, we got the post.
11 Q Okay. Were you done.
12 A So that's why I posted that. And I try this time.
13 MS. NOTO: Objection.
14 JUDGE GOLDMAN: What's the objection?
15 MS. NOTO: There was no question posed. You had
16 asked him to move on and it's just - -
17 THE WITNESS: Because that took me down.
18 JUDGE GOLDMAN: Hold on, just wait, just wait. The
19 question is why she posted, isn't that? Have you explained why
20 you made the post?
21 THE WITNESS: Yes, I made the post based on what was
22 posted on myself and Scott.
23 And I made that post because of work, they personally
24 attack me.
25 They say I sell my soul to the devil, all kind of

1 stuff like that. That's why I responded to that posting.
2 BY MR. PASCUCCI:
3 Q Did you find that offensive?
4 A Yes, I did.
5 Q Personally offensive.
6 A Personally, yes.
7 Q So when you wrote that post on Facebook, were you writing
8 that as a house supervisor?
9 A No, it's my house, my computer in my own living room.
10 Q And were you contacted by your supervisor or higher
11 manager about this?
12 A Yes.
13 Q When was that?
14 A She had contact me maybe a day or two later, when I came
15 back to work.
16 JUDGE GOLDMAN: Who called you?
17 THE WITNESS: Linda Crumb.
18 JUDGE GOLDMAN: What did she say?
19 Q I missed when. I'm sorry, when was it?
20 A I think a day or two after that.
21 Q Okay.
22 A I was not work when I wrote that.
23 Q Okay.
24 A And Jessica told me, I understand you're angry, but you
25 cannot put that post there.

1 And I say, why? She said because of your position. I'm
2 like, but I defend myself.
3 It's not position, I'm defending myself. This is war
4 personal on Facebook. She said, yes.
5 She said to take it down, you are the house supervisor.
6 And as of that, I have to give you a verbal warning. She did
7 and I signed a paper.
8 Q And you took the post down? I don't know if there's one
9 post or two posts. You took whatever post there was down.
10 A Yes.
11 JUDGE GOLDMAN: Well, how many did you take down
12 because of this call?
13 THE WITNESS: I took all of them down.
14 Q Well, if I could direct - -
15 A I don't have a number for you.
16 MR. PASCUCCI: If I could direct the witness's
17 attention to General Counsel's Exhibit, they're really 7
18 through 10.
19 JUDGE GOLDMAN: I have them here. So let me hand the
20 witness General Counsel's 7 through 10.
21 MR. PASCUCCI: Thank you, Judge.
22 Q Let's start with General Counsel's 7. Do you know who
23 Charla Green is on Facebook?
24 A I believe I was, but I have a picture on there.
25 Q Oh, the picture?

1 A Yeah.
2 Q Okay. Who's that a picture of?
3 A Scott Marsland.
4 Q All right. Now, this is his post. This is one of his
5 posts, correct?
6 A Yes.
7 Q Was that the only post you were reacting to? Or was there
8 another post about selling your soul - -
9 A No, that's not, that's not that. This is not all of it.
10 Q And what was the part of the post that you were reacting
11 to most strongly? And what was that part - -
12 A Well, it's not the one on here. It was the one that Anne
13 Marshall said that I was sell my soul to the devil. And that
14 is not here in all of it.
15 Q Okay. Now, take a look at General Counsel's Exhibit 8.
16 Actually it looks like there's three.
17 Eight, nine and ten. Those are all your posts?
18 A Eight, nine and ten. Yes, those - - hold on. Yeah.
19 Those aren't my posts.
20 Q So just number 8. Okay. Let's start with just number 8.
21 A Okay.
22 Q Do you know if that was your first post? Your first
23 response?
24 A Yes.
25 Q Okay. And that was in response to what both Scott - -

1 JUDGE GOLDMAN: Don't lead, just - -
2 Q What was that in response to?
3 A It was in response to what start to arose and what comes
4 after that. There was just only two. This is not the whole
5 post.
6 JUDGE GOLDMAN: Just let me ask you. The top part
7 you've seen. And then you're saying there were comments after
8 it?
9 THE WITNESS: This is not all of it. Well, it was
10 only after this. I was reacting to what came after this. But
11 it's not in this.
12 JUDGE GOLDMAN: Okay. Let me ask you this. You're
13 describing something that's not on a piece of paper.
14 THE WITNESS: Yes.
15 JUDGE GOLDMAN: That you reacted to.
16 THE WITNESS: Yes.
17 JUDGE GOLDMAN: Was it something that was written
18 after - - in other words, do you see how the things below - - I
19 know enough about Facebook, the things below it are comments -
20 -
21 THE WITNESS: Yes, yes.
22 JUDGE GOLDMAN: - - that were made in response to the
23 quote on the top, the statement on top. Was this additional
24 writing that concerned you, is that - -
25 THE WITNESS: Yes. That's, no.

1 set of comments.
2 JUDGE GOLDMAN: There's nothing here that would
3 indicate the number of comments one way or another.
4 And it's also, that's a moving - - so whenever this
5 was taken, this may have been all the comments.
6 MR. PASCUCCI: I understand.
7 JUDGE GOLDMAN: And, in fact, the fact that Charlie
8 Green's picture appears at the bottom, would suggest that's
9 sort of waiting to write another comment that might suggest
10 that those were all the comments at that moment. But this is
11 just a snapshot in time.
12 MR. PASCUCCI: Yeah, I know.
13 JUDGE GOLDMAN: The question and answers as to
14 whether or how many other comments - -
15 BY MR. PASCUCCI:
16 Q But when you posted your response in GC-8, you're
17 responding to more than what appears in GC-7, correct?
18 A Yes.
19 JUDGE GOLDMAN: What's your - -
20 MS. NOTO: Nothing.
21 JUDGE GOLDMAN: This is the witness copy?
22 MS. NOTO: Yes, it is.
23 JUDGE GOLDMAN: So I have no way to know one way or
24 the other.
25 MS. NOTO: No, that's fine.

1 BY MR. PASCUCCI:
2 Q And then the next two posts were posts you made after
3 that?
4 A Yes.
5 Q And then after Linda Crumb contacted you, what did you do
6 with these posts?
7 A Well, I don't check with Facebook. When she contacted me
8 actually I was like, in the beginning I didn't want to do it,
9 because I figure it was my right to respond.
10 JUDGE GOLDMAN: Can I ask you, is that what you told
11 her or this was your feeling?
12 THE WITNESS: This was, that's what I told her.
13 JUDGE GOLDMAN: Okay. You told her that?
14 THE WITNESS: I told her to claim that. And she
15 said, yes, I understand you want to respond. But because you
16 are the house supervisor, you cannot do that.
17 Q All right. And after she explained to you that because
18 you're house supervisor that it was not appropriate, what did
19 you do?
20 A Well, she got me early - - I mean a verbal warning.
21 Q No, I know, but what did you do with the posts?
22 A Well, I went home and took it down.
23 Q Okay.
24 MR. PASCUCCI: I'd like to mark this as Respondent's
25 4. Could you show that to the witness, Judge? Thank you.

1 Q Take a look at that and then tell us what that is.
2 A This is when Linda called me into her office and she
3 explained to me that the posts and inappropriate comment on
4 Facebook. So she gave me verbal warning.
5 (Respondent's Exhibit R-4 identified)
6 Q And it appears to be dated November 13. Is that when you
7 received it?
8 A No, on 11-18.
9 Q Oh, your signature says - -
10 JUDGE GOLDMAN: Did you sign it?
11 THE WITNESS: Yeah.
12 JUDGE GOLDMAN: How did you receive it? In a meeting
13 or?
14 THE WITNESS: No, she call to her office.
15 JUDGE GOLDMAN: Just the two of you?
16 THE WITNESS: Yes, two of us, yes.
17 Q I didn't hear.
18 A She called me to her office.
19 Q Oh, okay. So she called you to her office, you met with
20 her and she gave this to you?
21 A Yes.
22 Q And then you signed it?
23 A Yes.
24 Q Okay. Was there any discussion beyond what we see on the
25 verbal warning?

1 Q Right. If I understand Facebook, under his post could be
2 a whole series of comments, right?
3 A Yes.
4 Q And you responded that all that that was - -
5 A Yes.
6 Q Not just what he wrote, but what others wrote about what
7 he wrote, is that correct?
8 A Yes.
9 MR. PASCUCCI: Okay. Nothing further.
10 JUDGE GOLDMAN: Follow up?
11 MS. NOTO: Sorry, I'm just adding - very briefly.
12 RECROSS EXAMINATION
13 BY MS. NOTO:
14 Q Do you remember when I took your affidavit, Flo?
15 A Yes.
16 Q And when we were talking about the incident that occurred
17 on June 26th, 2015?
18 A Yes.
19 Q And I asked you what happened that afternoon? That's
20 right?
21 A Yes.
22 Q And I asked you to tell me everything that you knew,
23 right?
24 A At that time I remember, yes.
25 Q Okay.

1 collaborative team work with nursing units from across the
2 board.
3 Q As far as that's a committee? Is that a committee?
4 A Yes.
5 Q Okay. So who sits on Nurse Practice?
6 MS. NOTO: Your Honor, I object to the relevance of
7 the creation of the document as it involves established that
8 Respondent maintains it. It's admitted in the answer.
9 JUDGE GOLDMAN: I understand why you're stating your
10 view, but I think this is - - I'm not saying the defense is
11 valid or invalid, but it is part of their defense.
12 And how it was created. So I'm going to allow them
13 to make that record.
14 Q So who sits on Nurse Practice?
15 A It is a collaboration of nurses from across the
16 organization.
17 So there is team leaders, there is charge nurses, there is
18 staff nurses from every department. And it's overseen by a
19 nursing director.
20 Q And you said this document was created in about 2010?
21 A I would say approximately.
22 Q And it was adopted by that committee, correct?
23 A Correct.
24 Q Are you familiar with looking at that exhibit, which I'm
25 trying to get my hands on it, that references - - it appears to

1 be some links to some various sources.
2 Under the tab on page web supporting data, can you explain
3 what that's all about?
4 A So when we create a policy at Cayuga, we like to have
5 supporting data. So it's evidence based practice.
6 So a lot of this data and I can't speak for it
7 specifically 'cause I wasn't there at the time created, is
8 reinforcement of why this is a relevant policy to have in a
9 hospital.
10 Q From external sources to the hospital?
11 A Absolutely.
12 Q Okay. Are you familiar with a type of meeting called the
13 safety huddle?
14 A Yes.
15 Q What is that?
16 A So we call them safety huddles, safety briefings. And
17 that is any time during the day when you're on the unit that
18 you feel you need the team together to have a communication.
19 Q And are there both planned and unplanned safety huddles?
20 A Yes.
21 Q And how do the planned safety huddles work?
22 A Plan one, it varies from unit to unit. So on my units,
23 for north and for south, they're usually at 7:00 a.m. and 7:00
24 p.m. when you have a change of shift.
25 Versus a surgical unit in the emergency room are on

1 with Anne Marshall. And we'll meet in the consultation room."
2 And so I went out into the room to wait. She was clear
3 that she wanted to have it in the consultation room as to
4 really not draw attention to the employee.
5 So I waited there. And then Anne and Sandra came in.
6 They both said hello. Sandra told her that I was here just as
7 a third party witness, which is not something that is uncommon.
8 And then they began to have a conversation. So Sandra
9 addressed a few specific incidences with her that happened
10 earlier in the day.
11 If I recall it was that, when Sandra said hello to Anne,
12 she was sort of flippant about it and not kind. And then she
13 had asked her about the bed meeting.
14 And when Sandra asked her why she had left to go to the
15 bed meeting without her, she had said, "Well, you know, I'm not
16 your babysitter." You can find it there yourself.
17 And then she went into talk with Anne about a staffing
18 situation that there was too many users on Sunday, not enough
19 nurses on Tuesday.
20 It was the expectation that Anne would make those calls
21 and Anne did not feel that was her expectation.
22 Q Do you remember what was said by Ms. Beasley and what was
23 said by Ms. Marshall?
24 A So specifically I believe that Sandra and, you know, this
25 is vague, 'cause it was about a year ago.

1 But I remember Sandra saying that, you know, as a team
2 leader, my expectation is that you will make those calls to
3 call people on Sunday to see if they'll come out on Tuesday, so
4 that we can have equal staffing and even staffing throughout
5 the week.
6 I do remember Anne was very animated, red in the face, and
7 became loud and said that that was not her role, she did not
8 have a description.
9 No one had ever provided her a job description. Sandra
10 then said, "I think it's clear that you know your role as a
11 charge nurse and as a team leader."
12 And that would be the expectation of a leader at the
13 department to act professional and to make those calls.
14 At that time, Anne then turned to me and expressed that
15 she knew that why I was here and this was an intimidation
16 tactic which is the one really time that I had communicated
17 anything.
18 And just told her, Anne, I'm really here just for a third
19 party witness. 'Cause again, it's not uncommon that we do
20 that.
21 So Sandra then started to communicate again with Anne.
22 And Anne said I am not going to have this conversation with
23 you. I know that you're intimidating me.
24 It's either intimidating or bullying because of the union.
25 Sandra then said that I worked in both environments, union and

1 Q And you were here for the Counsel for the General
2 Counsel's opening statement, correct?
3 A Correct.
4 Q Before I ask you that, how long has Cayuga Medical Center
5 been operating?
6 A Since the late 1800s.
7 Q Okay. And you heard the Counsel for the General Counsel
8 say that the staffing was poor and that it was dangerous for
9 patients. Is that correct?
10 A Correct.
11 Q Is that an accurate statement?
12 A I don't believe so.
13 MS. NOTO: Objection, relevance. My opening
14 statement is in evidence and that actually isn't exactly what I
15 said.
16 MR. PASCUCCI: It was close enough.
17 JUDGE GOLDMAN: Well - -
18 MR. PASCUCCI: I'd like to mark this as - -
19 JUDGE GOLDMAN: I do agree, I mean, I think by
20 raising it, we're not going to have a detailed investigation of
21 staffing levels, but you can put it on the record. I'm sorry,
22 what number?
23 MR. PASCUCCI: Respondent's 5.
24 Q Allen, take a look at this document. Do you know what
25 this is?

1 Peterson to his staff about the - -
2 Q So before I ask you the specific question about those
3 exhibits, were you here when the Counsel for the General
4 Counsel stated in her opening statement that in response from
5 the active Organizing campaign, you, the medical center has
6 done everything in its power to stop employees who support the
7 union?
8 A Yes.
9 Q Okay. Is that accurate?
10 A No.
11 Q Tell me how Cayuga Medical Center have responded to the
12 active organizing campaign.
13 A We have been very, very balanced in our communication to
14 our employees.
15 Number one, respecting the rights of employees to either
16 be in favor of an organization or against.
17 We have tried to be very, very honest and transparent in
18 terms of communication about individual's rights and
19 responsibilities.
20 And if there is information that we have received that has
21 been shared with us that is incorrect, we try to correct it to
22 the best of our ability.
23 Q And how has been the spokesperson for the medical center
24 in this process?
25 A I have been.

1 Q Okay. And how have you shared that information and how
2 have you indicated to employees that the facility respects the
3 opinions of nurses who favor the union as well as the opinions
4 of nurses who do not favor the union.
5 A I've communicated a series of emails that have gone to a
6 distribution group that includes registered nurses.
7 And I've tried to be factual in communicating those issues
8 to our staff.
9 And have done that through a variety of different
10 communications that started last May.
11 Q Okay. And directing your attention now to GC Exhibit 2,
12 are these the communications that you just referred to?
13 A Yes, they are.
14 Q Okay. And how are these delivered?
15 A These are delivered by email. There's a specific
16 distribution group that goes to registered nurses.
17 Q Looking at exhibit 2(b). Do you know whether this is a
18 complete set of all the communications that you've sent?
19 A To registered nurses?
20 Q Yes.
21 A To the best of my recollection, I believe it is.
22 Q Okay. Good. And these, I believe these are in
23 chronological order. So would 2(b) then be the second
24 communication from you?
25 A Yes.

1 Q To the staff?
2 A Yes.
3 Q And in that communication in the second to last paragraph,
4 what did you say specifically about the rights of employees?
5 Second page, second last paragraph.
6 A Oh, I'm sorry. What I've tried to talk about is the
7 environment that we have within our organization, the fact that
8 we're respectful, we're responsive to employee needs.
9 We're open, we're fair and transparent. And while we
10 respect the rights of some individuals who believe the union's
11 in the best interest of our staff, we also respect the rights
12 of those individuals that are not supportive.
13 And that we also believe that direct communication,
14 interaction with employees without third party representation
15 is in the best interest of our employees.
16 Q All right. And in the next communication which is 2(c).
17 JUDGE GOLDMAN: I think they speak for themselves. I
18 will read them though.
19 MR. PASCUCCI: That's fine.
20 JUDGE GOLDMAN: I've read some of them already.
21 MR. PASCUCCI: That's fine, Judge. I want to get to
22 a different one. There is in one or more of these
23 communications, a reference to bullying.
24 If anyone experiences bullying or harassment. Can you
25 talk about that? Why is that in there and what is that about?

1 MS. NOTO: Objection, relevance as to why it was put
2 in there, whether that statement is or isn't lawful.
3 Does it matter as to what his attention was behind it
4 being in there?
5 JUDGE GOLDMAN: I thought in this case your
6 allegation was it was in response to. Would be this in
7 response to union activity.
8 I mean, let me give you a hypothetical. What if he
9 says the reason it's in there is 'cause I wanted to stop
10 unionization? Wouldn't you think that's relevant?
11 MS. NOTO: I suppose so. All right.
12 BY MR. PASCUCCI:
13 Q Well, let me direct your attention specifically on the
14 first page of 2(a), which is the first page of the overall
15 exhibit.
16 There are bullets and the third from the bottom bullet.
17 It says, if you feel you are being harassed or intimidated,
18 feel free to contact your supervisor directly or security.
19 First of all is that directed at harassment or
20 intimidation by Cayuga union employees or by anti-union
21 employees or by both or by neither?
22 A By both.
23 Q And why was that statement included in your email?
24 A Because we had some employees go to their directors who
25 indicated that they had been subject to bullying or

1 intimidation. And they wanted to know what steps they could
2 take.
3 Q And is that type of statement included in all of your
4 communications? Or only some of your communications?
5 A I don't believe it was in every communication.
6 Periodically that was reinforced.
7 Q And why would it be - - what occasion would give rise to
8 including that in one of your communications?
9 A Again, if I heard from a director or several directors
10 that employees were raising concerns with them, then we thought
11 it would be appropriate to share with the general
12 communication.
13 Q I direct your attention, just as another example to 2(i).
14 In the middle it says, while those who are in favor of
15 organizing you have a right to communicate expressly
16 acknowledging those in favor of the union having a right to
17 communicate.
18 Correct? 2(i) in the middle. The sentence says, while
19 those who are in favor of organizing have a right to
20 communicate, those are opposed to unionization have the same
21 right.
22 I don't know if you're on the right one. It's November
23 13.
24 A Yes.
25 Q It's the second sentence paragraph. It starts, we've

1 Q Can you tell us to the extent your communications say that
2 people have a right to favor or oppose the union.
3 Could you describe what kinds of activities have been
4 taking place throughout the facility, during this organizing
5 campaign in terms of employees communicating with one another?
6 JUDGE GOLDMAN: I'm sorry, I don't mean to quibble,
7 but first, the preface to your question seems unrelated.
8 You said in terms of what's written there. It seems
9 perfectly appropriate to ask him what kind of activities were
10 going on.
11 MR. PASCUCCI: Let's just do that then.
12 JUDGE GOLDMAN: Okay.
13 MR. PASCUCCI: Okay.
14 Q So what kinds of activities were going on among employees
15 in terms of communicating their views on the subject of
16 unionization?
17 A There were flyers that were being put up throughout the
18 organization.
19 There were also individuals proactively reaching out to
20 employees on a number of our different units asking for support
21 in unionization.
22 There were individuals that were being asked to sign
23 cards. There were individuals that were being asked to sign
24 cards.
25 What was reported to us was not really truthful reasons.

1 And a number of people felt as though they were being pressed
2 to sign a card.
3 Q And there's an allegation in the complaint that Cayuga
4 Medical Center has unlawfully interrogated employees about
5 union activities and threatened employees for supporting the
6 union.
7 Do you have any knowledge of either of those things taking
8 place?
9 A Not with any threats or anything of that matter.
10 Q Or interrogation?
11 A No, not that I'm aware of.
12 Q All right. What did Cayuga Medical Center do to educate
13 its own supervisors and managers about the roles of conduct for
14 them during an organizing campaign?
15 A There's a number of things that we have done. We have
16 educated all of our leaders throughout the organization. We
17 have utilized your firm to assist us in that.
18 We have also communicated and conducted similar
19 educational forums with our managers and we've done that
20 multiple times in the course of the year.
21 And we do that periodically. In fact, prior to this
22 campaign taken place, we have also done that with our directors
23 in previous years to make sure that they understand their
24 rights and also the rights of employees.
25 Q Okay. Let's talk about tabling. First of all, what

1 Q Okay. What happened the next day?
2 A The next time, the next day was, as I walked into the
3 cafeteria, Scott Marsland and Erin Bell had set up two tables
4 on the left hand side of the cafeteria.
5 I was originally not aware that they were there. I was
6 notified that they were there. I went over and again indicated
7 that they really couldn't table there.
8 Had a conversation with Scott where he said, our attorney
9 believes that we can.
10 Went back, had a follow up conversation. And at that
11 point in time, we did not stop them from tabling, nor did we
12 stop them at any time in the future.
13 Q Okay. And do you know how frequently tabling occurred
14 after that?
15 A It happened on numerous occasions. I couldn't tell you
16 exactly how many.
17 Q Okay. And on numerous occasions but also on how frequent
18 a basis? Weekly or monthly or daily?
19 A As I think back, it varied. Sometimes it would happen on
20 a weekly basis. Sometimes the spread of time would be longer
21 than that.
22 Pretty much it was like a week to two weeks as I recall.
23 Q And was security ever called to remove them?
24 A No.
25 Q And was anyone ever told that they had to stop engaging in

1 that activity after those first two occasions?
2 A No.
3 Q And would you be aware of any disciplines to any employees
4 for either violations of the medical center's solicitation
5 policy or violations for, letting to posting literature or
6 these tabling activities?
7 A Yes.
8 Q Okay. Have there been any?
9 A No.
10 Q Have there been any counselings?
11 A No, not that I'm aware of.
12 Q Okay. The General Counsel introduced an exhibit which was
13 a 2011, I believe, letter. I believe it's GC-5. GC-5 and 6.
14 Do you recognize those letters?
15 A Yes, I do.
16 Q And the issue is the allegation against the medical center
17 is that there's a rule that employees cannot discuss their
18 salaries or their pay rates with one another. Is that
19 allegation true?
20 A There is not a policy to that effect.
21 Q Is there a practice to that effect that they're not
22 allowed to talk to one another about the - -
23 A We encourage individuals not to do that. But there is not
24 a policy that prevents that.
25 Q Has there ever been discipline for that?

1 A No.
2 Q This letter closes with a reference to we ask that you
3 keep confidential. Why does this letter say that?
4 A The reason we said that is that this was a special market
5 adjustment that we put into place for registered nurses.
6 And we've done that periodically over time. And since
7 this was not an across the board salary adjustment, it was just
8 limited to registered nurses, we asked that they keep that
9 information confidential and not share it.
10 Q Okay. Have you, other than in this letter, do you
11 remember ever telling employees that they're not allowed to
12 share their information about their salaries to one another?
13 A In these types of letters, we just ask people not to share
14 that information.
15 Q Did you hear Anne Marshall testify that you told a group
16 of nurses recently, or in the past, since the active campaign's
17 been under way, that they should not be talking about their pay
18 raise?
19 A Yes, I heard that. I believe the word that she utilized
20 was this conversation is inappropriate.
21 Q Is that true?
22 A I do not recall that conversation. I round through the
23 hospital on a weekly basis and interact with staff on a weekly
24 basis.
25 To be quite honest, I can never recall any conversation I

1 had with any of those roundings where I had any conversation
2 that was like that.
3 Q Would you ever have a conversation like that telling
4 people who are talking about their pay rates that it was
5 inappropriate?
6 A Not that I can recall I've ever done that.
7 Q Okay. There's another allegation that Cayuga Medical
8 Center has a policy or a rule that requires confidentiality
9 concerning disciplinary actions. Do you remember that
10 allegation?
11 A Yes, I do.
12 Q First of all, is there a rule or policy that says that?
13 A There's not a rule or policy that says that. However, we
14 really do like to be able to preserve the confidentiality of
15 employees.
16 If an employee elects to share some disciplinary action
17 that was taken against them, they are free to do that.
18 But it is our intent not to have managers or supervisors
19 or individuals involved in that process to discuss that with
20 other people, because it's not their business if they were
21 disciplined.
22 So if the employee wants to share that, they can. But
23 from a leadership perspective, we don't do that.
24 Q So in other words, you regard disciplinary matters as
25 confidential for whose benefit?

1 A Correct.
2 Q There were no other methods of distribution for those
3 emails?
4 A The only other method of distribution was the letter on
5 May 7th, which was the first letter that came out. We asked our
6 directors to share that information so their registered nurses
7 would have it.
8 Q You asked them to hand deliver that, correct?
9 A Correct.
10 Q And you also gave them talking points as to what to say
11 about the campaign, correct?
12 A Yes, because I wanted to make sure that our communication
13 was consistent throughout the organization and there wasn't an
14 opportunity for different opinions with our leadership team. I
15 wanted to make sure that that was very consistent.
16 Q So you did know that members of your management were
17 having meetings about the union, correct?
18 A To communicate what we provided.
19 JUDGE GOLDMAN: Well, just answer yes.
20 Q Is that a yes?
21 A Yes.
22 Q GC Exhibits 39 and 40. And I apologize I don't have the
23 right copies for these, but I will get them.
24 JUDGE GOLDMAN: Let's give it to the Counsel and let
25 me see it.

1 Q This and nowhere else in this affidavit did you mention a
2 second conversation that you had with Scott that day, correct?
3 A That's correct.
4 Q Anne didn't pull two tables together, right?
5 A Excuse me?
6 Q Anne, when she was tabling the cafeteria did not pull two
7 tables together?
8 A No.
9 Q She sat at one of the high top tables?
10 A Correct.
11 Q Employees are allowed to post non-hospital related
12 material on the bulletin boards. Is that right?
13 A They do, yes.
14 Q And they're permitted to, correct?
15 A Yes.
16 Q And your employee Alisa Zelsnak (ph) removes those flyers
17 once a week, correct?
18 A When she posts our job opportunities flyers, she is to
19 remove all the other materials on that board.
20 Q And then it's only supposed to occur once a week, correct?
21 A That's correct.
22 Q And that's supposed to occur on Fridays, correct?
23 A That's when she does that.
24 Q You do know who took flyers down, don't you?
25 A I have been aware with communications that I have

1 her role as Team Leader?
2 A Team Leader role is expected to be collaborative in
3 problem solving in any issues, whether it's with the House
4 Supervisor, the Director, in trying to make accommodation for
5 the patients that we have in the Unit.
6 Q Right; and more specifically, what is the role or what is
7 the expectation with respect to helping to secure additional
8 staff?
9 A Any Charge Nurse/Team Leader is expected to make phone
10 calls to get staff in as needed.
11 Q Okay. So continuing on then, was more of what's reported
12 in this email given to you over -- while you were at that
13 retreat? Was this something -- were these events unfolding as
14 you --
15 A Not at the time, because the patients being discharged
16 and transferred out happened after that phone call, --
17 Q Okay.
18 A -- when Deb came up to be in charge.
19 JUDGE GOLDMAN: I have to ask: When you -- that phone
20 call --
21 THE WITNESS: Yes?
22 JUDGE GOLDMAN: -- for instance you were talking about --
23 you were hearing about Anne, who is reporting that to you?
24 THE WITNESS: (No audible response.)
25 JUDGE GOLDMAN: Who -- is that Cindy or is it Joel?

his personal space. She was confrontational.
Q Did you speak with Ms. Marshall about this incident?
A Yes; I interviewed Anne.
Q Okay. I forgot to ask you about that.
Before we spend any more time on this exhibit, tell me about your interview with Ms. Marshall.
A Anne told me that there was -- she went to him to talk about a staffing situation and that he told her that the situation could be remedied by Cynthia taking phone calls, and he called the House Supervisor to get some Ward Clerk help; and he had to change Ward Clerk help from the House Supervisor. She sent someone.
Q What did she tell you about his personal space -- her proximity to him?
A She felt that she had not gotten into his personal space, although that she was standing close to him.
Q And what did she say, if anything, about the second interaction?
A She said that he told her to get away, that she was harassing him and that she felt that he was not cooperative in trying to resolve the situation.
Q All right. And why did you decide to issue a verbal warning to Ms. Marshall based on this incident?
A I based it on the witness who had witnessed the whole situation. I --

1 Q Which witness observed --
2 A Cynthia.
3 Q Cynthia? Okay.
4 A And I based it on Joel's testimony to me, and I felt that
5 she had violated the Code of Conduct as far as being
6 confrontational and invading personal space and that she was --
7 I guess it was the confrontational dialogue is the best
8 statement.
9 Q And what did this decision have to do with her Union
10 support?
11 A Nothing.
12 Q And what is the Employer's general practice with respect
13 to disciplinary action?
14 A Well, it's a progressive process.
15 Q Okay.
16 A Usually there's a verbal warning that can be presented in
17 writing as a verbal warning; then a written warning; then
18 suspension -- and that can be various lengths of time -- and
19 then termination.
20 Q All right. And in Ms. Marshall's case, she had been
21 suspended shortly before this; correct?
22 A That's correct.
23 Q And why was this issued as a verbal warning versus a
24 higher level of discipline?
25 A I felt that it didn't warrant any; I felt that -- that it

1 was more appropriate to give her a verbal warning and not
2 progress up the disciplinary process.
3 Q Okay. Did there come a time when you became aware of an
4 incident involving a new Interim Director in the ICU named
5 Sandra Beasley and Ms. Marshall?
6 A Yes.
7 Q Do you remember the timeframe for that?
8 A Like the end of August timeframe; is that what you mean?
9 Q Is that what you remember?
10 A Yes; it was the end of August.
11 Q All right. Okay. And what -- tell us how this came to
12 your attention.
13 A This came to my attention from Sandra.
14 Q And did she call you? Did she meet with you? What
15 happened?
16 A She --
17 Q Or emailed --
18 A She called me, and I believe she sent an email as a
19 follow-up; but that she felt that Anne had been -- had flipped
20 her off; she was rude. She was --
21 Q Had done what?
22 A What?
23 Q What did you say?
24 A Flipped her off.
25 Q What do you mean by that?

1 A Gave her the finger.
2 Q Okay.
3 A She was rude; that she was -- she had -- Sandra had asked
4 Anne if they could go to bed meeting together. Sandra was
5 fairly new and felt that she might not find her way; and so
6 Sandra went to get Anne to go to bed meeting, and Sandra was
7 told that Anne had already gone to bed meeting; and Sandra was
8 upset about that and felt that Anne was being disrespectful and
9 unprofessional.
10 Q And what was the context, in terms of Ms. Beasley's
11 position with the Medical Center -- timing?
12 A She was a fairly new Interim Director in ICU. I think
13 she'd only been there a week or so.
14 Q And was -- did she tell you whether or not that was done?
15 A That was the first time she met Anne because Anne was on
16 vacation --
17 Q Okay.
18 A -- when Sandra started.
19 Q And who was Anne's immediate Supervisor at that point?
20 A Sandra was.
21 Q And this was the first day they met?
22 A Correct.
23 Q All right. So you mentioned that she flipped her off and
24 was rude and that she was disrespectful by not accompanying her
25 to bed meeting; correct?

1 A Okay.
2 Q Can you tell me how that ordinarily works?
3 A Ordinarily, we do evaluations between April 15th and the
4 end of June; but at that point, we had an Interim Director in
5 and not sure how long it was going to last in our search for a
6 permanent Director.
7 We decided to hold off until the fall for the evaluations
8 of the ICU Staff. So the message was given at a staff meeting
9 that we would be using the rating for the 2014 evaluation for
10 the 2015 evaluation and that we would look at personal
11 accountability -- that's where people can either lose a point
12 for such as not getting the mandatory education in or not
13 having a license or --
14 JUDGE GOLDMAN: What did you call that?
15 THE WITNESS: Personal accountability.
16 JUDGE GOLDMAN: Yes.
17 THE WITNESS: Right; and because I didn't think it was
18 fair if anyone had lost a point in 2014, they could have earned
19 it back in 2015.
20 Q Okay.
21 A So it's important to make sure that that was addressed;
22 and then for -- set goals for 2016.
23 Q So -- and this was all discussed at a staff meeting?
24 A Yes.
25 Q When -- do you know when that staff meeting took place?

1 A No; I don't remember.
2 Q And you said the timeframe was what -- April to when?
3 A April 15 to June 30 is when we normally do one. We had
4 decided to delay that because there was an Interim Director in
5 place in ICU, and we really could not evaluate the nurses'
6 performance at that point; so we delayed it 'til October --
7 fall, hoping that we would have a permanent Director in place
8 and that person would have -- have had enough time to evaluate
9 the staff nurses' performance.
10 Q Okay. But when you first informed staff about how it was
11 going to be handled this time in 2015, --
12 A Oh, boy --
13 Q -- when did that happen?
14 A I think it was late June.
15 Q Okay. And was that in one staff meeting or more than
16 one?
17 A I think I was at only one staff meeting, but that message
18 was given to the staff at the second staff meeting.
19 Q And is this a staff meeting for the whole house; or for
20 all of the nurses?
21 A For ICU.
22 Q ICU. Okay. And so does that mean if we looked at the
23 person's -- if we looked at the perform evaluation, there's a
24 form for that; correct?
25 A Yes.

1 Q Does that mean that the entire form, as it was completed
2 in 2014, would be repeated in '15, or that portions would and
3 other portions wouldn't?
4 A All I would take is their rating.
5 Q For what?
6 A From 2014. I'd look at their rating, and then I would
7 look at the personal accountability section in 2014 to see if
8 they had lost a point; and if they had lost a point, then I
9 would do an investigation to see if they earned that point
10 back, such as if they had not done their mandatories in 2014
11 and did in 2015; that they would earn that point back.
12 JUDGE GOLDMAN: What else is included in personal
13 accountability?
14 THE WITNESS: Let's see, we have licensure, mandatory
15 attendance, also we have work behaviors. I don't have the
16 whole list of those, though -- memorized.
17 MR. PASCUCCI: So actually Judge, I was going to ask -- I
18 was going to direct attention to the form now. That might
19 help. It's Statute 29(h) and 29(g) that I'll be asking her
20 about.
21 JUDGE GOLDMAN: We're going to get numbered?
22 MS. NOTO: Right. I mean that's what we were talking
23 about yesterday. I don't know the best effort for that. I had
24 asked for them all back, but everyone said they had numbered
25 their own, so -- I mean I can, I just thought that we had just

1 A They compared that she did meet all her certifications,
2 her mandatory attendance and red rules.
3 Q For 2014?
4 A Fourteen.
5 Q And what was -- I guess, what was the difference between
6 checkmarks in the '14 appraisal and the checkmarks that you
7 made in the '15 appraisal?
8 A The checkmarks -- the difference is that she checked --
9 she checked -- I had a "no" in one of the categories.
10 Q All right. So then why did you check "no" for that item,
11 "Demonstrates a sense of right and wrong by exhibiting
12 unacceptable behavior"?
13 A For all the behavior issues that had happened throughout
14 the year, from the June -- the June issues with not being
15 truthful about calling staff in, twice; and her behaviors as
16 far as not being truthful.
17 Q All right. And what did that have to do with her Union
18 support?
19 A Nothing.
20 Q And were any of the other nurses -- were any of the other
21 ratings that you made in the 2015 evaluation for other nurses
22 different in any way from the 2014 ratings?
23 A Yes; there were six or seven nurses that lost a point for
24 mandatory education done in an untimely manner. There was one
25 staff member that had lost a point in 2014, so I investigated

1 that to see if that point had been earned back because it was
2 an attendance issue.
3 Q Okay.
4 A So that point was reinstated; but unfortunately he didn't
5 complete his mandatories on time; so then he lost a point.
6 Q So he gained a point and lost a point?
7 A He gained a point and lost a point.
8 Q Okay.
9 A And there was one other employee that gained a point
10 back. I believe that was for mandatories.
11 Q Okay. Did there come a time when you became aware of an
12 inappropriate posting on Facebook?
13 A Yes.
14 Q When was that?
15 A I don't know the date.
16 Q Do you know the approximate timeframe?
17 A Let's see. You're testing my memory a little bit here.
18 Fall -- November.
19 Q What did you say?
20 A Fall -- November. It was when we went for the hearing
21 down in Bingington.
22 Q Okay. And how did this come to your attention?
23 A It came to my attention from Cindy Brown.
24 Q And so then tell us what happened; what did you --
25 A She said that there was a posting from Scott, although it

1 was listed as Charlie Green --
2 Q Remind me, I'm sorry; but just for the record, it's
3 probably there -- I'm sure it is; but who's Cindy Brown again?
4 A She's a House Supervisor.
5 Q Did she call you or do you remember how she communicated
6 with you about this?
7 A I think she called and then talked with me after bed
8 meeting.
9 Q All right. What did she tell you?
10 A That there was a posting from Scott Marsland about
11 providing support for Anne because she was going through a
12 hearing on the sexual harassment case and that Alan Pederson,
13 Linda Crumb and Flo were going to testify; and --
14 Q And why was it notable? I mean what else did she tell
15 you about the posting?
16 A Really --
17 Q Well, did -- what -- maybe I should ask you: Did there
18 come a time when it came to your attention that Flo Ogundele
19 had made a posting?
20 A Oh, yes; yes.
21 Q Okay. So how did that come to your attention?
22 A I don't know if that was Cindy or someone else on the --
23 I can't remember; but they showed me that Flo had responded,
24 and so I wasn't -- I felt it wasn't acceptable.
25 Q So you saw the posting?

1 A I saw the posting; yes.
2 Q And was that shown to you on the computer or in a hard
3 copy? Do you know?
4 A Off Cindy's phone.
5 Q Off Cindy's phone; okay. So you read it?
6 A Yes; I read it.
7 Q And so what did you decide about what was posted?
8 A So that was not appropriate, and so I called Flo, and I
9 told her, "You need to take that posting down. That's not
10 appropriate for you to do that," and so she
11 Q So how long after it was shown to you did you call --
12 A Oh, I called her right away.
13 Q I just want to be clear. Who did you call?
14 A I called Flo --
15 Q Okay.
16 A -- to tell her to take the posting down because it was
17 inappropriate.
18 Q And then how long -- was there any gap between the time
19 that you read the posting for the first time on someone's phone
20 and you made the call to Flo?
21 A How much time? Ten minutes.
22 Q Okay. And then so what did you -- and so to the best of
23 your recollection, tell us what you remember telling Flo.
24 A I told Flo that it was inappropriate; she shouldn't do
25 it; that she needed to take the posting down, and she said to

21 four. I found it

22 MR. PASCUCCI: Okay

23 MS. NOTO: Yes.

24 MR. PASCUCCI: I kn

25 BY MR. PASCUCCI:

home. I was being attacked, and I

elf."

till wanted her to remove the posting.

e anything else that took place in

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3 And I said that I s

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4 Q And what -- is ther

5 that conversation?

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6 A No.

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7 Q Did she tell you wh

8 A Yes; she told me sh

. That's good.

9 her to.

10 Q And what is your un

ew you did.

11 down?

12 A Immediately.

13 Q All right. And was

OURT REPORTING, LLC

14 A Yes. I gave Flo a

e 23 North, Suite 206
New Jersey 07470

15 Q And why did you do

973) 692-0660

16 A Because it was an i

17 Q I'd like to direct

1 Q Can you tell us what that is?
2 A Yes; it's an employee counselling form to Flo from me,
3 giving her a verbal warning for posting inappropriate comments
4 and the expectation that there would be no further postings of
5 this nature.
6 (R-4 identified.)
7 Q And whose writing appears on this document?
8 A Mine, and Flo's signature.
9 Q Is all the writing, other than her signature, by you?
10 A Yes.
11 Q All right. And did you meet with her to present this to
12 her?
13 A Yes; I did; the next time she came to work that day.
14 Q Sorry?
15 A I -- there was a time when I made the phone call, and I
16 gave the verbal warning because she wasn't working.
17 Q Okay.
18 A I waited until she was working.
19 Q So you waited until she came back to work --
20 A Yes.
21 Q -- to present this?
22 A Yes.
23 Q And are you familiar with Ms. Ogundele's disciplinary
24 records with the hospital -- with the Medical Center?
25 MS. NOTO: Objection; relevance?

1 BY MS. NOTO:
2 Q Would you look at Page 7 for me? Sorry; could you turn
3 to Page 7 for me?
4 A Yes.
5 Q To the best of your knowledge, Anne is the only person
6 who you -- who you changed that portion of the document for?
7 A No. The others let some -- to the best of my knowledge,
8 they didn't do their mandatory.
9 Q In that same category?
10 A Oh, you mean in that one?
11 JUDGE GOLDMAN: You mean on the one line?
12 THE WITNESS: On that line?
13 MS. NOTO: Yes.
14 THE WITNESS: Oh, the one line -- she's the only one.
15 BY MS. NOTO:
16 Q How many posts -- Facebook posts -- did you see from Flo
17 before you issued that verbal warning to her -- that verbal
18 writing?
19 A How many did I see?
20 Q Yes.
21 A One.
22 MS. NOTO: Your Honor, could we produce for the witness
23 GC Exhibit 8.
24 JUDGE GOLDMAN: Okay. The witness has eight.
25 BY MS. NOTO:

1 Q Okay, can you -- I think that we all know what ICU is --
2 what was the other Unit?
3 A Respiratory Therapy.
4 Q Okay, and focusing on the ICU, how was that Unit staffed?
5 A They --
6 Q Who works on that Unit?
7 A We have a Unit Clerk. We had RN's, Intensive Care RN's,
8 Critical Care Trained, and a Physician, of course, there
9 onsite, not all the time, but there was one available and also
10 Nurse Aides.
11 Q And what about a Team Leader or a Charge Nurse?
12 A Yes, there was usually a Team Leader on. When there was
13 not, there was an Assigned Charge Nurse.
14 Q And what does that role consist of, the Team Leader role,
15 or in the absence of a Team Leader, the Charge Nurse role?
16 A To -- like the Air Traffic Controller of the Unit, they
17 oversee the comings and goings of the Patient and ensure
18 Patient safety. They ensure adequate staffing. They assist the
19 Director or his Designee in helping Staff, getting Staff to
20 come in, taking care of day to day issues with Patients,
21 they're kind of boots on the ground, front line.
22 Q And how does that differ from -- how many different
23 medical centers or hospitals have you worked in over the years?
24 A Many, it was -- I would say as an Interim I've been in at
25 least 20 or 25 facilities.

1 phones ring. They have to take calls and I understand that.
2 Q Did there come a time later when you learned that there
3 was some concern about the video?
4 A Yes, sir.
5 Q Do you recall about when you first heard that there was a
6 concern?
7 A I want to say that it was roughly two weeks. I'm not sure
8 of the timeline.
9 Q And how -- what did you learn?
10 A I had learned from Ms. Marshall that certain individuals
11 were offended by the video and I should apologize. And I did
12 send out an apology email.
13 Q Did she -- what did Ms. Marshall say about why people --
14 did she say that she was offended or why did she say why she or
15 others were offended?
16 A No, sir, she did not say that she was offended. She said
17 that there were individuals in the audience that were offended,
18 including a combat veteran and several members of the female
19 staff.
20 Q Did she say why they were offended?
21 A No, she did not.
22 Q Did it come to your attention at some point that the song
23 that accompanied the video was a problem -- was a controversial
24 choice?
25 A That did come forward after an email was sent to the

1 Q You didn't sexually harass her?
2 A Absolutely not, sir.
3 Q And you also didn't interrogate her?
4 A Absolutely not.
5 Q Can you describe what really happened in that one on one
6 meeting that you had with her in early May?
7 A Yes, sir, I can. We were given a list of talking points
8 that was provided to us by the HR Department and by Senior
9 Leadership at Cayuga Medical Center. Every Nurse was met with
10 one on one in private. We handed them the talking points -- or
11 I handed them the talking points, had them read through it, and
12 ask them if they had any questions. And I would available for
13 questions. They could actually reach out to anyone for
14 questions. They could reach out to HR or come back to me and
15 ask me any questions that they have.
16 Q And what were those talking points pertaining to?
17 A The rights to unionize the facility and what that could
18 entail and what their rights were on both sides.
19 MR. PASCUCCI: If I could -- are the exhibits available,
20 Your Honor?
21 JUDGE GOLDMAN: I think that they are, yes.
22 MR. PASCUCCI: GC-39.
23 MS. NOTO: They're right there.
24 MR. PASCUCCI: Are those the Reporters?
25 MS. NOTO: Yes.

1 MR. PASCUCCI: It's GC-39 and GC-40, Judge, that I'm
2 looking for.
3 JUDGE GOLDMAN: I have copies, if that's sufficient.
4 MR. PASCUCCI: Yes, of course, if you don't mind showing
5 them. Thank you, Your Honor.
6 BY MR. PASCUCCI:
7 Q If you could look at both of those, one is dated May 6th
8 and one is dated May 7th and just tell me if you recall those
9 documents?
10 A Do you want to start with the one that is May 7th?
11 Q Either one.
12 A Okay.
13 JUDGE GOLDMAN: What's the marking on the first page at
14 the bottom?
15 MR. PASCUCCI: On the lower -- bottom left corner.
16 THE WITNESS: GC-39, Your Honor.
17 JUDGE GOLDMAN: Okay.
18 THE WITNESS: Did you want me to read through these?
19 BY MS. NOTO:
20 Q I just want you to glance and tell me if you recognize it?
21 A Yes, sir, I do.
22 Q And just -- what is that document?
23 A This is the fact sheet that we were asked to hand to every
24 RN.
25 Q And if you look at GC-40, the next one, which is actually

1 the date prior apparently, according to the date -- is that
2 similar? What is that?
3 A These were the talking points that were sent out to
4 Leadership on how to conduct the interviews and to give the
5 information out.
6 Q So, are these the -- is this the material that you were
7 referring to when you said that you gave talking points at
8 those one on one meetings?
9 A I did not give the talking points. I did give them the GC-
10 39.
11 Q Oh, so you gave them GC-39, but you also had GC-40 as kind
12 of a guide.
13 A GC-40 is our guide.
14 Q So specifically with respect to the meeting that you had
15 with Ms. Marshall, do you recall meeting with her about this?
16 A Yes, sir, she was the first one in my office.
17 Q And can you tell us what you said and what she said in
18 that meeting?
19 A I gave her the fax sheet. She read over it and I asked her
20 if she had any questions. And the only questions that I
21 remember her asking me if I ever been through a unionization
22 and have I ever worked for a union facility. And my answer to
23 that was yes.
24 Q And did you ask her any questions?
25 A No, I did not. I asked her if she did have questions. And

1 that was the only questions that she did.
2 Q Did you ever use the word 'ringleader'?
3 A No, sir.
4 Q Did you ever tell her that you'd have to go to HR?
5 A No, sir.
6 Q Now, Mr. Brown, I understand that your assignment at
7 Cayuga Medical Center was temporary in nature. Correct?
8 A That is correct.
9 Q And have you worked in both unionized and non-unionized
10 settings?
11 A Yes, sir, I have.
12 Q Did you have any particular stake in whether or not the
13 RN's at Cayuga Medical Center decided to unionize?
14 A Absolutely not.
15 Q What was your stance toward positive unionization at
16 Cayuga Medical Center?
17 A I've worked with union facilities before. And it's just a
18 process. It's part of the job.
19 Q And did you take a position yourself on that issue at
20 Cayuga Medical?
21 A Absolutely not.
22 Q What instructions did you receive from Cayuga Medical
23 Center about how to deal with the union issue or what to say
24 about it or how to conduct yourself?
25 A To just be there as a resource for the Staff and answer

1 any questions. And if there was a question that I could not
2 answer, to refer them to the Human Resource Department.
3 Q Did you ever take down any pro-union postings at Cayuga
4 Medical Center?
5 A Yes, sir, I did.
6 Q And why did you do that?
7 A I had multiple complaints from Staff Members that they
8 were offensive and I removed them.
9 Q Did this -- I guess that there were many postings,
10 correct, over the course of many days, many postings?
11 A Yes, sir.
12 Q And did some of them remain posted for a period of time
13 and some were taken down?
14 A They remained posted until I was told that they were
15 offensive and then I went and removed them. I did not remove
16 them until I was told that they were offensive. Or I even had
17 Staff Members bring them to me.
18 Q And so did you ever interrogate any of your Employees
19 about Union support or activity?
20 A Absolutely not.
21 Q Did you ever threaten any Employees based on Union
22 support?
23 A No.
24 Q Did you ever treat any Employees differently based on
25 Union support?

1 Mr. Brown dated Friday, June 26th -- an email to Susan -- an
2 email to Alan Pedersen cc'ing Linda Crumb.
3 MS. NOTO: I don't have either of those.
4 BY MR. PASCUCCI:
5 Q Do you recall the events that next day that June 26th?
6 A Yes, sir.
7 Q Tell me what took place that day.
8 A I was told by Ann that we had a possible staffing issue,
9 patient issue, an issue for patient care.
10 Q Now I guess the previous day you were offsite at a
11 retreat. Correct?
12 A That is correct.
13 Q And on this day were you in the Unit?
14 A Yes, sir, I was.
15 Q So, Ann came to you in person and talked to you?
16 A Yes, sir.
17 Q So what did she say?
18 A She had notified me that we had a possible staffing issue,
19 a patient issue. I did ask her to elaborate and she read off a
20 list of possible Patients that we may be getting, either from
21 the ED or from the Cath Lab. They were just tentative Patients
22 that could be placed in the Unit. I did ask if she had been
23 assigned. She said that she had three Patients. I told her that
24 I'll get on it and I'll see what I can do shoring up Staff and
25 find out what was going on in house and what the Patient flow

1 was looking like in the house and if we had any resources.
2 Q Okay.
3 A I called our House Supervisor and had her come up and --
4 Q Do you recall who that was?
5 A It was Flo.
6 Q Okay.
7 A And we went to the Nurses Station and we ran the board
8 with Ms. Marshall again looking at the acuity of the Patients
9 to see what was in the Unit at that time and what we needed to
10 do to try to shore up Patient safety and Staffing.
11 Q So then you, Flo, and -- Ms. Ogundele, she was there --
12 and then Ann was there and you were all at the Nurses Station.
13 A That is correct.
14 Q Which is where you run the board?
15 A Yes, sir.
16 Q So, then what happened?
17 A We ran the board. and we looked at the board and Ann only
18 actually had one Patient and -- but she was going to go up to
19 three after one of our Per Diem Nurses left at 3:00, she was
20 going to absorb those two Patients. It was still early in the
21 day before that had happened. So that Nurse was still on shift.
22 And then she stated to me, "Well, this evening is not
23 going to be any better because we may have a call in."
24 Q This is Ann who said that?
25 A Yes, sir, Ann said that, yes, sir. I asked her to

1 elaborate. She said that one of the Nurses may be calling in
2 sick and may be not feeling well.
3 And I'm like, "Can you be more specific?"
4 And she did tell me who the individual was. And I said,
5 "Well, could you please reach out to her and find out if she is
6 or is not coming."
7 And she said, "I've been talking to her all day."
8 And I said, "Well, let me rephrase. I need you to reach
9 out to her and see if she is or is not coming in."
10 And again, she said, "I've already talked to her and I'm
11 not going to call her again."
12 "Let me rephrase. I really need you to call to see if
13 she's coming in so we can make plans for staffing this
14 evening."
15 Again, she refused.
16 I then asked for the staffing book. I did ask her if she
17 had made calls to shore up staffing and she assured me that she
18 did. That calls had been made and she sent texts and emails and
19 no one had responded to her.
20 So, I took the book and went directly into my office and
21 started my calls. And I called one of the Nurses that I knew
22 would usually come in for us whenever he was available to, and
23 he immediately agreed to come in. he was a relatively new Nurse
24 to the position. But I asked him to come in as Charge because
25 the Charge that was assigned that night was stronger clinically

1 and I felt that it would be more prudent to put that Nurse in
2 the Patient Care mix to assure that the Patients were taken
3 care of. And that for him to take the Charge role and for him
4 to be there as a resource for the other Nurses. And then to be
5 there as the Air Traffic Controller to make sure that
6 everything was going well.
7 I did ask him if he had received any other calls, texts,
8 or emails. And he said that I was the first call that he had
9 heard and that he had not received any other phone calls that
10 day.
11 Q Okay.
12 A I went out to the desk with Flo and again, asked Ms.
13 Marshall if she would look at the call list and mark those that
14 she had called so I did not duplicate the calls. And that's
15 when she told me that she did not make calls.
16 Q And how did you react to that?
17 A I was very taken aback that she had first told me that she
18 did make those calls and then she told me that she did not make
19 those calls. So I went back to the office.
20 I actually handed the book to our PIC Supervisor, who is
21 the Performance Insertion Nurse, that happens to have a desk
22 right outside my office, and asked her if she would please
23 start making calls. And the first call that I wanted her to
24 make was to call the Nurse that was supposingly going to call
25 in sick to find out whether or not she was going to be coming

1 in.
2 Q Okay, and looking at Respondent's -- I'm sorry -- ALJ-L,
3 which is the June 26th email, is that -- you created that
4 document. Correct?
5 A Yes, sir.
6 Q Did you create that on June 26th about 1:25 p.m.?
7 A Yes, sir.
8 Q And at the bottom you said that 'Ms. Marshall put Patients
9 at risk and caused hospital loss of revenue secondary to
10 unnecessary' -- I'm sorry -- 'this week Ms. Marshall has been
11 rude constantly and insubordinate, not to mention stating facts
12 inappropriately putting the Patients at risk'.
13 My question is what did you mean by stating facts
14 inappropriately?
15 A That she did make calls and that there was no nursing help
16 available outside of the facility. And that we had not -- that
17 she had actually tried to shore up Staff with our existing
18 Staff that was not on shift that night or that next day, which
19 was our practice to do.
20 Q And so she said she made calls and she said that she
21 didn't make calls.
22 A That is correct.
23 Q What about putting Patients at risk? What did you mean by
24 that?
25 A What I meant by that was on the flip side if we could not

1 have found Staff, what we would have had to do was to transfer
2 Patients out of our area to another facility, which puts them
3 at risk for injury or worsening of their condition going to an
4 outside facility because there's not that's very, very close.
5 It's not just right around the block. It's actually an
6 ambulance ride and getting them in the ambulance, getting them
7 packaged up, getting them to the next facility; if we could
8 find a facility that would accept them.
9 Q So transferring a Patient out is the option of last
10 resort?
11 A That is an option of last resort.
12 Q Okay, and then those events, I guess, led to her
13 suspension for a day. Correct?
14 A Correct.
15 Q And were you involved -- did you participate the decision
16 making process with respect to the suspension or no?
17 A Absolutely not, I did not.
18 Q Was the information that you reported about the events
19 leading up to that truthful and accurate?
20 A Yes.
21 Q Did there come a time later -- by the way with respect to
22 -- you mentioned that -- that your relationship had changed
23 drastically with Ms. Marshall. Right?
24 A Yes, sir.
25 Q And that -- did you eventually end up leaving Cayuga

1 office and said that we had a Patient that needed to go to Hida
2 Scan and could I escort the Patient down.
3 And I asked her if she could take the Patient down. I knew
4 that she did not have an assignment.
5 And she said that she was the Work Clerk. She was being
6 the Work Clerk because we did not have one that day.
7 Ms. Sullivan who is our PIC Nurse was there, and I asked
8 Ms. Sullivan, who was in that area, if she would mind watching
9 the phones while Ann took the Patient to Hida Scan.
10 And Ann said, "Well, I have pages of orders that need to
11 be put in."
12 And I asked her, "Is the Patient here?"
13 And the Patient was not there. In fact, the Patient had
14 not even arrived yet.
15 So, I asked her again to take the Patient down to Hida
16 Scan and I'll see about getting a Nurses Aide.
17 And where I'm out there's a doorway that leads out the
18 back entrance of the Emergency -- sorry -- the ICU. And in that
19 doorway was where this conversation had been had. I backed up a
20 couple of steps and picked up the phone at Susan Nohelty's
21 desk, who is our Educator, and picked up the phone and called
22 the House Supervisor and asked her if she could get me a Unit
23 Clerk. And while I was on the phone I turned and when I turned
24 Ann was almost nose to nose with me.
25 And I asked her if she could please step back. She didn't

1 need to stand there.
2 And her answer to me was, "I can stand anywhere I want."
3 Q How close was she to you?
4 A Within touching distance -- I mean -- she was right in my
5 face.
6 Q And when you say 'touching' this is arm's length or
7 closer?
8 A Closer.
9 Q How close?
10 A Within inches -- I mean -- she was definitely in my
11 personal space.
12 Q Okay, so you asked her to step back.
13 A I asked her to step back and she refused. And so I backed
14 up and hung the phone up and we did get a Unit Clerk. And I
15 went around her and went on my way to deliver my documents.
16 When I came back, I put into our Risk Management System
17 the incident that occurred, which is normal procedure whenever
18 you have something that happens outside the facility, and put
19 down what had happened and that I felt that she was
20 inappropriate, especially with the allegations being levered
21 towards me. And I reported that.
22 Within minutes of me hitting send, Ms. Marshall came with
23 documents in her hands, saying why -- and I was still in my
24 office -- she asked me why I put this in. she wanted to talk to
25 me about it.

1 And I refused.
2 And she put both of her hands on my door frame and said,
3 "I need to talk to you about this."
4 I said, "I am not going to talk to you about this. It's
5 inappropriate. I need you to leave my office."
6 And she refused again. I turned my back to her and told
7 her that she needed to leave my presence or I was going to call
8 Security and have her removed.
9 Q Alright, and all of this -- I guess that there were two
10 parts to this interaction. The first part where you turned to
11 being on the phone and she was there. And the next part was
12 your office door. How far apart did these two things happen?
13 A Time wise?
14 Q Yes.
15 A Time wise was probably -- I want to say -- 30 minutes to
16 35 minutes.
17 Q If you could look --
18 MR. PASCUCCI: Could we show the witness, Judge, GC-26?
19 JUDGE GOLDMAN: Is this -- my copy is hard to see where it
20 says that?
21 MR. PASCUCCI: Yes.
22 BY MR. PASCUCCI:
23 Q Do you recognize -- I'm sorry -- you don't have a copy.
24 A Thank you, sir.
25 Q Do you recognize that photograph? What's the photograph

1 JUDGE GOLDMAN: You said that's true? I just didn't hear
2 you.
3 THE WITNESS: Yes, sir.
4 BY MS. NOTO:
5 Q Now you learned about the Union organizing campaign about
6 two weeks after you started at Cayuga Medical Center?
7 A Yes, Madam.
8 Q You took down Union flyers that were posted. Correct?
9 A Yes, Madam.
10 Q You would sometimes take those Union flyers down four
11 times a day?
12 A At times, yes, Madam.
13 Q And you would also pick up those Union flyers off the
14 break room table?
15 A Yes, Madam.
16 Q You also compensated -- confiscated the Union flyers that
17 other Staff would take off the bulletin boards and brought to
18 you. Right?
19 MR. PASCUCCI: Objection to the form of the -- I don't
20 know what she means by confiscated. Do you mean physically took
21 them away from somebody? I object to the form of the question.
22 JUDGE GOLDMAN: Well, maybe you can rephrase it. I kind of
23 are. I'm not sure the witness would know what you mean by
24 confiscate.
25 BY MS. NOTO:

1 Q When Members of your Staff took those flyers down off the
2 boards and off the break room tables, they brought them to you.
3 Right?
4 A Yes.
5 Q And you took those. Didn't you?
6 A Yes.
7 JUDGE GOLDMAN: What did you do with them?
8 THE WITNESS: I took them down to the HR Department.
9 BY MS. NOTO:
10 Q You also had your Department Team take down those Union
11 flyers in the department and give those flyers to you. Didn't
12 you?
13 A I did not ask them to do that, no, Madam.
14 Q Is it your testimony here today that you didn't have
15 Members of your Department Team take down Union flyers and
16 bring them to you?
17 A Not by my order.
18 Q You gave an affidavit to the Board. Is that right?
19 A Yes, Madam.
20 Q And the testimony in that affidavit was true and accurate.
21 Is that right?
22 A Yes, Madam.
23 Q Can you take a look at the document that I just handed
24 you?
25 A Yes, Madam.

1 Q Is that the statement that you gave? Make sure that you
2 look at it. Your initials are at the bottom right hand corner
3 and your signature is on the back. Right?
4 A Yes.
5 Q I'm directing your attention to Page 2. Do you see where
6 there's a number 4 on the left hand side?
7 A I do.
8 Q The sentence prior to that reads, 'I had my Department
9 Team take the flyers down that were posted in the department
10 and give them to me.' Did I read that accurately?
11 A Yes, you did.
12 Q And it was Union literate that you were specifically
13 taking down. Correct?
14 A That is correct.
15 Q And at this time you knew that there was only a few
16 Organizers for the Union. Correct?
17 A I did not know the full number. I knew the ones that I was
18 involved with, yes, Madam.
19 Q And the ones that you were involved with were Ann
20 Marshall. Correct?
21 A And Ms. Cole.
22 JUDGE GOLDMAN: I'm sorry. What was the second one?
23 THE WITNESS: Ms. Cole.
24 BY MS. NOTO:
25 Q That's Jen Cole, right, for the record?

1 A Yes, Madam.
2 Q But you would agree with me that Ann was the most active
3 in the campaign. Correct?
4 A No.
5 Q You don't believe that Ann was the most Active Organizer?
6 A No.
7 Q Who do you think was the most Active Organizer?
8 A Mr. Marsland.
9 Q Within your department, who do think was the most Active
10 Organizer?
11 A Then that would be Ms. Marshall.
12 Q Mr. Marsland works in the Emergency Department. Right?
13 A That is correct.
14 Q And in your department Ms. Marshall was the one who posted
15 flyers. Right?
16 A I don't know who posted them. That would be -- I was told
17 that she was the one that was posting them by individuals who
18 brought them to me, but I did not witness her posting them.
19 Q Even though she was the one who left flyers in the break
20 room. Right?
21 A By admission of other individuals, yes, Madam.
22 Q So, Ms. Marshall was the one that you were told was
23 putting up flyers and leaving things in the break room. Right?
24 A That is correct.
25 Q And she spoke to people about the Union while she was on

1 Q In fact, Mr. Pedersen advised you to meet with Employees
2 privately in one on one meetings to pass these out. Correct?
3 A Yes.
4 Q And you held your individual meetings as instructed.
5 Didn't you?
6 A I did.
7 Q You talked to Staff when they were on their break or when
8 you could have them relieved. Right?
9 A That is correct.
10 Q In fact, Ms. Marshall was one of the first one on one
11 meetings that you held. Right?
12 A That is correct.
13 Q And she helped you relieve Staff so that they could come
14 and meet with you. Didn't she?
15 A Yes.
16 Q Now during that one on one meeting that you had with Ms.
17 Marshall she told you that you might want to apologize for the
18 video that you showed on your first day because some people
19 took offense to it. Right?
20 A Yes.
21 Q And that video was set to a Marilyn Manson song. Is that
22 correct?
23 A That is correct.
24 Q And that video -- the song lyrics swear. Don't they?
25 A Yes, they do.

Q You called it 'Rebel', but it's actually called 'This is the New Shit'. Isn't that right?
A Yes.
Q Part of those lyrics include "sex, sex, sex, and don't forget the violence". Right?
A Yes.
Q It also includes "are you mother fuckers ready for the new shit"?
A Yes.
Q Among other things, right, I'm not going to read the whole song.
MR. PASCUCCI: Object, among other words.
MS. NOTO: Among other words.
JUDGE GOLDMAN: Obviously it includes other words.
I have a question, you called it 'Rebel'. What is that?
THE WITNESS: That's the bridge.
JUDGE GOLDMAN: That's the bridge.
THE WITNESS: That's what I have marked in my iTunes account as 'Rebel'.
JUDGE GOLDMAN: Okay.
BY MS. NOTO:
Q And at the time that you had this one on one meeting with Ms. Marshall she was the Team Leader. Right?
A That is correct.
MS. NOTO: Can I just have one moment, Your Honor?

1 Human Resources. Wasn't it?
2 A Yes.
3 Q After Ms. Marshall served her suspension you attended a
4 meeting with Ms. Marshall and Linda Crumb. Right?
5 A Yes.
6 Q In that meeting Linda told Ann about the expectations
7 moving forward. Didn't she?
8 A Yes, she did.
9 Q You left that meeting to check and see if Ann was needed
10 in the department that day. Didn't you?
11 A That would be normal practice. We wouldn't overstaff on
12 purpose.
13 Q So you left that meeting to check and see if Ann was
14 needed. Didn't you?
15 A Yes.
16 Q And Ann went to work after that meeting. Didn't she?
17 A That is correct.
18 Q I want to direct your attention to the incident that led
19 up to the suspension where you called Scott Goldsmith. Do you
20 know what I'm talking about?
21 A Yes.
22 Q You -- when you called him you offered him the Charge
23 role. Didn't you?
24 A I did.
25 Q And the Charge role is a higher pay than the regular Staff

1 Nurse role. Isn't it?
2 A They do because they're taking charge, yes.
3 Q And a Team Leader can't offer to change who's in charge
4 for a particular shift. Can they?
5 A No, they cannot.
6 Q Now, I want to direct your attention to July 3rd with the
7 report that you put in. you put in the QA Report on Ann
8 standing in your personal space. Correct?
9 A Yes.
10 Q And that was with respect to the incident in the back
11 hallway, not the incident in your office. Right?
12 A That is correct.
13 Q When Ann approached you she said that there was a Patient
14 that had to go to Hida Scan. Correct?
15 A That is correct.
16 Q But it wasn't her Patient. Correct?
17 A No, it would not have been.
18 Q So it would have had to been a Patient of another Nurse in
19 your department. Right?
20 A I believe so, yes.
21 Q And she asked you for help in getting Ward Clerk. Didn't
22 she?
23 A She did.
24 Q Because at that time she was Team Leader and Charge Nurse
25 for the Unit. Right?

GC EX's 2a-j.

To: Cayuga Medical Center RN's

From: Alan Pedersen, Vice President Human Resources

Re: Union Activity

Date: May 7, 2015

We wanted to take the opportunity to reach out to you to inform you that there is an active campaign underway to establish a union for Registered Nurses at Cayuga Medical Center.

As a CMC Registered Nurse, it is very important that you know the facts.

- You may be approached by one or more employees that are in favor of establishing a union at Cayuga Medical Center. While we believe that the best way to address issues is through open dialogue, there are others that are in favor of 3rd party representation.

- You will at some point be asked or more likely pressured to sign a union authorization card. You should understand that signed authorization card is used by the union to determine support. It is a legal document and written endorsement that you want the union to represent you.

- Your signature does not mean you are only signing the card to get more information. The union only wants your signed card to petition for an election. Once you sign a card it is highly unlikely that you will be able to get it back if you change your mind

- You have rights as employee. You cannot be forced to sign a card. You have the right to say no and tell them you are not interested. You have the right to ask them to leave you alone and not bother you.

- If you feel you are being harassed or intimidated feel free to contact your supervisor, director or security.

- There have been many incorrect claims being made. If someone is telling you information that does not seem true, or does not seem consistent with what you know about CMC, please take the time to ask us.

- We promise to tell you the truth.

GC Exhibit 2a

To: Registered Nurses

From: Alan Pedersen

Date: June 25, 2015

Many of you may have received a direct mail card from a group who is attempting to convert our Registered Nurses at Cayuga Medical Center into a union shop. I wanted to assure you that the Medical Center has not provided your home address to anyone involved in this process.

While we respect everyone's right to their own opinion, we believe intervention by an outside organization would likely do more harm than good. We believe that our longstanding commitment to open and honest communication between management and staff is the preferred way of working with one another at CMC.

While union organizers argue that unionization will provide RNs with a voice in quality, staffing and job security, we believe that RNs already have significant influence in those areas with direct access to leaders throughout the organization. In the area of job security, it is important to note that Cayuga Medical Center has never gone through a layoff, a fact that very few upstate healthcare organizations can match (including those with unions).

When organizations are in the midst of a campaign, it is typical for organizers to make promises in order to get employees to sign a union organization card. At this time, the union is only interested in getting cards signed to petition for an election. Your signature does not mean you are only signing a card to get more information. It is a legal document that you should only sign if you are convinced based on all available information that you want to become a dues-paying member of the union.

As employees of CMC, you have the right to advocate in favor of a union; you also have the right to advocate against union representation (within the guidelines of our existing solicitation policy requiring that solicitations only occur between employees during non-work time). We respect these rights regardless of your viewpoint on this subject.

We encourage any Registered Nurse to understand the facts before signing an authorization card.

If you have any questions, please feel free to speak with your Director.

G.C. Exhibit

To: Registered Nurses

From: Alan Pedersen

Date: August 13, 2015

Re: Information you should know

Many of you have continued to receive direct mail pieces from SEIU 1199 and personal contacts from those that are continuing their efforts to establish a union at Cayuga Medical Center.

Before making the decision to sign a union authorization card, it is very important to understand the facts.

Cayuga Medical Center is committed to providing a work environment that is positive and respectful for our staff with a commitment to clinical excellence for our patients.

While it is very easy to make promises regarding what the workplace will look like if a third party receives support of the majority of our Registered Nurses, we think it is more important to look at some of the things that we have accomplished working together.

- We have been able to provide salary increases every year since 1981 when we became a stand alone not for profit hospital
- For 9 out of the past 10 years we have provided Performance Recognition bonus payments that have been as high as $1,560 dollars.
- While we were not able to provide a performance recognition payment last year, we did provide a $100 gift card to all employees in addition to merit increases provided in January.
- We have expanded our selection of health insurance options to provide employees with products that match their individual needs.
- We are able to provide employees with two retirement programs, a defined benefit plan which requires no investment by employees and our Retirement Savings Plan that provides a match of 50% of the first 4% an employee invests.
- We have a strong track record of providing nursing input into decision making through our Nurse Practice Council, Nursing Policy and Procedure Committee, and many other committees at the unit, division, and hospital levels.
- Employees have direct access to leadership throughout the organization to address issues that are of importance to them.
- We highly value our employees and the relationship we have with you. As such we have never conducted a layoff, and have always worked with employees to provide them with opportunities they are interested in.

While we respect the rights of those who believe in third party representation, it is our belief that direct communication in an open manner is in the best interest of our staff.

G.C. Exhibit 20

As employees of CMC, you have the right to advocate in favor of a union; you also have the right to advocate against union representation (within the guidelines of our existing solicitation policy requiring that solicitations only occur between employees during non-work time).

If you have any questions, please don't hesitate to ask your director.

To: Registered Nurses

From: Alan Pedersen
Vice President HR

Re: Information You Should Have

Date: 8/26/2015

During the past few months, we have reached out to provide you with information that we hope is useful as a campaign continues to create a union for Registered Nurses. While we recognize that there are always two sides to an issue we believe that periodically we should all take a moment to reflect on why we are here. As Registered Nurses, you make a difference in the lives of our patients and live our mission of providing the highest quality healthcare, in partnership with our community, one person at a time. We thank you for all that you do.

At the same time, we also strive to provide a place of employment that is positive, responsive to your needs, respectful and provides you with the tools and environment that you need to practice your profession as part of our team. While we recognize that it is not easy to meet the needs of every employee at CMC, we have worked hard to create an environment where we attempt to do so

As we respectfully listen to those who believe that third party representation is in the best interest of our nurses and organization, we also think that it is important for you to have information that is important. During the past few weeks we have received numerous questions from RN's that we thought would be important to answer, along with some important reminders.

- Organizers are telling staff that they'll have a union within the next few months. Is that true?

  That is not true at this point in time. If those in favor of unionization solicit enough signed cards, an election will be requested to be conducted by the National Labor Relations Board (NLRB). The NLRB will schedule an election and all Registered Nurses will have the opportunity to vote either yes or no in a secret ballot. Even if you signed a union authorization card you would still have the opportunity to vote yes or no.

  At the conclusion of the election, whoever gets 50% of the cast ballots plus one will determine our future direction. If those who are against unionization get the majority of votes cast, the organization campaign will cease and we'll move forward as a union free organization.

  If those in favor of organization get the majority of the votes, then negotiation will begin on a contract which can be a long and lengthy process. In negotiating a contract, nothing is guaranteed, but the final contract will determine many aspects of your employment including pay, vacation scheduling, holidays, sick time, seniority, staffing, overtime, floating etc.

- If a union campaign is successful and a contract is negotiated do I have to join?

  Yes. In the unlikely event that there is an election and a majority of Registered Nurses vote in favor of a union and a contract is negotiated, <u>all</u> RN's would be required to

G.C. Exhibit 2f

become members of the union, be subject to the terms of the contract and be obligated to pay union dues. You would not be able to work at CMC as an RN if you were not a union member.

- I have floated to another unit, and feel like I am being harassed and pressured to sign a card, what can I do?

  You have the absolute right to tell the person you are not interested and you wish to be left alone. It is not legal for you to be solicited while you are in a patient care area and performing your job. If you feel that you continue to be harassed you have every right to file a complaint in our incident reporting system, and notify your Director so that we can address the behavior with the individual involved.

Finally, several reminders.

- You have a legal right to refrain from signing a union authorization card. Whether you wish to sign a union authorization card is completely up to you.
- No matter what you may be told, a card is not a request for more information; it is a request for representation by the union.
- We have always worked hard to respond to issues raised by employees. If you have a concern or question, please reach out and ask. Here's what you can do:
  - Talk with your Director, or
  - Talk with your VP, or
  - Talk with Human Resources, or
  - If you want your request to remain confidential,
    - use our incident reporting system, and note the issue as HR, or
    - use our confidential compliance hotline
- We <u>do not</u> believe a union would help us deal with our challenges or have a positive impact, so we think it is very important that you know the facts.

We very much appreciate all that you do for our patients and our community, and want you to be able to continue to work in an organization that provides a great work environment, recognition for your contribution and flexibility to accommodate your needs.

Thank you for taking the time to read this email. If you have any questions, please let us know.

From: Pedersen, Alan
Sent: Friday, November 13, 2015 10:20 AM
To: ~cmc-employees
Subject: Information You Should Have

Dear CMC Employees,
During the past week, you may have received several communications from those who are leading the attempt to convert the workplace for our nurses into a union shop. Throughout their 6 month effort to gain enough support to move forward, we have shared information that we believe is important for involved employees to know.
At this point, we believe that the organizers do not have sufficient support to move forward and are now using a variety of different tactics to increase their visibility and perceived support. This increased effort is specifically designed to get additional Registered Nurses to sign cards.
We find it disappointing but also very telling that those who are leading the efforts continue to malign a number of CMC employees while attempting to portray Cayuga Medical Center as an organization that does not support our employees. This portrayal is absolutely wrong and couldn't be further from the truth.
We have heard from a number of employees that they find the union communications to be inappropriate. While those who are in favor of organizing have a right to communicate, those who are opposed to unionization have the same right.
I would ask that you take the time to reflect on your experience as an employee. As an organization we have worked hard to provide a positive working environment, fair compensation, excellent benefits, accessibility to leadership, and the flexibility to work with the needs of our employees. We are proud of the environment we have worked to create and we are proud of our focus on employees, patients and what we do for our community.
While we do respect the rights of those who seek to create a wall between management and staff through 3rd party intervention, we believe that our ability to communicate and work directly with employees without external involvement is the preferred approach.
Thank you.

Add G.C. Ex 2j

G.C. Exhibit ___

To: Registered Nurses

From: Alan Pedersen

Date: July 15, 2015

During the past month, you have witnessed an increase in visibility of those in favor of creating a union for nurses at Cayuga Medical Center as they continue to attempt to get nurses to sign authorization cards. Please understand that the increased visibility does not reflect our support of their position. While we believe that third party representation is not in the best interest of our nurses, our patients and the medical center, we have respected their right to make their opinion known.

As I have communicated in prior letters, it is very important that you understand the facts and implications of signing an authorization card. Your signature does not mean you are only signing a card to get more information. It is a legal document that you should only sign if you are convinced based on all available information that you want to become a dues-paying member of the union. At this juncture, the only reason for the increased contact and visibility is to get you to sign a card.

As employees of CMC, you have the right to advocate in favor of a union; you also have the right to advocate against union representation (within the guidelines of our existing solicitation policy requiring that solicitations only occur between employees during non-work time). We respect these rights regardless of your viewpoint on this subject.

If you have any questions, please feel free to speak with your Director.

GC Ex. 3

CAYUGA MEDICAL CENTER AT ITHACA NURSING POLICY AND PROCEDURE MANUAL	
	Effective: Revised: Reviewed:
Administrative Approval: Susan Nohelty, RN, MSN Vice President of Patient Services	
Department: Nursing Category: Subject: Nursing Code of Conduct and Mutual Respect	

Standard:

All members of the healthcare team need to be knowledgeable about unacceptable behaviors and its affect on the patient and the healthcare team.

Purpose:

Awareness and non-acceptance of disruptive behaviors among healthcare workers help to promote the safety and well being of both patients and staff.

Supporting Data:

American Nurses Association (2010). Code of ethics for nurses with interpretive statements. Retrieved July 22, 2011 from http://www.nursingworld.org/MainMenuCategories/EthicsStandards/CodeofEthicsforNurses/Code-of-Ethics.aspx.

New York State Education Department (2009). Practice alerts and guidelines-ethical practice. Retrieved March 14, 2012 from http://www.op.nysed.gov/prof/nurse/nurseethicalpractice.htm.

E-notes. Code of ethics for nurses. Retrieved March 14, 2012 from http://www.enotes.com/code-ethics-nurses-reference/code-ethics-nurses.

Cayuga Medical Center. Overview: History, Mission, Core Values. Retrieved from March 14, 2012 http://www.cayugamed.org/content.cfm?page=mission.

Policy:

Expected and acceptable communications/behaviors include but are not limited to:

Clinical Excellence

Respects confidentiality and privacy at all times, including co-workers, adhering to the Social Networking Policy.

Knowledgeable of and follows applicable policies and procedures. Responsible for continued personal and professional growth.

G.C. EXHIBIT 3

Committed to respect for patient's rights and dignity with compassion.

Customer Service

Interacts with others in a considerate, patient and courteous manner. Demonstrates a caring and positive attitude: smiles, greets and acknowledges others, make eye-contact, says please and thank you. Gives recognition and praise.

Actively listens to the perspective of others and seek to resolve conflicts promptly. Apologizes when mistakes are made or misunderstandings have occurred.

Is honest, truthful, and respectful at all times.

Holds self and others accountable to the Cayuga Medical Center (CMC) mission, vision and values, meeting their own expectations.

People

Promotes equality and acceptance of people from diverse backgrounds.

Utilizes proper channels to express dissatisfaction with policies and administrative or supervisory actions and without fear of retaliation.

Financial Integrity

Properly uses and maintains CMC property and resources.

Understands and follows CMC Compliance Policy

Community

Provides a secure, clean and safe environment for patients and fellow staff.

Works as part of a team by promoting cooperation, participation and sharing of ideas and information to promote team success. Fosters open and honest communication. Develops and supports community relationships inside and outside the hospital.

Inappropriate and disruptive communications/behaviors include but are not limited to:

- Uses abusive language, including repetitive sarcasm
- Sexually harasses making comments, jokes or innuendoes of a sexual nature
- Makes direct or indirect threats of violence, revenge, legal action or financial harm
- Uses racial, ethnic or religious slurs
- Exhibits behavior that threatens or results in verbal and/or physical abuse
- Uses foul or insulting language, shouting, and rudeness
- Displays behavior that would be considered by others to be intimidating, disrespectful or dismissive

- Criticizes co-workers or other staff in the presence of others in the workplace or in the presence of patients
- Publicly shames others
- Disregards or is insensitive to the personal space or boundaries of others
- Destroys CMC property
- Is impaired (e.g. use of alcohol or drugs) in the workplace or academic environment
- Fails to know and follow applicable policies and procedures

Cayuga
Medical Center
at Ithaca

GCEX
5.

May 19, 2011

ANNE MARSHALL
INTENSIVE CARDIAC CARE UNIT

Dear Anne,

During the past several months, we have met with a number of staff members and hospital leaders to discuss how we can more effectively recruit and retain you and your colleagues, and continue to position Cayuga Medical Center as a positive place to work. While we recognize that a number of factors go into an individual's decision to work and remain with an employer, it is important for us to maintain an environment where employees are involved in decision making, respected for their contribution and are compensated competitively for their work.

As a result of these conversations, we are very pleased to announce, that effective May 22, 2011 Cayuga Medical Center will be increasing the compensation of CMC Registered Nurses by $1.00 per hour. In your case, your new hourly rate will increase from 27.96 to 28.96.

In addition to this change, we will also be increasing our charge pay differential from $1.00 per hour to $1.50 per hour in recognition of the additional duties those who are in charge take responsibility for.

In addition to this adjustment, we have also rolled out an expanded relationship with Kaplan University and are finalizing components of a clinical ladder program that will be rolling out later this year.

We thank you for your contribution to Cayuga Medical Center. As this special adjustment is limited to nursing staff, we would ask that you keep your salary information confidential.

If you have any questions, please don't hesitate to ask your Director.

Sincerely,

Susan Nohelty, RN
Vice President Patient Services

Alan Pedersen
Vice President Human Resources

Signature & Date 7/25/11

101 Dates Drive
Ithaca, New York 14850-1383
607.274.4011
607.274.4527 fax
www.cayugamed.org

GC-Exhibit 5

Cayuga
Medical Center
at Ithaca

May 19, 2011

SCOTT MARSLAND
EMERGENCY

Dear Scott,

During the past several months, we have met with a number of staff members and hospital leaders to discuss how we can more effectively recruit and retain you and your colleagues, and continue to position Cayuga Medical Center as a positive place to work. While we recognize that a number of factors go into an individual's decision to work and remain with an employer, it is important for us to maintain an environment where employees are involved in decision making, respected for their contribution and are compensated competitively for their work.

As a result of these conversations, we are very pleased to announce, that effective May 22, 2011 Cayuga Medical Center will be increasing the compensation of CMC Registered Nurses by $1.00 per hour. In your case, your new hourly rate will increase from 25.4408 to 26.4408.

In addition to this change, we will also be increasing our charge pay differential from $1.00 per hour to $1.50 per hour in recognition of the additional duties those who are in charge take responsibility for.

In addition to this adjustment, we have also rolled out an expanded relationship with Kaplan University and are finalizing components of a clinical ladder program that will be rolling out later this year.

We thank you for your contribution to Cayuga Medical Center. As this special adjustment is limited to nursing staff, we would ask that you keep your salary information confidential.

If you have any questions, please don't hesitate to ask your Director.

Sincerely,

Susan

Susan Nohelty, RN
Vice President Patient Services

Alan Pedersen
Vice President Human Resources

Signature & Date

101 Dates Drive
Ithaca, New York 14850-1383
607.274.4011
607.274.4527 fax
www.cayugamed.org

GC Exhibit 6

Please send Anne Marshall your words of encouragement and love. She is standing up for what is right, facing down Flo Ogunsola, Linda Crump, Alan Anderson and a nasty NYS lawyer representing CHC in a hearing with the NYS Human Rights Commission, right now. FB PM and text her.

Good luck, hon!

Thinking of you Anne and sending all the good vibes I can.

Go Anne! Sending lots of strength your way. We have had to face down the same people. You can do this!

More power to you, Anne!

Sending powerful vibes your way. You are an inspiration.

I want to thank Sue for posting this and to the many of you who texted me. [illegible] I cannot express what your support means. It was a difficult day and I learned many things about our communication including the deaf community still [illegible]. I learned that being the underdog is difficult, but most of all I learned that doing what is right is the only solution. We need to stand up for what is right regardless of the consequences. Thank you again for all kindness and support.

So amazing!

GC Exhibit Z

Sprint 9:53 PM 34%

Search

Florence Olufunke Ogundele

Just so you know Scott, I thought you have class am very surprised about your comments, well maybe am not. I am not your enemy or anyone enemy but I will not compromise my integrity to lie for anyone. To tell you the truth you don't want to make me your enemy I can go from nice to a bitch in 20 second flat. You cannot bully me or intimidate me, you want to fight let's do it face to face don't hide behind your wife name. Maybe it is time to start telling people the real truth. This is my advice for you, don't mess with me and tell your disciples the same. I am not afraid of any one of you

Charlie Green

Please send Anne Marshall your words

G C Exhibit

Verizon LTE 8:34 AM 52%

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Florence Olufunke Ogundele feeling bad

Write a comment...

News Feed

GC Exhibit

Sprint 6:29 AM 4%

Search

Florence Olufunke Ogundele

You know what I believe? What goes around comes around. If you use your life destroying people the bad you do will surely follow you. What really made me mad is that these people are not telling the truth they get their fix from drama and their so called stupid friends follow them acting dumb without asking questions because they don't want to cause trouble. They don't have their own mind. Intelligence people don't act like an animal. These people cannot live their lives without drama. But now that the ass hole mentioned my name, I will show him and all his followers that am not the one to mess with I have nothing to lose. I never blocked them for what they are doing actually supported them and expect me to lie? Hell no, you know something karma is a bitch. They pick the wrong woman to pissed off. I will

GC Exhibit

Sprint 6:29 AM 4%

Search

and their so called stupid friends follow them acting dumb without asking questions because they don't want to cause trouble. They don't have their own mind. Intelligence people don't act like an animal. These people cannot live their lives without drama. But now that the ass hole mentioned my name, I will show him and all his followers that am not the one to mess with I have nothing to lose. I never blocked them for what they are doing actually supported them and expect me to lie? Hell no, you know something karma is a bitch. They pick the wrong woman to pissed off. I will like anyone of them to confront me instead of gossiping. I saw them when I walked in the ICU today and don't have the guts to face me. Hell this shit is on and am tired of playing nice

Yesterday at 10:53 PM · Edited · Like

Linda Crumb

To: Anne Marshall, RN

From: Linda Crumb, RN
Assistant Vice President Patient Services

Date: July 1, 2015

Re: Suspension and Follow up

This memo will confirm our decision to suspend you without pay for your scheduled shifts on Friday June 26 and Saturday June 27 due to your performance as a Team Leader and Charge Nurse, where your actions regarding placement of patients in the ICCU was not appropriate. In addition, your interactions with other staff members was not professional and you purposely were not truthful regarding the contact other staff members to determine availability.

On Wednesday June 30, you met with Joel Brown and myself to determine how you will more appropriately fill your responsibilities as Team Leader and Charge Nurse.

During our conversation it was agreed that you would follow and uphold the Nursing Code of Conduct and participate collaboratively with leadership and staff on problem solving.

It was also agreed that you would engage in timely communication with your Director and House Supervisor when you are unable to work on filling staffing requirements, and that you would delegate staffing phone calls when appropriate.

Anne, it is our objective that we function as a team to do the right things for our patients, and it is not acceptable to behave in a manner that is confrontational and not in accordance with professional standards as discussed.

It is our expectation and we all agreed that in the future, that there will not be a repeat of the behavior exhibited on Wednesday June 24 and Friday June 26. In the event that this does occur, it may be necessary to take additional disciplinary action.

If you have any questions, please feel free to meet with either Joel or me.

Thank you for your understanding and commitment.

Cc: Joel Brown, RN
Interim Director ICCU

I am signing this document under duress and am being forced to sign I do not agree with the above statement [illegible]

G.C. Exhibit 12a

July 8th 2015

0730

During discussion with Anne Marshall about her suspension I provided her with a copy of the attached letter. I asked her to sign the letter & she refused because she did not agree with it. I then asked her to document ~~her~~ that she disagreed with the letter which she did.

G.C. Exhibit 12b

- Kansas stated, "I am here only to observe the meeting, nothing else."
- I stated, "I have no idea of what you are talking about but this is not harassment, we are not trying to intimidate you, it doesn't matter to me whether the hospital is union or nonunion and having worked in both union and non-union environment I can assure you this is not harassment."
- Anne jumped up out of her seat, raised her voice and stated, "I am not going to talk union with you, this conversation is over" as she stood in the open door way of the consultation room and then she literally stormed out heading back to the unit.

Anne has displayed several failures in the code of conduct inclusive of poor job performance.

Thanks,
Sandra B.

From: Crumb, Linda
Sent: Friday, August 28, 2015 2:07 PM
To: Beasley, Sandra
Subject: Re: Anne Marshall

Anne's behavior today is the same we have been seeing for months. I agree you need to have Kansas with you and I think your caring style is appropriate. She should expect a meeting with you to review expectations and you will have examples from today that demonstrate what you don't expect from a Team Leader. Give Alan an update when the meeting is over. Good Luck. Call me after

Sent from my IPhone

On Aug 28, 2015, at 1:56 PM, Beasley, Sandra <SBeasley@CAYUGAMED.org> wrote:

Hi Linda,
Kansas and I are going to meet with Anne Marshall today.
I asked Kansas to sit in on my meeting with Anne so that she does not feel threatened nor attacked.

- 1st, This morning around ~ 0700, Anne pretty much flipped me away when I informed her that I would like to meet with her sometime today so that we can get to know one another.
- 2nd, I informed Anne that I was going to bed huddle with her at 0830 and she left without informing that she was heading that way.
- 3rd, There are only 4 people scheduled for this Sunday, and 8 on Tuesday. When Sharon approached Anne about it, Anne informed Sharon to take it to Sandra. I would have expected Anne (the team leader) to facilitate calling staff to manager the direct operations of the unit.
- 4th, I was discussing the schedule with Anne and Crystal. Anne became argumentative when I informed me that we do not staff for all beds. That we staff based on ADC and that is the national hospital standard for all hospitals. Anne insisted that the last place that she worked staffed accounting to the number of beds which we know is impossible.

Therefore, I want to have a crucial but caring conversation with her today at 2:30pm and have Kansas there as a witness to the conversation.

Thoughts??

Cayuga
MEDICAL CENTER
A Member of Cayuga Health System

Date: September 2, 2015

To: Anne Marshall

From: Sandra Beasley, Interim Director ICU and Linda Crumb, Vice President Patient Services

Subject: **Letter of Expectation- Transition to Staff Nurse**

On August 31, 2015, you were informed that based on repetitive unacceptable behaviors which include but not limited to the failure to follow the provisions of the Nursing Code of Conduct and Mutual Respect through professional leadership, that you were being transitioned into a Clinical Staff Nurse position effective immediately. Therefore officially, at the end of your shift on August 31, 2015, you are no longer to assume the role of a Team Leader nor as a Charge Nurse within Cayuga Medical Center.

As you move forward, you are expected to follow the Nursing Code of Conduct & Mutual Respect Provision. In addition, you are required to follow all applicable policies, procedures, provisions, and guidelines within Cayuga Medical Center.

Anne, you are a valuable member of our organization and we want you to be successful in your new role. Therefore the requirements of your new role are inclusive of the expectations that are listed below.

Expectations:

- Serve as the initial point of contact for internal and external customers.
- Upholding the Nursing Code of Conduct and Mutual Respect Provision.
- Respond to internal and external customer needs promptly and professionally
- Maintain a professional demeanor when speaking with someone over the telephone and/or when seen in person.
- Maintain professionalism at all times.
- Maintain a positive attitude and be aware of verbal and nonverbal behavior (Body language is 55% of the communication process) and tone of voice.

GC EXHIBIT

To: Anne Marshall, RN

From: Linda Crumb, RN
Assistant Vice President

Date: July 10, 2015

Anne, this memo will confirm our conversation today. As you know, an incident report was submitted regarding an interaction that you have with Joel Brown on Friday July 3. I have completed my investigation of this incident having interviewed all staff that were working that day.

As a result of that investigation I have determined that your interactions with the Director Friday afternoon were not in accordance with our Nursing Code of Conduct.

On Wednesday June 30 you met with Joel and me to determine how you will more appropriately fill your responsibilities as Team Leader and Charge Nurse. During our conversation it was agreed that you would follow and uphold the Nursing Code of Conduct and participate collaboratively with leadership and staff on problem solving.

We reiterated that it was our objective to function as a team to do the right things for our patients, and it is not acceptable to behave in a manner that is confrontational and not in accordance with professional standards as discussed.

According to the QA, it was reported that your behavior and interactions with the Director were not respectful but aggressive and confrontational in nature. These behaviors included

- A confrontational dialogue where you were requested numerous times to leave the door of the director's office but refused to leave until you were advised that security would be called.
- Following the director within his personal space and in the opinion of another staff member of harassing him about getting ward clerk help

While we understand that there can be varying opinions regarding the actions that took place, it is important to again reinforce the necessity to interact professionally and in accordance with the Nursing Code of Conduct. Key elements are:

G.C Exhibit

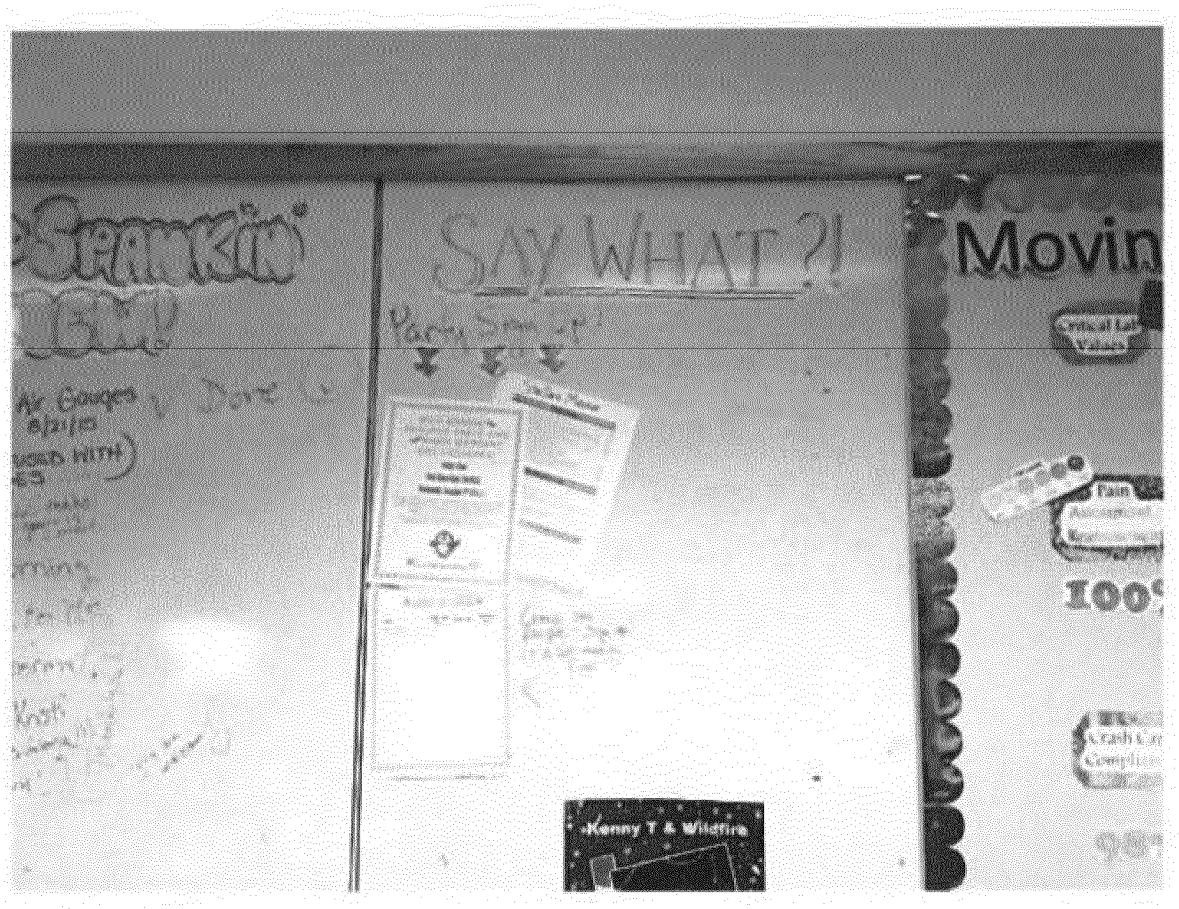
- Interacting with others in a considerate, patient and courteous manner
- Being honest, truthful, and respectful at all times.
- Avoiding inappropriate and disrupting communications/behaviors that include but are not limited to;
  - Displaying behaviors that would be considered by others to be intimidating, disrespectful or dismissive
  - Disregards or is insensitive to the personal space or boundaries of others.

This letter will be considered a verbal warning reinforcing the need to follow the Code of Conduct in your interactions with others.

I am confident that there will not be any additional violations in the future. However, in the event that there are, appropriate disciplinary action will need to be taken.

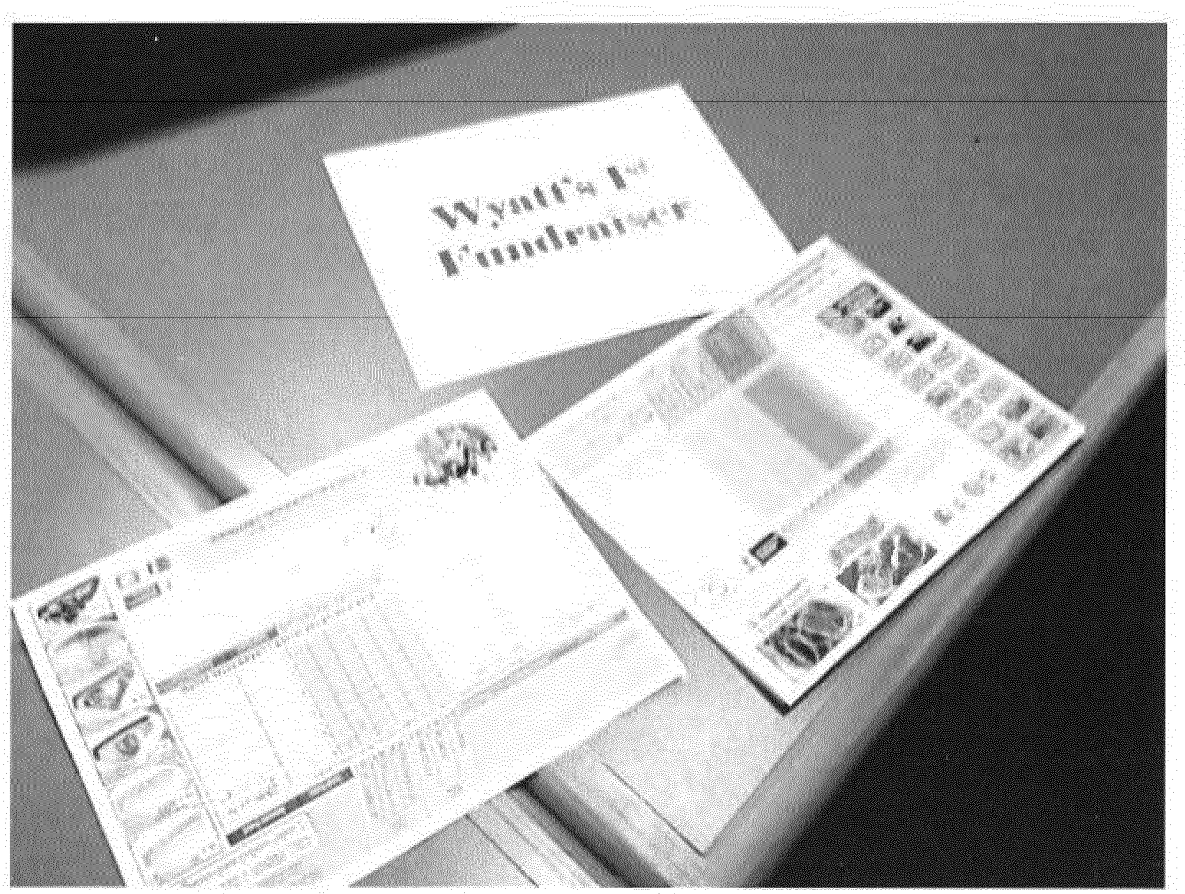
11/4/15

G.C. Exhibit



11/4/15

G.C. EXHIBIT



11/4/15

G.C. EXHIBIT 20

GC-21b

SUSPENSION MEETING 7-1

03-CA-156375

Cayuga Medical Center

AUDIO RECORDING

Transcribed for the

National Labor Relations Board

Transcript 1 of 4

RECEIVED
NLRB
2015 OCT 19 AM 10:43
BUFFALO, NY

By: Mary E. Dring

Burke Court Reporting, LLC

TRANSCRIPTION OF AUDIO PROVIDED

MS. CRUMB: So we wanted to get back together --

ANN: Okay.

MS. CRUMB: To talk about what your plans are to be successful in the charge nurse role.

ANN: Okay. Well, I would like to state that, you know, I've been here eight years.

MS. CRUMB: Um-hum.

ANN: I've had excellent evaluations.

MS. CRUMB: Um-hum.

ANN: I've been promoted. I've never had a disciplinary action.

MS. CRUMB: Um-hum.

ANN: And I take care of my patients and the staff to my best ability.

MS. CRUMB: Okay. The concern that I had was that you felt that you had an opportunity to communicate with your director or your house supervisor that your role that day that you were too busy in order to make phone calls, so that --

ANN: I did make phone calls --

MS. CRUMB: -- we can get on it quicker.

ANN: -- that day. I stated to Cindy Brown that I had made phone calls and that nobody was coming. She was aware of it. I had said it in the morning in bed

1 meeting. Chrissy brought it up to Joel Tuesday, before
2 that day. I made calls.
3 MS. CRUMB: Well --
4 ANN: I made as many calls as I possibly could
5 while taking care of patients.
6 MS. CRUMB: And I understand that there are
7 times that you can't make phone calls. That you need to
8 delegate it to ward clerk or --
9 ANN: Absolutely.
10 MS. CRUMB: -- ask for assistance from your --
11 ANN: Absolutely. And I did do that.
12 MS. CRUMB: -- director.
13 Well, all I know is that the information that I
14 got from an outside -- employee outside of ICU, said that
15 there was a conversation that she heard you say, no, I did
16 not make any calls.
17 ANN: Well, that's not what I said. I did make
18 calls.
19 MS. CRUMB: Okay. I --
20 ANN: I even came in on Thursday evening, on my
21 own time, to make sure there would be enough staff for
22 Friday morning, and that calls were made.
23 MS. CRUMB: Okay.
24 ANN: I mean, if you would like me to not take
25 care of patients and just make calls I'll do that. But I

need it in writing.

MS. CRUMB: No, you know that's not what I expect. But -- Not at all.

ANN: I can only do the best I can do. And I made as many calls as I possibly could have made that day.

MS. CRUMB: Well, obviously there was a big communication --

ANN: Obviously.

MS. CRUMB: -- issue here. So going forward, my expectation would be that you will communicate with your director or the house supervisor.

ANN: I always do.

MS. CRUMB: Early on that --

ANN: I did it days ahead.

MS. CRUMB: -- you need -- you need help.

ANN: Absolutely. And I have done that.

MS. CRUMB: Okay. I think, you know, there are times where you -- you come across kind of, I don't know what the right word is, Ann, but I don't want to say "antagonistic," but that's what it feels like sometimes. That you're --

ANN: Well, I'm sorry that's people's interpretation. That's not how it's meant to sound.

MS. CRUMB: That you're -- um-hum. That we're not working well together as a team. So --

1 ANN: But I will continue to do the best I can
2 do to take of patients and take care of the staff.
3 MS. CRUMB: Well, just like we talked about at
4 the last team leader meeting, I think the more we can
5 stick to the code of conduct --
6 ANN: Absolutely.
7 MS. CRUMB: -- all of us, the better off that
8 we're going to be.
9 ANN: Absolutely.
10 MS. CRUMB: So what can we do?
11 ANN: What you can is, as we know there are
12 holes coming up in the schedule, that Wendy puts out an
13 email.
14 MS. CRUMB: Um-hum.
15 ANN: It's not just my responsibility or any
16 other team leader's responsibility to make sure they're
17 filled. Everybody has to make sure they're filled.
18 MS. CRUMB: Um-hum. Okay. That's fair. So
19 maybe Joel, we can have -- maybe when -- the team leaders
20 are going to be meeting every two weeks, right?
21 ANN: Yeah.
22 JOEL: Um-hum.
23 MS. CRUMB: We -- the schedule can be part of
24 the --
25 JOEL: Absolutely (indiscernible).

MS. CRUMB: -- agenda, and we're looking for ahead -- far ahead so that --

ANN: Wendy does that every week. She sends out an email saying, these are the holes we have. Can anybody fill in? And then throughout the week it's brought up again and again, and calls are made and try to get people in.

MS. CRUMB: And I would like to be more proactive than that, actually, Yeah, I would like to see when you -- you put out a four-week schedule, you see you're going to have holes, that before that schedule comes out we have made calls to say, can you pick up another shift?

ANN: Well, absolutely. But the schedules are approved --

MS. CRUMB: So you're not -- that you're not --

ANN: -- that way.

MS. CRUMB: So they're --

ANN: I don't approve the schedules.

MS. CRUMB: That we're not spending all of your day while you're working trying to make phone calls.

ANN: Absolutely. That would make my life a lot easier, and then I could take care of my patients instead of worrying about who's coming after me to be able to take care of them, too. Because that's what it's about; it's

about taking care of the patients.

MS. CRUMB: No doubt. And I would appreciate if when things are getting pushed that you could be more collegial in talking about, I need assistance if we're going to take the next patient. Because always hearing, I'm not taking it, I'm not taking it, I'm not taking it, and that in quite a bit that tone of voice isn't helpful.

ANN: Well, I -- when I go to a bed meeting and say, this is where we are, I can take this many more until I have more staff.

MS. CRUMB: Well, I -- you know, I'm at some bed meetings and that -- that's not always the message that I (indiscernible). I just really would appreciate if we could work closer together --

ANN: Absolutely.

MS. CRUMB: -- as a team. And not against each other.

ANN: Absolutely.

MS. CRUMB: I mean, we all want the best care for our patients.

ANN: Yes. I will completely agree with that.

MS. CRUMB: So. Joel?

JOEL: I just -- no, I was just taking notes. I won't ask her any questions. I'm fine with everything she's saying.

MS. CRUMB: Is there anything else?

ANN: No.

MS. CRUMB: I just want us to work well together.

ANN: Okay. That's my goal.

MS. CRUMB: Our focus is to be our patients.

ANN: Absolutely.

MS. CRUMB: This isn't helpful -- us.

ANN: It's not. No. Because it takes away from what we should be doing, which is taking care of patients.

MS. CRUMB: Um-hum. Absolutely.

ANN: And this wasn't my choice.

MS. CRUMB: Is there any other expectations that you have, Joel --

JOEL: Just --

MS. CRUMB: -- working forward?

JOEL: Just the code of conduct.

ANN: Absolutely.

JOEL: And the professional demeanor. Me and you, you know, we seem to be at odds; we need to be seen as a cohesive team.

ANN: Okay.

JOEL: We do.

ANN: I don't have an issue with that.

JOEL: Okay.

ANN: But it's a two-way street.

JOEL: I just said that. So.

MS. CRUMB: Okay. So, why don't we look at the schedule, see how far ahead we can --

JOEL: I'll bring it down.

MS. CRUMB: -- look ahead.

Do you know of any offhand?

ANN: I don't know of any offhand, but I'm sure there are. There's multiple people on vacation and --

MS. CRUMB: Where are (indiscernible) this morning?

JOEL: We finally got our (indiscernible) early, early this morning.

MS. CRUMB: Yeah.

JOEL: (Indiscernible).

MS. CRUMB: Sherry (ph) (indiscernible) be around five.

JOEL: (Indiscernible).

MS. CRUMB: And that's why they couldn't do the generator test.

JOEL: Yeah, because of that patient (indiscernible), three and a half hour surgery.

MS. CRUMB: Okay. What's Ann up today?

ANN: I'm off the schedule. I've been crossed off, so -- and Crystal's in charge, so.

MS. CRUMB: Well, we knew that we were going to assign someone else to be in charge so we can have a conversation.

ANN: Right.

MS. CRUMB: And then going forward, as what we're going to do next --

ANN: My next day would be Friday then.

JOEL: Okay.

ANN: Friday, Saturday.

MS. CRUMB: So you don't need her today?

ANN: Well, I'm crossed off.

JOEL: (Indiscernible).

MS. CRUMB: All right. Why don't you go check with Crystal, we'll see (indiscernible) need to go for testing or --

ANN: Okay. All right. I'm just going to run to the bathroom.

(Whereupon, the above audio was concluded.)

CERTIFICATION

I, Mary E. Dring, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings on Suspension Meeting 7-1, Track 01, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded.

NJ AOC AD/T 582

4/18/2016

Signature/Date

Burke Court Reporting, LLC

Litigation

From: noreply@cayugamed.org
Sent: Thursday, April 28, 2016 12:22 PM
To: Litigation
Subject: Fwd: Union material

-----Original Message-----

From: <LCrumb@CAYUGAMED.org>

Sent: Sat, 20 Jun 2015 08:57:31 +0000

To: <~HouseSupervisors@CAYUGAMED.org>

Cc: <APedersen@CAYUGAMED.org>, <RClink@CAYUGAMED.org>

Subject: Union material

When you make your rounds please remove Union material at time clocks and break rooms or anywhere else you find them . Security has been instructed to do the same. They have the right to put up and we have the right to take down.

Sent from my iPhone

GC Exhibit 22

Litigation

From: noreply@cayugamed.org
Sent: Thursday, April 28, 2016 12:24 PM
To: Litigation
Subject: Fwd: RE: flyers at timeclocks

From: <kames@CAYUGAMED.org>
Sent: Mon, 12 Oct 2015 13:04:45 +0000
To: <APedersen@CAYUGAMED.org>
Subject: RE: flyers at timeclocks

I will bring it right down

From: Pedersen, Alan
Sent: Monday, October 12, 2015 9:05 AM
To: Ames, Karen
Subject: RE: flyers at timeclocks

Karen, I don't could you get me a copy. Thanks, Alan

From: Ames, Karen
Sent: Monday, October 12, 2015 9:04 AM
To: Pedersen, Alan
Subject: RE: flyers at timeclocks

Do you have a copy of the flyer? It is SEIU stuff on one side and then scott on the other with info.

From: Pedersen, Alan
Sent: Monday, October 12, 2015 9:04 AM
To: Ames, Karen
Subject: RE: flyers at timeclocks

Thanks Karen.

From: Ames, Karen
Sent: Monday, October 12, 2015 8:40 AM
To: ^SLT
Subject: flyers at timeclocks

You probably already know but just in case there are SEIU newsletters posted at timeclocks. Polly grabbed what she saw, I will check other timeclocks.

Karen A Ames, RRT, MA
Six Sigma Black Belt
Chief Patient Safety Officer & Director of Quality and Patient Safety
Cayuga Medical Center
607-274-4436

GC Exhibit 23

Litigation

From: noreply@cayugamed.org
Sent: Thursday, April 28, 2016 12:22 PM
To: Litigation
Subject: Fwd: Re: walk through

From: <LCrumb@CAYUGAMED.org>
Sent: Sat, 20 Jun 2015 08:43:51 +0000
To: <DDiBartolo@CAYUGAMED.org>
Cc: <JRudd@CAYUGAMED.org>, <APedersen@CAYUGAMED.org>
Subject: Re: walk through

They have the right to put up and we have the right to take down
l

Sent from my iPhone

On Jun 20, 2015, at 2:35 AM, DiBartolo, Debra <DDiBartolo@CAYUGAMED.org> wrote:

> Walked through ed 3 times took down union info all 3 times in break room----with one of the notes saying "It is illegal to remove union information from non-patient care areas" I am seeking your further guidance.
>
> Also picked up a magazine on nurses station desk with union postings in it-----Deb

GC Exhibit 24

MEETING WITH LINDA CRUMB 7-8 SUSPENSION AND QA

03-CA-156375

Cayuga Medical Center

AUDIO RECORDING

Transcribed for the

National Labor Relations Board

Transcript 2 of 4

RECEIVED
2016 APR 13
BUFFALO, NY
NLRB

By: Mary E. Dring

Burke Court Reporting, LLC

GC 25B
Exh. No: ____ Received ✓ Rejected ____
Case No.: 03-CA 156375
Case Name: CAYUGA MEDICAL
No. Pgs: 13 Date: 5/2/16 Rep.: R.A.

GC Exhibit 25b

1 TRANSCRIPTION OF AUDIO PROVIDED

2 MS. CRUMB: Morning. Okay, so I didn't have a
3 letter ready for you --
4 ANN: Okay --
5 MS. CRUMB: -- because I wasn't here Friday
6 after our conversation. So I was curious as to why you
7 felt that your suspension should be -- Lifted
8 ANN: Because it was -- in the meeting that we
9 had with Joel last Wednesday, you said that it was a
10 miscommunication. So to suspend somebody on a
11 miscommunication from something you heard from somebody
12 who wasn't even in my unit.
13 MS. CRUMB: I don't think I said exactly that.
14 I believe I said that there was more like a disconnect
15 between --
16 ANN: No, it was "miscommunication" is the word
17 you used.
18 MS. CRUMB: I think that the issues that we
19 talked about were not only the issue of finding staffing
20 and the fact that you stated that you had made phone calls
21 and that --
22 ANN: Um-hum
23 MS. CRUMB: -- indeed we -- you admitted to
24 three different people that you had not made phone calls.
25 I made phone calls. And people will tell you I made phone

Anne! I did not admit to
Three different people that
I had not made phone calls

calls. They will tell you that I called them. Did I call every single person on the list? No.

MS. CRUMB: Okay. That's where may -- I may have said "miscommunication." That you did not make it clear that you had not made calls to everyone, because that's -- that's what they heard.

Now, but that's not the only thing that was concerning. Is that, you know, your behavior throughout the whole process. You know, you were confrontational. You were less than helpful in problem solving.

ANN: I don't feel that was the case at all. I brought up numerous times that we had staffing ~~holds~~ holes. I had made calls. I came in on my day off to make calls to make sure the next day was completely staffed.

MS. CRUMB: Um-hum.

ANN: So I don't know what more I can do. We put out that schedule. Joel approved it. He knew days ahead that we were in a crisis as far as staffing. He let five day people go on vacation at the same time. That's crazy. So there's nobody to call if they're not working.

MS. CRUMB: Um-hum.

ANN: You know, we've got Jenny Stir (ph), Christy Lijack (ph), Terry Ellis, Sara Ultice (ph) and Christy Monacelli (ph) all on vacation.

MS. CRUMB: Not helpful.

1 ANN: That is not helpful.
2 MS. CRUMB: Well, and I believe that your
3 approach and your less than professional conduct are more
4 the reason why that you were suspended. And --
5 ANN: Well, I disagree. I think I was very
6 professional about it. I brought it up multiple times
7 that we were going to have issues.
8 I talked to him that morning at bed meeting that
9 we had no staff, and he left for the day. Didn't tell
10 anybody he was leaving and went to a retreat and didn't
11 fix a thing. All weekend he didn't fix a single hole.
12 And that's one of the things we talked about in that
13 meeting last Wednesday.
14 MS. CRUMB: Team leader, um-hum.
15 ANN: There's nothing fixed. Tomorrow there's
16 no charge nurse and there's four nurses off.
17 MS. CRUMB: Okay.
18 ANN: Nothing's getting fixed. And letting five
19 people go on vacation is irresponsible.
20 MS. CRUMB: Okay. Well, I'm going to uphold the
21 suspension. I believe your behavior was inappropriate at
22 times, confrontational, and disrespectful.
23 ANN: Okay, I disagree.
24 MS. CRUMB: So -- and you can disagree. Going
25 forward, we looked at talking about upholding the code of

1 conduct, like we discussed it at the team leader meeting.
2 And that THAT we need to work together in partnership to be
3 positive, and problem solving, and making sure that the
4 communication flows appropriately.
5 ANN: And I have been doing that.
6 MS. CRUMB: Okay. But I'm going to uphold the
7 suspension.
8 But the -- and that's your copy of the letter.
9 And I have a copy here if -- that you could sign that we
10 discussed that today.
11 ANN: I don't agree with it, so I'm not going to
12 sign it.
13 MS. CRUMB: You can sign that, "I do not agree
14 with this." That would be -- document that you have a
15 disagreement with it.
16 (Distortion)
17 ANN: I would like to --
18 MS. CRUMB: So you've read this?
19 ANN: Yeah.
20 MS. CRUMB: Okay. So tell me about Friday. How
21 you perceive that things were on Friday?
22 ANN: Okay, so on Friday, I came in. We were
23 short-staffed because no holes had been filled, although
24 people knew about it for days. We had no ward clerk,
25 because ours has left.

1 MS. CRUMB: Because Wanda's --
2 ANN: She's gone over to CHI.
3 MS. CRUMB: Yeah. And her replacement hasn't
4 started yet. Okay.
5 ANN: So we were more than over stressed at that
6 point.
7 We were getting admissions.
8 MS. CRUMB: Um-hum.
9 ANN: We had somebody that needed to go to
10 testing. Robert went and asked Joel if he would take his
11 patient to the test, because we were going to get
12 admissions.
13 MS. CRUMB: Robert asked Joel?
14 ANN: Um-hum. Joel said no. So I went and I
15 said to Joel, we need some help. I need somebody to take
16 this patient to hide-a-scan (ph). And he said no. And I
17 said, well, if it's a time issue, when could you do it?
18 And he said, I can't do it at all.
19 MS. CRUMB: Okay.
20 ANN: I said, we really need some help. I said,
21 we're going to get admissions. I have no ward clerk. He
22 said, have the nurse enter all the orders. Well, there's
23 eight pages of orders and she had two patients. That is
24 not a feasible --
25 MS. CRUMB: Those were admission orders --

1 ANN: -- things for her to do.
2 Yeah. Yeah. It's not something she could do.
3 She was already drowning with the patient that she had
4 that was intubated. And she was getting an overdose.
5 So at that point, I said, well, if you can't
6 take the patient I need to take the patient because Robert
7 had another one on multiple drips that was intubated, and
8 he couldn't leave that patient.
9 MS. CRUMB: Okay.
10 ANN: So, I said, can you at least get me a ward
11 clerk so somebody can be up here entering orders, because
12 Anita can't do it.
13 So we were in the back hallway, he went to
14 Sharon's desk. I was standing in the doorway to the
15 kitchen.
16 MS. CRUMB: Okay.
17 ANN: And he called the house supervisor and
18 asked if she could send over a ward clerk.
19 MS. CRUMB: Okay.
20 ANN: At that point, he said to me, you don't
21 have to stand there. And I said, I want to know what's
22 going on before I leave for hide-a-scan. I need to know
23 so I can tell Anita and Robert who's responsible for what
24 and who's going to be doing what job.
25 MS. CRUMB: Okay.

ANN: So I took the patient down to hide-a-scan. They were only able to do a portion of the scan. And the patient then had to go back down about two hours later.

Two hours later we were in the same boat, getting admissions with orders and no ward clerk again.

MS. CRUMB: Okay. So had a ward clerk come the first time?

ANN: To enter the first orders, the first set, yeah.

MS. CRUMB: Oh, came and did that and then left?

ANN: Right.

MS. CRUMB: Okay.

ANN: Because she was from Short Stay. She had to be somewhere else.

So I went to him again, and I asked him if he could please help us with taking this patient down to testing. And again he said no. And I said, is it a time issue? Can we do something at a different time? And he said, no, I can't take the patient.

From what I understand, he has helped out on the floors before, and I don't understand why he was not willing to help us.

Later that day, I opened my email, I saw the QA. I went to the doorway of his office.

MS. CRUMB: Yeah, that's where I want --

ANN: And I asked him, can we please talk about this? And he said, absolutely not. Get out of my office or I'll have you removed by security. And you can talk to Dr. Hannon about that because he was right there when it happened.

MS. CRUMB: He was?

ANN: Um-hum. I asked Joel to please have administration come upstairs. He did not. He left. He met Tony -- downstairs to get coffee, to discuss the issue, and left. So I called Tony and asked him to come up.

MS. CRUMB: So you asked for the administrator on call --

ANN: Yeah.

MS. CRUMB: -- to come?

ANN: Um-hum. And he did not contact him for us. He left the building. But talked to Tony before he left.

MS. CRUMB: And you know that because?

ANN: Because Robert was done -- when it happened.

MS. CRUMB: Oh, okay. So then you called Tony.

ANN: Um-hum.

MS. CRUMB: And he came up?

ANN: And he came up, and I explained the

1 situation. And his response was that I'm picking on Joel.
2 MS. CRUMB: Okay.
3 ANN: Which was not the case. I did not enter a
4 QA, Joel did. Joel did nothing to help us the entire day.
5 Did nothing to get staffing. Helped us with no patient
6 care, even when asked to help.
7 MS. CRUMB: Okay.
8 ANN: And according to the meeting that we had
9 last Wednesday, we were supposed to work together as a
10 team. That's not being a team.
11 MS. CRUMB: Um-hum.
12 ANN: That is not being helpful at all. If he
13 didn't want to take the patient, he could have entered
14 orders. He could have watched Anita's patients or
15 Robert's patients so they could have gone.
16 MS. CRUMB: So did you block the doorway to his
17 office?
18 ANN: Did I block the doorway to his office?
19 MS. CRUMB: So that he couldn't get out of the
20 office?
21 ANN: No. And Dr. Hannon was right there, and
22 I'm sure if you ask him he'll tell you exactly what
23 happened and how nasty Joel was to me.
24 MS. CRUMB: He was in his office?
25 ANN: Dr. Hannon? Yeah.

MS. CRUMB: Okay. I just want to know proximity wise.

(Distortion.)

MS. CRUMB: All right, I have a little bit more. A few more people to call. I'm going to call everybody that was on shift that day.

ANN: I hope you do, so that would be Anita, Robert --

MS. CRUMB: Yeah, I got the list from the -- software. I contacted quite of a few of them, but not all of them. And I'll try to get a hold of Dr. Hannon. I don't believe he's here this week.

ANN: No. But you can call him on his phone.

MS. CRUMB: Yeah.

ANN: He'll answer his phone.

MS. CRUMB: Yeah.

ANN: He may even be in town.

MS. CRUMB: All right. There is one thing that is -- and speaking of Dr. Hannon, that -- that was that after our discussion on Friday and you were told to go report off and go home, you went directly to Dr. Hannon's office.

ANN: Um-hum. I'm allowed to talk to anybody in the building.

MS. CRUMB: You're allowed to talk to them. But my

1 expectation was that you would directly go report off and
2 then leave.
3 ANN: Well, you didn't voice that.
4 MS. CRUMB: I didn't think I had to.
5 ANN: Well, if you don't say it I don't know it.
6 MS. CRUMB: And I think judgment wise it would
7 have been better for you to report off first.
8 ANN: That's your opinion.
9 MS. CRUMB: Yeah. It is.
10 ANN: Okay.
11 MS. CRUMB: All right, so I'll call you later
12 and maybe we can meet up later if I get all this
13 investigation done. So that way --
14 ANN: Sounds like a plan.
15 MS. CRUMB: -- we can review?
16 ANN: Absolutely.
17 MS. CRUMB: All right. I'm here till 7.
18 ANN: Till 7.
19 MS. CRUMB: Thank you.
20 ANN: You're welcome.
21 (Whereupon, the above audio was concluded.)
22
23
24
25

CERTIFICATION

I, Mary E. Dring, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings on Meeting with Linda Crumb 7-8 Suspension and QA, Track 01, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded.

NJ AOC AD/T 582

4/18/2016

Signature/Date

Burke Court Reporting, LLC

11/4/15

G.C. EXHIBIT

NEW RECORDING 7-10 QA MEETING FINAL WITH LINDA CRUMB

03-CA-156375

Cayuga Medical Center

AUDIO RECORDING

Transcribed for the

National Labor Relations Board

Transcript 3 of 4

RECEIVED
NLRB
2010 OCT 19 AM 10 05
BUFFALO, NY

By: Mary E. Dring

Burke Court Reporting, LLC

Exh. No: GC27B Received ✓ Rejected
Case No.: 03-CA-156375
Case Name: CAYUGA MEDICAL CENTER
No. Pgs: 9 Date: 5/2/16 Rep.: BB

GC Exhibit 27b

TRANSCRIPTION OF AUDIO PROVIDED

MS. CRUMB: So I interviewed every staff on -- that was on that day.

ANN: Okay.

MS. CRUMB: And Dr. Hannon.

ANN: Um-hum.

MS. CRUMB: And the eight staff members that I talked to, only one witnessed and two knew anything about it because they had heard it from you. And Dr. Hannon heard you say, can we talk about this? And he said, you're harassing me.

So it's more of a he said/she said --

ANN: Um-hum.

MS. CRUMB: -- sort of situation. I think that after we talked the other day, we talked about the code of conduct.

ANN: Um-hum.

MS. CRUMB: And I think that I'm going to give you a verbal warning, that I know -- the code of conduct -- happened.

ANN: I have been following it.

MS. CRUMB: People find you to be confrontational and disrespectful.

ANN: I don't believe that.

MS. CRUMB: Okay. But I do have a copy. You

1 already have a copy of the code of conduct? We talked
2 about it at the team leader's meeting.
3 ANN: It's posted all over.
4 MS. CRUMB: Okay. All right. So this is what
5 I've written up as far as our conversation today.
6 ANN: Okay.
7 MS. CRUMB: And I assume that you don't want to
8 sign that, you didn't sign it the other day, so I'll just
9 document that you refused to sign.
10 I know -- I have -- you know, Ann, I have
11 confidence that you can follow the code of conduct.
12 ANN: I do follow it.
13 MS. CRUMB: Well, maybe we need to work on why
14 others don't feel that --
15 ANN: I think we need to look at who the others
16 are that feel I don't.
17 MS. CRUMB: Okay. That's fair.
18 ANN: Because if you asked the people that I
19 work with directly, my peers, they will tell you I do.
20 MS. CRUMB: Okay. So if I have any further
21 complaints, then I will do a more thorough investigation
22 as far as, with your permission, talking with other
23 people. Your peers.
24 ANN: Sure.
25 MS. CRUMB: Okay?

ANN: Um-hum.

MS. CRUMB: But I don't anticipate that I'm ever going to hear from them again.

ANN: I hope not.

MS. CRUMB: I don't think so.

ANN: I hope not.

MS. CRUMB: And now, I have to have your help with something. You have -- we're working on it -- about it now, but we have an offer out to this person who's already working here in the ED, what's her name? Hamilton.

ANN: Oh.

MS. CRUMB: Angela Hamilton. To sign on with the ICU for days.

ANN: Okay.

MS. CRUMB: And she might be available starting Sunday.

ANN: Okay.

MS. CRUMB: So we're -- Lisa Walters is working with her fast staff (ph) to try to get confirmation.

ANN: Okay.

MS. CRUMB: Once we get confirmation, then I would like your help in getting her setup with a schedule.

ANN: That's actually Sharon does that because she organizes all the things with the med tests and --

MS. CRUMB: She's already had it all. She would just be transferring --

ANN: Oh.

MS. CRUMB: -- from the ED --

ANN: Oh.

MS. CRUMB: -- to ICU.

ANN: Oh, okay. So would she just need like a couple days with a nurse?

MS. CRUMB: She wouldn't need anything. She would just need a schedule.

Now, if you want to put her one day with somebody because you don't know her.

ANN: Yeah, I think that would be more fair because she doesn't know where anything is.

MS. CRUMB: If you don't -- if you don't know her and she hasn't come up --

ANN: She has ICU experience and --

MS. CRUMB: Um-hum.

ANN: Okay. Yeah, I think at least one day with somebody so that --

MS. CRUMB: Okay.

ANN: -- she can see how everything's --

MS. CRUMB: Whatever you think's fair, Ann.

ANN: Yeah. I don't like to throw anybody right into it.

MS. CRUMB: Okay.

ANN: Yeah. But yeah, we can do that.

MS. CRUMB: We do it only when people have been here for a while. So --

ANN: Yeah.

MS. CRUMB: Yeah, not when they're brand new to us.

And if we can't confirm her, then I have a few other résumés from -- a couple ~~from~~ from Lisa. And Lisa's going to send me one or two on -- she's getting them from another agency, Night Travelers (ph) --

ANN: Okay.

MS. CRUMB: And so --

ANN: Yeah, because Joseph is gone now.

MS. CRUMB: Yes. So if I don't get them until later is Wendy or --

ANN: Jen Cole tonight.

MS. CRUMB: Jen tonight. So maybe then she could make some phone calls, because me interviewing isn't appropriate. They're going to be working with you guys.

ANN: Right.

MS. CRUMB: And you know what you need to ask --

ANN: Right.

MS. CRUMB: -- a ICU nurse. And I would appreciate if you guys could help me with that.

ANN: Yeah, I don't see why we couldn't.

MS. CRUMB: Yeah. And then you'll get a little kind of a flavor for who they are and --

ANN: Yeah. I mean, most of the travelers we had have been great, so I can't complain.

MS. CRUMB: Um-hum. Yeah. I -- this last round we -- they've all been good in -- on all the floors. We've had other ~~expenses~~ experiences that haven't been so good.

ANN: Yeah. Well, Renee we had before and she's great. So -- and Joseph was great. So --

MS. CRUMB: Um-hum.

ANN: Yeah.

MS. CRUMB: Is there anything I can do for you?

ANN: I don't think so.

MS. CRUMB: Okay.

ANN: No. Alrighty.

MS. CRUMB: You're welcome to have a copy if you want.

ANN: Sure.

MS. CRUMB: And I also (inaudible) -- I got to get Christy's --

ANN: She needs it, yeah. Desperately.

MS. CRUMB: Yeah. (Distortion.)

ANN: Oh, well, she can't today because she's working, but --

MS. CRUMB: (Indiscernible).

ANN: I only have four nurses this afternoon, including myself. So no.

MS. CRUMB: Like at 3:00, she can go down to the bank before 3 if it's -- you know, I mean, if her -- if her bank's downtown?

ANN: Yeah, I don't know which one it is. If it's before 3 I might be able to do something for her.

MS. CRUMB: Okay. I'll get (indiscernible).

ANN: You're welcome.

(Whereupon, the above audio was concluded.)

CERTIFICATION

I, Mary E. Dring, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings on New Recording 7-10 QA Meeting Final with Linda Crumb, Track 01, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded.

NJ AOC AD/T 582

4/18/2016

Signature/Date

Burke Court Reporting, LLC

PULLED FROM CHARGE AND TEAM LEADER

03-CA-156375

Cayuga Medical Center

AUDIO RECORDING

Transcribed for the

National Labor Relations Board

Transcript 4 of 4

2015 FEB 19 AM 9:43
BUFFALO, NY
NLRB

By: Mary E. Dring

Burke Court Reporting, LLC

Exh. No: GC28B Received ✓ Rejected ____
Case No.: 03-CA-156375
Case: CAYUGA MEDICAL
No. Pgs. 10 Date: 5/12/16 Rep.: A.B

GC Exhibit 281

TRANSCRIPTION OF AUDIO PROVIDED

UNIDENTIFIED FEMALE SPEAKER: We haven't met, I don't think.

MS. CRUMB: Well, when -- I think Linda took you on a tour around --

UNIDENTIFIED SPEAKER: Oh, okay.

MS. CRUMB: -- I met with you very briefly.

UNIDENTIFIED SPEAKER: Very briefly, okay. That's what it was. Yeah.

SANDRA: And so you want to --

ANN: Well, can I just start by saying that I requested to have you here because I didn't feel comfortable.

SANDRA: And let me second that by saying that whatever is said in this room, please keep it confidential.

UNIDENTIFIED SPEAKER: Oh, absolutely.

ANN: I don't have any place where I --

MS. CRUMB: Well, you came back from vacation on Friday and you met Sandra.

ANN: Um-hum.

MS. CRUMB: And she has some concerns that she would like to --

ANN: Well, I think we already went over that.

SANDRA: We went over the concerns. We did.

But based on the level of the concerns and the -- and from my standpoint the egregiousness of the continuation of that day, and how you stormed out of the room ending the conversation, when the conversation was totally appropriate.

THE WITNESS: I don't agree it was appropriate. You can't ask me questions about the union or my involvement.

SANDRA: I didn't ask you -- I didn't ask you ~~any questions~~ about your involvement. I didn't -- I didn't ask you any of -- I either -- you jumped to that conclusion and you didn't listen to what I said.

ANN: No, you specifically said --

SANDRA: And you weren't --

ANN: -- about the union, and that's when I ended the conversation.

SANDRA: At no -- at no point in time -- and we're not going to go around in that circle, but at no point in --

ANN: No, I'm just saying what was said.

SANDRA: -- at no point in time did I ask you about the union or question you about the union.

ANN: You brought up the union.

SANDRA: (Indiscernible).

ANN: I ~~dint~~ didn't say union, you said union, and

1 that's when I ended the conversation.
2 SANDRA: And so -- and this takes me to this
3 juncture. Based on the lack of professionalism that you
4 showed that day, and also based on the lack of -- the poor
5 job performance you did when I asked you about scheduling
6 and you had another nurse to come to you and point out
7 that there was an issue, that you weren't even willing to
8 follow-up and to ask specifically, because you directed
9 them back to me, and I specifically had to come to you as
10 a team leader to ask you to call staff --
11 ANN: That had already been done. Nobody was
12 coming. I informed you of that.
13 SANDRA: That had not been done.
14 ANN: It had been done.
15 SANDRA: And you came to me later and you showed
16 me the sheet where you done them, because we had that
17 conversation.
18 ANN: But it had also been done the day before.
19 SANDRA: But this is a new day.
20 ANN: But it was for the same day.
21 SANDRA: This is a new day.
22 ANN: And the same people were called and the
23 no's were all exactly the same.
24 SANDRA: So what we're going to do at this point
25 is we're going to step you down out of the team leader

position into a staff position.

ANN: Okay.

SANDRA: Okay.

ANN: I know this is complete retaliation and bullying. That's what this is. It's evident.

SANDRA: It is not. It is not. But you know, there is some history there with the behaviors that you presented to me, not even knowing me, you flipped me off.

ANN: I never, ever did that.

SANDRA: Yeah, you did. You did.

ANN: That is a perception, and I did not.

SANDRA: So just having met me as your new director that morning, it was not -- it was not -- it wasn't customer service friendly at all. Your first interaction with me was not at all.

And then to, when I asked you -- I even didn't even ask you, I said, hey, I'm going to go to the bed flow meeting with you, I'm going with you. You left without me. Didn't even come to see whether I was ready, not ready. 8:30 I walk on the unit, you were already gone.

ANN: That meeting is at 8:30. I had to go. I was busy that day. There was a lot going on.

SANDRA: And then your conversation with the statement of -- that you're not a baby; I don't have to hold your hand, you're not a baby. You know what bed flow

is. That's not what I communicated to you. I told you I was going with you. And being new, only three days here --

ANN: You knew where it was. You had been escorted there previously.

SANDRA: And so --

ANN: You knew what time it was. I can't track you down. I have things going on.

SANDRA: That's irrelevant when I was sitting in the office. I asked you to track me down.

ANN: You weren't in your office --

SANDRA: A courtesy call --

ANN: -- at 25 after.

SANDRA: So you knew where I was, but you still didn't come --

ANN: I didn't know where you were, but you weren't in your office at 25 after. And I wasn't going to go searching.

SANDRA: Okay. So what I'm going to do, because we're going around in a circle of the conversation that we've already had, so we're not going to continue going around in a circle, I'm just going to let you know that effective immediately we're going to step you down out of the team leader position and back into a staff nurse.

ANN: That's fine.

SANDRA: Okay.

ANN: Okay. And I know exactly what this is about, so that's all that has to be said.

SANDRA: Okay. Well, I'm sorry that's your perception, but it's not retaliation.

ANN: Well, I find that hard to believe when you're the one at the first meeting who brought up union, and now this is happening. So that's all I need to know.

SANDRA: Okay. All right.

(Distortion.)

ANN: Okay, that's fine.

MS. CRUMB: (Indiscernible) charge, as well.

ANN: That's fine.

MS. CRUMB: Because that's part of a charge nurse's responsibility --

ANN: Okay.

MS. CRUMB: -- is to follow through on staffing changes.

ANN: Not a problem.

(Distortion)

SANDRA: (indiscernible) before you go.

ANN: Um-hum.

SANDRA: It is not appropriate at any time, whether you feel like the conversation is not right, you don't just jump and storm out of a room. You don't.

ANN: I gave you two instances to stop talking about the union. I told you couldn't talk to me about it.

SANDRA: That is not true.

ANN: And you asked another question and it was done. I left the room.

SANDRA: That's not true. Because I never asked you --

ANN: It is the truth.

SANDRA: -- a question. But regardless of what the conversation is, you can't just --

ANN: No, it is not regardless, because you cannot ask me about that.

SANDRA: -- storm out of a room, okay? You have to properly exit the room.

ANN: Not when you're doing something that is illegal.

SANDRA: And that is not illegal. And I --

ANN: It is illegal to ask me about that.

SANDRA: -- so I just want -- because I know you're recording, so I want to be clear in me saying, and I want you to hear me clearly with us having a witness in the room then and us having a witness in the room now, at no point in time did I ask you about the union, okay?

ANN: You did. But that's okay.

SANDRA: All right, thank you.

ANN: Yeah.

(Whereupon, the above audio was concluded.)

CERTIFICATION

I, Mary E. Dring, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings on Pulled From Charge and Team Leader, Track 01, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded.

NJ AOC AD/T 582

4/18/2016

Signature/Date

Burke Court Reporting, LLC

Cayuga Medical Center at Ithaca
Position Description Performance Evaluation

Registered Nurse, ICCU

Evaluation Cover Page and Summary

SECTION A. EMPLOYEE & SALARY INFORMATION

Employee Name:	Anne Marshall		2008

☐ Annual Performance Evaluation Rating Summary - To Be Completed at Conclusion of Evaluation

		Points Available	Points Earned		Weight	Total
Section C	Service Excellence Standards	5	4.5	x	40%	2.25
Section D	Position Specific Standards	5	4.42	x	40%	2.21
Section F	Annual Goals	5		x	20%	
	Total Points				Total	4.46

X Introductory Performance Evaluation Rating Summary - To Be Completed at Conclusion of Evaluation

		Points Available	Points Earned		Weight	Total
Section C	Service Excellence Standards	5	4.5	x	50%	
Section D	Position Specific Standards	5	4.42	x	50%	
	Total Points				Total	4.46

Preliminary Performance Rating Score from Above _____

Personal Accountability Adjustment _____

Final Performance Evaluation Score 4.46
Final Performance Rating using score from above right

_____	Does Not Perform as Expected	1.0 - 1.5 Points
_____	Inconsistently Meets Expectations	1.6 - 2.5 Points
_____	Regularly Performs as Expected	2.6 - 3.5 Points
✓	Frequently Performs Beyond Expectations	3.6 - 4.5 Points
_____	Consistently Exceeds Expectations	4.6 - 5.0 Points

SIGNATURES: (Evaluation will be returned if signatures are not present)

Anne Marshall — Employee — Date 5/27/08

*Employee's signature indicates that he/she has reviewed the completed evaluation but does not imply agreement.

Supervisor — Date 5/27/08

Department Director — Date 5/27/08

Susan Rotelli — Vice President — Date 5/28/08

G.C. Exhibit

Section B: POSITION PURPOSE AND REQUIREMENTS

Position Purpose

The Registered Professional Nurse is responsible for the provision of direct patient care to a designated group of patients. These responsibilities will include the assessment, planning, implementation and evaluation of the patients' physical, psychological, emotional, educational and spiritual needs.

Reporting Relationships

This position reports to the Director of the ICCU. May function as a designated charge nurse. Supervision may be exercised over Licensed Practical Nurses, Clinical Technicians, Hospital Aides, and Ward Clerks.

Employment Criteria

1. Possession of a current NYS Registered Nursing License
2. Strong interpersonal, oral and written communication skills
3. One year medical/surgical experience
4. Ability to move or lift patients with assistance
5. One year RN experience in an acute care facility
6. Current CPR certification
7. ACLS certification within one year

Section C: MEDICAL CENTER SERVICE EXCELLENCE STANDARDS

I understand that Cayuga Medical Center is committed to providing the highest level of healthcare services to our customers, and takes pride in having staff and volunteers who will go out of their way to achieve this mission. I also understand that our hospital's success depends on my effort to helping earn our customers confidence and trust.

To meet the expectations for Service Excellence, the employee should exhibit performance in this section that is applicable to his/her position. The employee will receive 1,2,3,4 or 5 points for each Service Excellence Standard according to the following criteria, with the score for each section listed to left of each category.

1- Does not meet expectations
2- Inconsistently meets expectations
3 - Regularly meets expectations
4 - Consistently meets expectations and goes beyond what is expected when appropriate
5 - Consistently goes beyond what is expected and demonstrates the highest level of service possible. Serves as a role model for others

I. Standard 1 Treat the people we serve as guests

__5_ Welcome all patients, visitors and staff in a warm friendly manner.

__5_ Introduce yourself by name, and when appropriate position

__5_ Address people by name whenever possible

__5_ Escort people to their destinations

__5_ Rude or inappropriate behavior is never acceptable

Comment: Is very welcoming to visitors and families and is always accommodating to them. She is often mentioned by families during rounds.

II. Standard 2 Respect the privacy and confidentiality of patients, visitors and staff

__5_ Conduct phone and other discussions with discretion

__5_ Stopping gossip begins with you

__5_ Do not discuss patient or hospital business in elevators or other public areas.

__5_ Be sensitive to issues of private space and personal dignity

__4_ Always knock before entering a room and introduce yourself when meeting someone for the first time

__4_ Close curtains and doors, provide robes and blankets as appropriate

__5_ Take all steps to protect patient confidentiality

Comments Demonstrates the highest level of confidentiality and privacy with patients and families. Does not gossip or speak negatively of others

III. Standard 3 Present a professional image.

__5_ Wear your name badge at all times

__5_ Make sure your appearance is appropriate for your role

__5_ Practice good personal hygiene and grooming. Please avoid cologne, perfume or aftershave

__5_ Communicate clearly and positively with co-workers

__5_ Positively represent Cayuga Medical Center in the workplace and in our community

Comments An excellent representative for the medical center. Always presents a professional attitude with patients and the public. Is almost always smiling. ☺ Is very Pleasant to work with.

IV. Standard 4 Use the telephone professionally

__4_ Answer the phone promptly

__5_ Introduce yourself and your department, offer assistance if appropriate

__5_ Use a pleasant tone of voice

__4_ Be a good listener and follow through on callers requests

__5_ Establish and adhere to a call transfer policy

__4_ Eliminate overhead pages whenever possible

Comments: Very respectful and professional on the phone.

V. Standard 5 Listen to patients, visitors and staff, then act promptly to address concerns

__4_ Stop to pay attention to the person in front of you

__4_ Take time to listen and explain next steps

__4_ Validate what you've heard by repeating back the message

__4_ Respond to call lights promptly

__4_ Never, never argue

Comments: Does a great job communicating with patients and visitors. Responds to call lights and patient needs promptly.

VI. Standard 6 Anticipate what services and information people need and take action to provide it

__5_ Ask people if you can help them

__4_ If you anticipate a delay take the time to explain the reason to the patient/family or staff

__4_ Communicate frequently

__4_ Encourage people to ask questions, explain you are there to help

__4_ Be sensitive to the cultural, emotional or spiritual needs of our guests

Comments: Does a great job of anticipating the needs of others, and is always willing to help out co-workers. Never seems to be flustered or too busy to address patient needs

VII Standard 7 Maintain a safe and clean environment for our patients, visitors and staff

__4_ Keep hallways clear

__4_ Understand safety codes such as code pink, grey, etc

__4_ Know your role in an emergency

__5_ Keep your work area clean and safe and free of clutter

__4_ Use equipment properly, report problems promptly

__5_ Ask for help when lifting or moving patients

__4_ Report unsafe items promptly

Comments: Highly aware of safety concerns. Good in emergent situations. Keeps a neat and well maintained work area.

VIII. Standard 8 Be a positive part of our service team

__3_ Use "Values in Action" to recognize those who exemplify excellent customer service

__5_ Take pride in what we do

__5_ Remember that the customer is #1

__5_ Portray a positive attitude

__5_ Never use the term, it's not my job

Comments: ___Portrays a positive attitude and takes great pride in her work and the work of her shift. Never above doing any job to meet patient needs. Always positive!

Medical Center Performance Standards Summary

Total the ratings for each standard in this Section	204
Divide the number above by 45. This is the Section B Total.	– 4.5

Note: If any score for any component for this section is at a 1 or below, the overall score for this section will be limited to a maximum of 3.0. Any component receiving a score of 1 will require a written plan of correction.

Section D: POSITION SPECIFIC PERFORMANCE STANDARDS

AGE SPECIFIC CRITERIA: If the employee has clinical contact with patients, circle yes or no to indicate whether the employee has exhibited clinical proficiency with the age groups served. Be sure that only the age groups served in the course of performing the job are checked. Lack of demonstration of proficiency may be due to not having the opportunity to work with patients in the age group. If "No" is checked, an action plan should be written in Section G.

Age of Patients Served

Neonate Yes___ No___ N/A___	Adolescent Yes _X_ No___ N/A___	Geriatric Yes_X_ No___ N/A___
Pediatric Yes_X_ No___ N/A___	Adult Yes_X_ No___ N/A___	Does Not Have Patient Contact

POSITION SPECIFIC PERFORMANCE STANDARDS

To meet the expectations for Position Specific Performance Standards, the employee will demonstrate Standards that are applicable to his/her position. The employee will receive 1,2,3,4 or 5 points for each Performance Standard according to the following criteria, with the score for each section placed in the box to the left of each category.

1 - Does not meet expectations
2 - Inconsistently meets expectations
3 - Regularly meets expectations
4 - Consistently meets expectations and goes beyond what is expected when appropriate
5 - Consistently goes beyond what is expected and demonstrates the highest level of service possible. Serves as a role model for others

Score

4 **I. Observation/Data Collection**

- Demonstrates accuracy in data collection
  - Vital signs
  - Weight
  - Glucometer/Finger sticks
  - Laboratory specimens
  - EKG's
  - Cardiac monitoring
- Assures patient's knowledge of Advance Directives and patient rights and documentation support

Comments: Demonstrates excellent data collection and observation skills.and work is thorough. Generally well prepared for rounds.

4 **II. Documentation**

- Performs and documents a triage assessment upon patient arrival
- Documents pertinent pre-hospital care
- Assessment and documentation of social, psychosocial and spiritual needs are made
- Patient's chief complaint, subjective and objective assessment is documented
- Performs and documents immunization and lead screening per policy
- Fully documents care and response to care so as to give a full accounting of patient visit and discharge

Comments: Good documentation. Generally through and accurate.

5 **III. Evaluation/Planning**

- Plans and organizes self to meet patient and unit needs within shift
- Able to prioritize patient care
- Plans and provides immediate comfort needs
- Uses appropriate equipment and room for patient care (i.e., negative pressure room, psych room, monitored room, GYN room)
- Assures emergency equipment is readily available (i.e., crash cart, glucometer, etc.)
- Completes and documents necessary referrals (i.e. social work, health department, etc.)
- Establishes discharge teaching plan utilizing resources available to meet patient educational needs
- Knowledgeable of hospital disaster plan and role of Emergency Department RN

Comments: Work flow is well planned and completed in a timely manner. Things are left complete and in order for the next shift. Never appears to be overextended even when it is very busy

5 IV. **Implementation**

- Administers optimal patient care according to Emergency Department policies and procedures
- Prepares patient for MD visit
- Accurately follows through with MD orders in a timely manner
- Administers and documents medications timely and accurately according to hospital policy
- Reassesses and documents response to medications
- Reassesses patients on an ongoing basis during their Emergency Department stay and documents based on ED standard
- Maintains calm, therapeutic atmosphere while discussing all nursing care
- Implements and reinforces patient teaching within scope of practice
- Able to effectively monitor and intervene in the care of chemically impaired and emotionally unstable patients
- Performs effectively as member of ABC Alert Team

Comments: Gives high quality patient care. Patients are left in very good condition.

5 V. **Risk Management/Safety**

- Anticipates potential and actual environmental safety hazards and takes appropriate actions
- Demonstrates standard precautions and infection control techniques in daily patient care activities
- Equipment in need of repair is reported, tagged and placed out of use
- Consistently uses proper lifting techniques
- Follows restraint policy/procedures for patient observations and patient checks
- Consistently uses fall prevention techniques and equipment
- Completes quality assurance forms and follow up telephone calls

Comments: Highly aware of patient safety and potential risks within the unit

4 VI. **Leadership**

- Able to function as Charge Nurse
- Recognizes and assures appropriate staffing levels based on established standard
- Effectively supervises the triage process
- Able to assign and direct patient care appropriately based on education, experience and competency of staff members
- Able to handle difficult situations with diplomacy

Comments: Has shown good potential for leadership. Has shown good potential for charge responsibilities. Good teacher and role model

4 VII. **Information Management**

- Accurately uses the hospital information system to enter and retrieve data
- Demonstrates computer skills to enter all tests and procedures

Position Specific Performance Standards Summary

Total the categories rated in this Section	31
Divide the number above by categories rated. This is the Section D Total	4.42
Note: If any score for any component for this section is at a 1 or below, the overall score for this section will be limited to a maximum of 3.0. Any component receiving a score of 1 will require a written plan of correction.	

SECTION E: PERSONAL ACCOUNTABILITY EXPECTATIONS. Check "Yes" or "No". If "No" is checked for any of the statements, a plan of correction will be written in Section H.

__x__Yes____No	Follows laws and regulations applicable to the operations of department and organization
___x_Yes____No	Demonstrates a sense of right and wrong by exhibiting honest, ethical behavior
__x__Yes____No	Brings concerns forward to management, human resources or Compliance Officer
__x__Yes____No	Preserves confidentiality of patient and employee information "written or electronic" and observes patient rights
__x__Yes____No	Maintains all appropriate certifications and licenses appropriate for position
___x_Yes____No	Has completed minimum level of competency defined for the position
___x_Yes____No	Completes all required competencies/Mandatory Education by established deadline dates
___x_Yes____No	Meets the expectations of the attendance policy

If any item in the Personal Accountability Section is indicated as no, the overall evaluation score will be reduced by 1 rating level.

SECTION F: GOAL EVALUATION: This section will document and evaluate the performance on goals established Section F in the prior years evaluation. Performance on achieving the goal will be rated using the 1,2,3,4,5 scoring system.

	Rating	Weight	Score
1. _____			
_____	___ x	___%	___
2. _____			
_____	___ x	___%	___
3. _____			
_____	___ x	___%	___
4. _____			
_____	___ x	___%	___
5. _____			
_____	___ x	___%	___

Total for Section F ___

SECTION G: Annual GOALS: Each medical center employee will identify 3 goals for this year. One goal will be related to Service Excellence and one goal will be related to Position Specific responsibilities, and one goal will be focused on Personal Development. Total weigh of all 3 goals should be 100%

	Weight
1.Service Excellence___Recognize another employee 2 times monthly with thank you cards._	_33_%
_____	
2.Position Specific ___renew PALS certification prior to next eval_____	_33_%
_____	
3.Personal Development___Complete 8 education hours beyond required mandatories_	_34_%
_____	100%

SECTION H: PLAN OF CORRECTION, IF REQUIRED

No plan of correction required.

SECTION I: SUMMARY STATEMENT. This section is to be used to summarize strengths, contributions and developmental goals.

Anne is a valuable member of our department. She has shown what a positive impact one person can make in the ICU Anne demonstrates the highest level of professionalism and teamwork, and is always there for her co-workers. She always brings a smile and a positive attitude to the workplace and maintains this even during the toughest of shifts. Her work is thorough and of top notch quality.

Anne has been mentioned by patients and families for her outstanding care and positive attitude. She is positive role model for her peers and an ambassador of team work and positive attitude for our unit.

SECTION J: EMPLOYEE COMMENTS

Distribution: Original: Human Resources Copy: Employee Copy: Supervisor File

AEP
BB 1

Cayuga Medical Center at Ithaca
Position Description Performance Evaluation

Registered Nurse, ICCU

Evaluation Cover Page and Summary

SECTION A. EMPLOYEE & SALARY INFORMATION

Employee Name:	Anne Marshall		2009

[X] Annual Performance Evaluation Rating Summary - To Be Completed at Conclusion of Evaluation

		Points Available	Points Earned	Weight	Total
Section C	Service Excellence Standards	5	4.64_	x 40%	1.86_
Section D	Position Specific Standards	5	4.57_	x 40%	1.83
Section F	Annual Goals	5	4.67_	x 20%	0.93
	Total Points			Total	4.62

[ ] Introductory Performance Evaluation Rating Summary - To Be Completed at Conclusion of Evaluation

		Points Available	Points Earned	Weight	Total
Section C	Service Excellence Standards	5		x 50%	____
Section D	Position Specific Standards	5		x 50%	____
	Total Points			Total	

Preliminary Performance Rating Score from Above ____

Personal Accountability Adjustment ____

Final Performance Evaluation Score
Final Performance Rating using score from above right 4.62

____	Does Not Perform as Expected	1.0 - 1.5 Points
____	Inconsistently Meets Expectations	1.6 - 2.5 Points
____	Regularly Performs as Expected	2.6 - 3.5 Points
____	Frequently Performs Beyond Expectations	3.6 - 4.5 Points
X	Consistently Exceeds Expectations	4.6 - 5.0 Points

SIGNATURES: (Evaluation will be returned if signatures are not present)

Anne Marshall — Employee — Date 6/15/09

*Employee's signature indicates that he/she has reviewed the completed evaluation but does not imply agreement.

Supervisor — Date

Department Director — Date 6/15/09

Linda C. Chinnard — A Vice President — Date 6/22/09

GC Exhibit 29b

Section B: POSITION PURPOSE AND REQUIREMENTS

Position Purpose

The Registered Professional Nurse is responsible for the provision of direct patient care to a designated group of patients. These responsibilities will include the assessment, planning, implementation and evaluation of the patients' physical, psychological, emotional, educational and spiritual needs.

Reporting Relationships

This position reports to the Director of the ICCU. May function as a designated charge nurse. Supervision may be exercised over Licensed Practical Nurses, Clinical Technicians, Hospital Aides, and Ward Clerks.

Employment Criteria

1. Possession of a current NYS Registered Nursing License
2. Strong interpersonal, oral and written communication skills
3. One year medical/surgical experience
4. Ability to move or lift patients with assistance
5. One year RN experience in an acute care facility
6. Current CPR certification
7. ACLS certification within one year

Section C: MEDICAL CENTER SERVICE EXCELLENCE STANDARDS

I understand that Cayuga Medical Center is committed to providing the highest level of healthcare services to our customers, and takes pride in having staff and volunteers who will go out of their way to achieve this mission. I also understand that our hospital's success depends on my effort to helping earn our customers confidence and trust.

To meet the expectations for Service Excellence, the employee should exhibit performance in this section that is applicable to his/her position. The employee will receive 1,2,3,4 or 5 points for each Service Excellence Standard according to the following criteria, with the score for each section listed to left of each category.

1- Does not meet expectations
2- Inconsistently meets expectations
3 - Regularly meets expectations
4 - Consistently meets expectations and goes beyond what is expected when appropriate
5 - Consistently goes beyond what is expected and demonstrates the highest level of service possible. Serves as a role model for others

I. **Standard 1 Treat the people we serve as guests**

__5_ Welcome all patients, visitors and staff in a warm friendly manner.

__5_ Introduce yourself by name, and when appropriate position

__5_ Address people by name whenever possible

__5_ Escort people to their destinations

__5_ Rude or inappropriate behavior is never acceptable

Comment: Is very welcoming to visitors and families and is always accommodating to them. She is often mentioned by families during rounds.

II. Standard 2 Respect the privacy and confidentiality of patients, visitors and staff

__5_ Conduct phone and other discussions with discretion

__5_ Stopping gossip begins with you

__5_ Do not discuss patient or hospital business in elevators or other public areas.

__5_ Be sensitive to issues of private space and personal dignity

__4_ Always knock before entering a room and introduce yourself when meeting someone for the first time

__4_ Close curtains and doors, provide robes and blankets as appropriate

__5_ Take all steps to protect patient confidentiality

Comments Demonstrates the highest level of confidentiality and privacy with patients and families. Does not gossip or speak negatively of others

III. Standard 3 Present a professional image.

__5_ Wear your name badge at all times

__5_ Make sure your appearance is appropriate for your role

__5_ Practice good personal hygiene and grooming. Please avoid cologne, perfume or aftershave

__5_ Communicate clearly and positively with co-workers

__5_ Positively represent Cayuga Medical Center in the workplace and in our community

Comments An excellent representative for the medical center. Always presents a professional attitude with patients and the public. Is almost always smiling. ☺ Is very Pleasant to work with.

IV. Standard 4 Use the telephone professionally

__4_ Answer the phone promptly

__5_ Introduce yourself and your department, offer assistance if appropriate

__5_ Use a pleasant tone of voice

__4_ Be a good listener and follow through on callers requests

__5_ Establish and adhere to a call transfer policy

__4_ Eliminate overhead pages whenever possible

Comments: Very respectful and professional on the phone.

V. **Standard 5 Listen to patients, visitors and staff, then act promptly to address concerns**

__5_ Stop to pay attention to the person in front of you

__4_ Take time to listen and explain next steps

__4_ Validate what you've heard by repeating back the message

__4_ Respond to call lights promptly

__5_ Never, never argue

Comments: Communicates very well with patients and visitors. Is often mentioned by patients and families for her compassion, helpfulness and excellent clinical skills.

VI. **Standard 6 Anticipate what services and information people need and take action to provide it**

__5_ Ask people if you can help them

__4_ If you anticipate a delay take the time to explain the reason to the patient/family or staff

__4_ Communicate frequently

__4_ Encourage people to ask questions, explain you are there to help

__4_ Be sensitive to the cultural, emotional or spiritual needs of our guests

Comments: Does a great job of anticipating the needs of others, and is able to respond to unanticipated events

VII **Standard 7 Maintain a safe and clean environment for our patients, visitors and staff**

__4_ Keep hallways clear

__5_ Understand safety codes such as code pink, grey, etc

__5_ Know your role in an emergency

__5_ Keep your work area clean and safe and free of clutter

__4_ Use equipment properly, report problems promptly

__5_ Ask for help when lifting or moving patients

__4_ Report unsafe items promptly

Comments: Highly aware of safety concerns. Good in emergent situations. Keeps a neat and well maintained work area.

VIII. Standard 8 Be a positive part of our service team

__4_ Use "Values in Action" to recognize those who exemplify excellent customer service

__5_ Take pride in what we do

__5_ Remember that the customer is #1

__5_ Portray a positive attitude

__5_ Never use the term, it's not my job

Comments: ___Very outgoing and positive. Is a role model for positive attitudes.!

Medical Center Performance Standards Summary

Total the ratings for each standard in this Section	**209**
Divide the number above by 45. This is the Section B Total.	**4.64**

Note: If any score for any component for this section is at a 1 or below, the overall score for this section will be limited to a maximum of 3.0. Any component receiving a score of 1 will require a written plan of correction.

Section D: POSITION SPECIFIC PERFORMANCE STANDARDS

AGE SPECIFIC CRITERIA: If the employee has clinical contact with patients, circle yes or no to indicate whether the employee has exhibited clinical proficiency with the age groups served. Be sure that only the age groups served in the course of performing the job are checked. Lack of demonstration of proficiency may be due to not having the opportunity to work with patients in the age group. If "No" is checked, an action plan should be written in Section G.

Age of Patients Served

Neonate Yes___ No___ N/A___	Adolescent Yes _X_ No___ N/A___	Geriatric Yes_X_ No___N/A___
Pediatric Yes_X_ No___ N/A___	Adult Yes_X___ No___ N/A___	Does Not Have Patient Contact

POSITION SPECIFIC PERFORMANCE STANDARDS

To meet the expectations for Position Specific Performance Standards, the employee will demonstrate Standards that are applicable to his/her position. The employee will receive 1,2,3,4 or 5 points for each Performance Standard according to the following criteria, with the score for each section placed in the box to the left of each category.

1 - Does not meet expectations
2 - Inconsistently meets expectations
3 - Regularly meets expectations
4 - Consistently meets expectations and goes beyond what is expected when appropriate
5 - Consistently goes beyond what is expected and demonstrates the highest level of service possible. Serves as a role model for others

Score

5 **I. Observation/Data Collection**

- Demonstrates accuracy in data collection
  - Vital signs
  - Weight
  - Glucometer/Finger sticks
  - Laboratory specimens
  - EKG's
  - Cardiac monitoring
- Assures patient's knowledge of Advance Directives and patient rights and documentation support

Comments: Demonstrates excellent data collection and observation skills.and is able to use this information to formulate a plan for the patient. Generally well prepared for rounds.

4 **II. Documentation**

- Performs and documents a triage assessment upon patient arrival
- Documents pertinent pre-hospital care
- Assessment and documentation of social, psychosocial and spiritual needs are made
- Patient's chief complaint, subjective and objective assessment is documented
- Performs and documents immunization and lead screening per policy
- Fully documents care and response to care so as to give a full accounting of patient visit and discharge

Comments: Good documentation. Generally through and accurate.

5 **III. Evaluation/Planning**

- Plans and organizes self to meet patient and unit needs within shift
- Able to prioritize patient care
- Plans and provides immediate comfort needs
- Uses appropriate equipment and room for patient care (i.e., negative pressure room, psych room, monitored room, GYN room)
- Assures emergency equipment is readily available (i.e., crash cart, glucometer, etc.)
- Completes and documents necessary referrals (i.e. social work, health department, etc.)
- Establishes discharge teaching plan utilizing resources available to meet patient educational needs
- Knowledgeable of hospital disaster plan and role of Emergency Department RN

Comments: Work flow is well planned and accomplished in a timely manner. Very good about holding things together and maintaining organization even when things are hectic.

5 **IV. Implementation**

- Administers optimal patient care according to Emergency Department policies and procedures
- Prepares patient for MD visit
- Accurately follows through with MD orders in a timely manner
- Administers and documents medications timely and accurately according to hospital policy
- Reassesses and documents response to medications
- Reassesses patients on an ongoing basis during their Emergency Department stay and documents based on ED standard
- Maintains calm, therapeutic atmosphere while discussing all nursing care
- Implements and reinforces patient teaching within scope of practice
- Able to effectively monitor and intervene in the care of chemically impaired and emotionally unstable patients
- Performs effectively as member of ABC Alert Team

Comments: Gives excellent patient care. Patients and rooms are left in very good condition.

5 **V. Risk Management/Safety**

- Anticipates potential and actual environmental safety hazards and takes appropriate actions
- Demonstrates standard precautions and infection control techniques in daily patient care activities
- Equipment in need of repair is reported, tagged and placed out of use
- Consistently uses proper lifting techniques
- Follows restraint policy/procedures for patient observations and patient checks
- Consistently uses fall prevention techniques and equipment
- Completes quality assurance forms and follow up telephone calls

Comments: Highly aware of patient safety and potential risks within the unit

4 **VI. Leadership**

- Able to function as Charge Nurse
- Recognizes and assures appropriate staffing levels based on established standard
- Effectively supervises the triage process
- Able to assign and direct patient care appropriately based on education, experience and competency of staff members
- Able to handle difficult situations with diplomacy

Comments: Has shown good potential for leadership. Would like to see Anne assume some charge responsibilities on an occasional basis. Good clinical and professional role model for others

4 **VII. Information Management**

- Accurately uses the hospital information system to enter and retrieve data
- Demonstrates computer skills to enter all tests and procedures

Position Specific Performance Standards Summary

Total the categories rated in this Section	**32**
Divide the number above by categories rated. This is the Section D Total	4.57

Note: If any score for any component for this section is at a 1 or below, the overall score for this section will be limited to a maximum of 3.0. Any component receiving a score of 1 will require a written plan of correction.

SECTION E: PERSONAL ACCOUNTABILITY EXPECTATIONS. Check "Yes" or "No". If "No" is checked for any of the statements, a plan of correction will be written in Section H.

__x__Yes____No	Follows laws and regulations applicable to the operations of department and organization
___x_Yes____No	Demonstrates a sense of right and wrong by exhibiting honest, ethical behavior
__x__Yes____No	Brings concerns forward to management, human resources or Compliance Officer
__x__Yes____No	Preserves confidentiality of patient and employee information "written or electronic" and observes patient rights
__x__Yes____No	Maintains all appropriate certifications and licenses appropriate for position
___x_Yes____No	Has completed minimum level of competency defined for the position
___x_Yes____No	Completes all required competencies/Mandatory Education by established deadline dates
___x_Yes____No	Meets the expectations of the attendance policy

If any item in the Personal Accountability Section is indicated as no, the overall evaluation score will be reduced by 1 rating level.

SECTION F: GOAL EVALUATION: This section will document and evaluate the performance on goals established Section F in the prior years evaluation. Performance on achieving the goal will be rated using the 1,2,3,4,5 scoring system.

	Rating	Weight	Score
1. Recognize another employee 2 times monthly with thank you cards	4	x 33 %	1.32
2. renew PALS certification prior to next eval	5	x 33 %	1.65
3. Complete 8 education hours beyond required mandatories	5	x 34 %	1.70
4.		x %	
5.		x %	
Total for Section F			**4.67**

SECTION G: Annual GOALS: Each medical center employee will identify 3 goals for this year. One goal will be related to Service Excellence and one goal will be related to Position Specific responsibilities, and one goal will be focused on Personal Development. Total weigh of all 3 goals should be 100%

	Weight
1.Service Excellence Assist orienting new staff	33 %
2.Position Specific participate on a committee	33 %
3.Personal Development Complete 8 education hours beyond required mandatories	34 %
	100%

SECTION H: PLAN OF CORRECTION, IF REQUIRED

No plan of correction required.

SECTION I: SUMMARY STATEMENT. This section is to be used to summarize strengths, contributions and developmental goals.

Anne is a valuable member of our department. Her positive attitude and smile can brighten a difficult day. Anne brings a lot of experience to the bedside and is always willing to share her knowledge with others and is always willing to help train new staff. Anne is flexible with her schedule and is willing to do what it takes to help the team. She is also one to stay calm when things get very busy which contributes to keeping the team relaxed and on task.

Anne is often mentioned by patients and families for her outstanding care and positive attitude. We are very fortunate to have Anne on our team.

SECTION J: EMPLOYEE COMMENTS

Distribution: Original: Human Resources Copy: Employee Copy: Supervisor File

RECEIVED
HUMAN RESOURCES
JUN 15 2010
CAYUGA MEDICAL CENTER
AT ITHACA

Cayuga Medical Center at Ithaca
Position Description Performance Evaluation

Registered Nurse, ICCU

Evaluation Cover Page and Summary

SECTION A. EMPLOYEE & SALARY INFORMATION

Employee Name: Anne Marshall		Department Name: ICCU 2010

☐ Annual Performance Evaluation Rating Summary - To Be Completed at Conclusion of Evaluation

		Points Available	Points Earned	Weight	Total
Section C	Service Excellence Standards	5	4.56	x 40%	1.86
Section D	Position Specific Standards	5	4.71	x 40%	1.88
Section F	Annual Goals	5	4.34	x 20%	0.87
	Total Points			Total	4.61

☐ Introductory Performance Evaluation Rating Summary - To Be Completed at Conclusion of Evaluation

		Points Available	Points Earned	Weight	Total
Section C	Service Excellence Standards	5	____	x 50%	____
Section D	Position Specific Standards	5	____	x 50%	____
	Total Points			Total	____

Preliminary Performance Rating Score from Above ____

Personal Accountability Adjustment ____

Final Performance Evaluation Score 4.61

Final Performance Rating using score from above right

____	Does Not Perform as Expected	1.0 - 1.5 Points
____	Inconsistently Meets Expectations	1.6 - 2.5 Points
____	Regularly Performs as Expected	2.6 - 3.5 Points
____	Frequently Performs Beyond Expectations	3.6 - 4.5 Points
X	Consistently Exceeds Expectations	4.6 - 5.0 Points

SIGNATURES: (Evaluation will be returned if signatures are not present)

Anne Marshall — Employee — Date 6/11/10

*Employee's signature indicates that he/she has reviewed the completed evaluation but does not imply agreement.

Supervisor — Date

Department Director — Date 6/11/10

Susan Doherty — Vice President — Date 6/17/10

G.C. Exhibit 29c

Section B: POSITION PURPOSE AND REQUIREMENTS

Position Purpose

The Registered Professional Nurse is responsible for the provision of direct patient care to a designated group of patients. These responsibilities will include the assessment, planning, implementation and evaluation of the patients' physical, psychological, emotional, educational and spiritual needs.

Reporting Relationships

This position reports to the Director of the ICCU. May function as a designated charge nurse. Supervision may be exercised over Licensed Practical Nurses, Clinical Technicians, Hospital Aides, and Ward Clerks.

Employment Criteria

1. Possession of a current NYS Registered Nursing License
2. Strong interpersonal, oral and written communication skills
3. One year medical/surgical experience
4. Ability to move or lift patients with assistance
5. One year RN experience in an acute care facility
6. Current CPR certification
7. ACLS certification within one year

Section C: MEDICAL CENTER SERVICE EXCELLENCE STANDARDS

I understand that Cayuga Medical Center is committed to providing the highest level of healthcare services to our customers, and takes pride in having staff and volunteers who will go out of their way to achieve this mission. I also understand that our hospital's success depends on my effort to helping earn our customers confidence and trust.

To meet the expectations for Service Excellence, the employee should exhibit performance in this section that is applicable to his/her position. The employee will receive 1,2,3,4 or 5 points for each Service Excellence Standard according to the following criteria, with the score for each section listed to left of each category.

1- Does not meet expectations
2- Inconsistently meets expectations
3 - Regularly meets expectations
4 - Consistently meets expectations and goes beyond what is expected when appropriate
5 - Consistently goes beyond what is expected and demonstrates the highest level of service possible. Serves as a role model for others

I. Standard 1 Maintain a safe and clean environment for our patients, visitors and staff

__4__ Follow all Cayuga Medical Center safety guidelines.

__4__ Keep hallways clear

__5__ Understand safety codes such as code pink, grey, etc

__5__ Know your role in an emergency

__5__ Keep your work area clean and safe and free of clutter

__5__ Use equipment properly, report problems promptly

__5__ Ask for help when lifting or moving patients

__5__ Report unsafe issues promptly

Comments: Very good in emergencies. Safe in practice and knows when to ask for help or report problems

II. Standard 2 Treat the people we serve as guests

___5_ Welcome all patients, visitors and staff in a warm friendly manner.

____4 Introduce yourself by name, and when appropriate position

___4_ Address people by name whenever possible. Ask what people prefer.

___4_ Escort people to their destinations

___5_ Rude or inappropriate behavior is never acceptable. Courtesy and consideration is expected at all times.

Comments _____*Always very pleasant to those around her and appropriately addresses patients and their families*

III. Standard 3 Respect the privacy and confidentiality of patients, visitors and staff

__5__ Conduct phone and other discussions with discretion

__4__ Stopping gossip begins with you. Refrain from speaking negatively about others.

___5_ Do not discuss patient or hospital business in elevators or other public areas.

___4_ Be sensitive to issues of private space and personal dignity

___5_ Always knock before entering a room and introduce yourself when meeting someone for the first time

___5_ Close curtains and doors, provide robes and blankets as appropriate

___5_ Take all steps to protect patient confidentiality

Comments_____*Very good with confidentiality and tends to stay out of the gossip and rumor mill.*

IV. Standard 4 Present a professional image.

___4_ Wear your name badge at all times

___4_ Make sure your appearance is appropriate for your role

___4_ Practice good personal hygiene and grooming. Please avoid cologne, perfume or aftershave

___5_ Communicate clearly and positively with co-workers

___5_ Positively represent Cayuga Medical Center in the workplace and in our community

Comments ____*Always positive in her approach to others.*

V. Standard 5 Use the telephone professionally

__4__ Answer the phone promptly

___4_ Introduce yourself and your department, offer assistance if appropriate

___5_ Use a pleasant tone of voice

___5_ Be a good listener and follow through on callers requests

___4_ Adhere to a call transfer policy

___5_ Eliminate overhead pages whenever possible

Comments: *Appropriately uses the phone and paging system.*

VI. Standard 6 Listen to patients, visitors and staff then act promptly to address concerns

__5_ Stop to pay attention to the person in front of you. Make eye contact, acknowledge and provide assistance to each person.

__4__ Take time to listen and explain next steps

___4_ Validate what you've heard by repeating back the message

__5__ Respond to call lights ***or concerns*** promptly

Comments: *Listens well to others. Responds quickly to patient needs.*

VII. Standard 7 Anticipate what services and information people need and take action to provide it

_5___ Ask people if you can help them

__5__ If you anticipate a delay take the time to explain the reason to the patient/family or staff

__4__ Communicate frequently

___5_ Encourage people to ask questions, explain you are there to help

___5_ Be sensitive to the cultural, emotional or spiritual needs of our guests

____4_ Use white boards to communicate information.

Comments: *Does a good job of keeping patients and families informed. Is very sensitive to the needs of others.*

VIII. Standard 8 Be a positive part of our service team

__4__ Recognize those who exemplify excellent customer service

__5__ Take pride in what we do

__5__ Remember that the customer is #1

__5__ Portray a positive attitude

__5__ Never use the term, it's not my job

__4__ Address employee interpersonal issues appropriately and positively.

Comments: *Almost always positive, and always puts the patient first. To my knowledge, has not had incidents with other employees and gets along very well with co-workers.*

Medical Center Performance Standards Summary

Total the ratings for each standard in this Section	**216**
Divide the number above by 47. This is the Section C Total.	**4.56**

Note: If any score for any component for this section is at a 1 or below, the overall score for this section will be limited to a maximum of 3.0. Any component receiving a score of 1 will require a written plan of correction.

Section D: POSITION SPECIFIC PERFORMANCE STANDARDS

AGE SPECIFIC CRITERIA: If the employee has clinical contact with patients, circle yes or no to indicate whether the employee has exhibited clinical proficiency with the age groups served. Be sure that only the age groups served in the course of performing the job are checked. Lack of demonstration of proficiency may be due to not having the opportunity to work with patients in the age group. If "No" is checked, an action plan should be written in Section G.

Age of Patients Served

Neonate Yes___ No___ N/A___	Adolescent Yes _x_ No___ N/A___	Geriatric Yes _x_ No___ N/A___
Pediatric Yes_ x_ No___ N/A___	Adult Yes _x_ No___ N/A___	Does Not Have Patient Contact ___

POSITION SPECIFIC PERFORMANCE STANDARDS

To meet the expectations for Position Specific Performance Standards, the employee will demonstrate Standards that are applicable to his/her position. The employee will receive 1,2,3,4 or 5 points for each Performance Standard according to the following criteria, with the score for each section placed in the box to the left of each category.

1 - Does not meet expectations
2 - Inconsistently meets expectations
3 - Regularly meets expectations
4 - Consistently meets expectations and goes beyond what is expected when appropriate
5 - Consistently goes beyond what is expected and demonstrates the highest level of service possible. Serves as a role model for others

Score

I. Observation/Data Collection **5**

- Demonstrates accuracy in data collection
  - Vital signs
  - Weight
  - Glucometer/Finger sticks
  - Laboratory specimens
  - EKG's
  - Cardiac monitoring
- Assures patient's knowledge of Advance Directives and patient rights and documentation support

Comments: *collects and uses data very appropriately.*

II. Documentation **4**

- Performs and documents a triage assessment upon patient arrival
- Documents pertinent pre-hospital care
- Assessment and documentation of social, psychosocial and spiritual needs are made
- Patient's chief complaint, subjective and objective assessment is documented
- Performs and documents immunization and lead screening per policy
- Fully documents care and response to care so as to give a full accounting of patient visit and discharge

Comments: *Documentation is solid.*

III. Evaluation/Planning **5**

- Plans and organizes self to meet patient and unit needs within shift
- Able to prioritize patient care
- Plans and provides immediate comfort needs
- Uses appropriate equipment and room for patient care
- Assures emergency equipment is readily available (i.e., crash cart, glucometer, etc.)
- Completes and documents necessary referrals (i.e. social work, PT, palliative care, etc.)
- Establishes discharge teaching plan utilizing resources available to meet patient educational needs
- Knowledgeable of hospital disaster plan and role of ICU RN

Comments: *Work is well organized and patients are well cared for.*

IV. Implementation **5**

- Administers optimal patient care according to ICCU policies and procedures
- Prepares patient for MD visit
- Accurately follows through with MD orders in a timely manner
- Administers and documents medications timely and accurately according to hospital policy
- Reassesses and documents response to medications
- Reassesses patients on an ongoing basis during their ICCU stay and documents based on ICCU standard
- Maintains calm, therapeutic atmosphere while discussing all nursing care
- Implements and reinforces patient teaching within scope of practice
- Able to effectively monitor and intervene in the care of chemically impaired and emotionally unstable patients
- Performs effectively as member of ABC Alert Team and Clinical Assessment Team

Comments: *Provides very good care to her patients and their families*

V. **Risk Management/Safety** 5

- Anticipates potential and actual environmental safety hazards and takes appropriate actions
- Demonstrates standard precautions and infection control techniques in daily patient care activities
- Equipment in need of repair is reported, tagged and placed out of use
- Consistently uses proper lifting techniques
- Follows restraint policy/procedures for patient observations and patient checks
- Consistently uses fall prevention techniques and equipment
- Completes quality assurance forms and follow up telephone calls

Comments: *Very safe in her practice and knows when to ask appropriate questions related to safety.*

VI. **Leadership** 5

- Able to function as Charge Nurse
- Recognizes and assures appropriate staffing levels based on established standard
- Effectively supervises the triage / patient placement process
- Able to assign and direct patient care appropriately based on education, experience and competency of staff members
- Able to handle difficult situations with diplomacy

Comments: Has done some charge and does a very nice job. Is also a leader in the eyes of her peers as she is a role model for positivity and for clinical professionalism.

VII. **Information Management** 4

- Accurately uses the hospital information system to enter and retrieve data
- Demonstrates computer skills to enter all tests and procedures

Position Specific Performance Standards Summary

Total the categories rated in this Section	
Divide the number above by categories rated. This is the Section D Total	4.71
Note: If any score for any component for this section is at a 1 or below, the overall score for this section will be limited to a maximum of 3.0. Any component receiving a score of 1 will require a written plan of correction.	

SECTION E: PERSONAL ACCOUNTABILITY EXPECTATIONS. Check "Yes" or "No". If "No" is checked for any of the statements, a plan of correction will be written in Section H.

___x_Yes____No	Follows laws and regulations applicable to the operations of department and organization
__x_Yes____No	Demonstrates a sense of right and wrong by exhibiting honest, ethical behavior
__x__Yes____No	Brings concerns forward to management, human resources or Compliance Officer
___x_Yes____No	Preserves confidentiality of patient and employee information "written or electronic" and observes patient rights
__x__Yes____No	Maintains all appropriate certifications and licenses appropriate for position
__x__Yes____No	Has completed minimum level of competency defined for the position
__x__Yes____No	Completes all required competencies/Mandatory Education by established deadline dates
__x_Yes____No	Meets the expectations of the attendance policy

If any item in the Personal Accountability Section is indicated as no, the overall evaluation score will be reduced by 1 rating level.

SECTION F: GOAL EVALUATION: This section will document and evaluate the performance on goals established Section F in the prior years evaluation. Performance on achieving the goal will be rated using the 1,2,3,4,5 scoring system.

	Rating	Weight	Score
1. _____ Assist orienting new staff_ _____	__5 x	_33__%	1.65
2. ____ participate on a committee _____	___3 x	__33_%	.99
3. _____ Complete 8 education hours beyond required mandatories _____	__5 x	_34__%	1.7
4._____ _____	____x	___%	___
5._____ _____	____x	___%	___
Total for Section F			**4.34**

SECTION G: Annual GOALS: Each medical center employee will identify 3 goals for this year. One goal will be related to Service Excellence and one goal will be related to Position Specific responsibilities, and one goal will be focused on Personal Development. Total weigh of all 3 goals should be 100%

Weight

1.Service Excellence___ Assist orienting new staff_ _____ ____%

2.Position Specific __Core member to train staff to pull sheaths_____ ____%

3.Personal Development__ Complete 8 education hours beyond required mandatories ____%

100%

SECTION H: PLAN OF CORRECTION, IF REQUIRED

SECTION I: SUMMARY STATEMENT. This section is to be used to summarize strengths, contributions and developmental goals.

Anne is a valued member of our team. She brings a positive attitude to the workplace and has a very strong work ethic. Although in a per-diem position, she has been working on a very regular basis and brings a nice skill mix to the team. Anne has demonstrated time and again the ability to take care of the most critically ill patients without becoming unglued. She is very poised and professional in her approach to nursing.

Over the past year Anne has done some charge for us, and is currently active in precepting and mentoring new employees, and is doing an exceptional job. We are very fortunate to have someone like Anne on our team and we hope to maintain her employment here for many years to come.

SECTION J: EMPLOYEE COMMENTS

Distribution: Original: Human Resources Copy: Employee Copy: Supervisor File

RB AEP

Cayuga Medical Center at Ithaca
Position Description Performance Evaluation

Registered Nurse, ICCU

Evaluation Cover Page and Summary

SECTION A. EMPLOYEE & SALARY INFORMATION

Employee Name:	Department Name:
Anne Marshall	ICCU 2011

☐ Annual Performance Evaluation Rating Summary - To Be Completed at Conclusion of Evaluation

	Points Available	Points Earned		Weight	Total
Section C Service Excellence Standards	5	4.88	x	40%	1.95
Section D Position Specific Standards	5	4.71	x	40%	1.89
Section F Personal Expectations	5	4.91	x	10%	0.49
Section G Annual Goals	5	5.00	x	10%	0.50
Total Points (no rounding)					4.83

☐ Introductory Performance Evaluation Rating Summary - To Be Completed at Conclusion of Evaluation

	Points Available	Points Earned		Weight	Total
Section C Service Excellence Standards	5	4.88	x	50%	2.44
Section D Position Specific Standards	5	4.71	x	50%	2.36
Total Points					4.79

Preliminary Performance Rating Score from Above	4.83
Personal Accountability Adjustment	0.00
Final Performance Evaluation Score	4.83

Final Performance Rating using score from above right

	Does Not Perform as Expected	1.0 - 1.5 Points
	Inconsistently Meets Expectations	1.6 - 2.5 Points
	Regularly Performs as Expected	2.6 - 3.5 Points
	Frequently Performs Beyond Expectations	3.6 - 4.5 Points
X	Consistently Exceeds Expectations	4.6 - 5.0 Points

SIGNATURES: (Evaluation will be returned if signatures are not present)

Employee Anne Marshall Date 6/30/11

*Employee's signature indicates that he/she has reviewed the completed evaluation, but does not imply agreement.

Supervisor Date 6/30/11

Department Director Susan Roberts Date 7/6/11

G.C. Exhibit

Section B: POSITION PURPOSE AND REQUIREMENTS

Position Purpose

The Registered Professional Nurse is responsible for the provision of direct patient care to a designated group of patients. These responsibilities will include the assessment, planning, implementation and evaluation of the patients' physical, psychological, emotional, educational and spiritual needs.

Reporting Relationships

This position reports to the Director of the ICCU. May function as a designated charge nurse. Supervision may be exercised over Licensed Practical Nurses, Clinical Technicians, Hospital Aides, and Ward Clerks.

Employment Criteria

1. Possession of a current NYS Registered Nursing License
2. Strong interpersonal, oral and written communication skills
3. One year medical/surgical experience
4. Ability to move or lift patients with assistance
5. One year RN experience in an acute care facility
6. Current CPR certification
7. ACLS certification within one year

Section C: MEDICAL CENTER SERVICE EXCELLENCE STANDARDS

I understand that Cayuga Medical Center is committed to providing the highest level of healthcare services to our customers, and takes pride in having staff and volunteers who will go out of their way to achieve this mission. I also understand that our hospital's success depends on my effort to helping earn our customers confidence and trust.

To meet the expectations for Service Excellence, the employee should exhibit performance in this section that is applicable to his/her position. The employee will receive 1,2,3,4 or 5 points for each Service Excellence Standard according to the following criteria, with the score for each section listed to left of each category.

1- Does not meet expectations
2- Inconsistently meets expectations
3 - Regularly meets expectations
4 - Consistently meets expectations and goes beyond what is expected when appropriate
5 - Consistently goes beyond what is expected and demonstrates the the highest level of service possible. Serves as a role model for others

5 **I. Standard 1 - Maintain a safe & clean environment for our patients, visitors & staff**

- Follow all Cayuga Medical Center safety guidelines and policies, keep hallways clear, and keep your work area safe and clean of clutter
- Know your role in an emergency and understand all safety codes
- Use equipment properly and report all unsafe issues promptly

Comments _____

_____

_____

_____

5 II. Standard 2 - Treat the people we serve as guests

- Welcome all patients, visitors and staff in a warm friendly manner.
- Introduce yourself by name and, when appropriate position, address people by name when possible and appropriate
- Escort people to their destinations
- Always treat people with courtesy, as rude or inappropriate behavior is never acceptable.

Comments _____

5 III. Standard 3 - Respect the privacy & confidentiality of patients, visitors & staff

- Be sensitive to issues of private space and personal dignity and when entering a patient room always knock and introduce yourself. If possible close doors or patient cubicles.
- Take all steps to protect patient confidentiality being careful not to discuss patient or hospital business in elevators and public places. Remember to only discuss information with people who have a need and right to know.
- Conduct phone and other discussions with discretion
- Refrain from speaking negatively about others, if you have an issue discuss it directly with the person involved.

Comments _____

5 IV. Standard 4 - Present a professional image.

- Wear your name badge at all times
- Make sure your appearance is appropriate for your role
- Practice good personal hygiene and grooming. Please avoid cologne, perfume or aftershave

Comments _____

5 **V. Standard 5 - Use the telephone professionally**

- Answer the phone promptly
- Introduce yourself and your department, offer assistance if appropriate
- Use a pleasant tone of voice
- Be a good listener and follow through on requests
- Adhere to a call transfer policy
- Eliminate overhead pages whenever possible

Comments _____

_____

_____

5 **VI. Standard 6 - Listen to patients, visitors & staff then act promptly to address concerns**

- Stop to pay attention to the person in front of you. Make eye contact, acknowledge and provide assistance to each person.
- Take time to listen and explain next steps
- Validate what you've heard by repeating back the message
- Respond to call lights or concerns promptly

Comments _____

_____

_____

5 **VII. Standard 7 - Anticipate what services & information people need & take action to provide it**

- Ask people if you can help them
- If you anticipate a delay take the time to explain the reason to the patient/family or staff
- Communicate frequently
- Encourage people to ask questions, explain you are there to help
- Be sensitive to the cultural, emotional or spiritual needs of our guests
- Use white boards to communicate information.

Comments _____

_____

_____

4 **VIII. Standard 8 - Be a positive part of our service team**

- Recognize those who exemplify excellent customer service
- Take pride in what we do
- Remember that the customer is #1
- Never use the term "it's not my job"
- Address employee interpersonal issues appropriately and positively.
- Communicate clearly and positively with co-workers
- Positively represent Cayuga Medical Center in the workplace and in our community

Comments _____

Medical Center Performance Standards Summary

Total the ratings for each standard in this Section	39
Divide the number above by 8. This is the Section C Total	4.88

Note: If any score for any component for this section is at a 1 or below, the overall score for this section will be limited to a maximum of 3.0. Any component receiving a score of 1 will require a written plan of correction.

Additional Comments:

_____

Section D: POSITION SPECIFIC PERFORMANCE STANDARDS

AGE SPECIFIC CRITERIA: If the employee has clinical contact with patients, circle yes or no to indicate whether the employee has exhibited clinical proficiency with the age groups served. Be sure that only the age groups served in the course of performing the job are checked. Lack of demonstration of proficiency may be due to not having the opportunity to work with patients in the age group. If "No" is checked, an action plan should be written in Section G.

Age of Patients Served

Neonate	☑	Adolescent	☑	Geriatric	☑
Pediatric	☑	Adult	☑	Does Not Have Patient Contact	☐

POSITION SPECIFIC PERFORMANCE STANDARDS

To meet the expectations for Position Specific Performance Standards, the employee will demonstrate Standards that are applicable to his/her position. The employee will receive 1,2,3,4 or 5 points for each Performance Standard according to the following criteria, with the score for each section placed in the box to the left of each category.

1 - Does not meet expectations
2 - Inconsistently meets expectations
3 - Regularly meets expectations
4 - Consistently meets expectations and goes beyond what is expected when appropriate
5 - Consistently goes beyond what is expected and demonstrates the highest level of service possible. Serves as a role model for others

I. Observation/Data Collection

5

- Demonstrates accuracy in data collection
  1. Vital signs
  2. Weights
  3. Glucometer/Finger Sticks
  4. Laboratory Specimens
  5. EKG's
  6. Cardiac Monitoring
- Assures patient's knowledge of Advance Directives and patient rights and documentation support

Comments: _____

II. Documentation

5

- Performs and documents a triage assessment upon patient arrival
- Documents pertinent pre-hospital care
- Assessment and documentation of social, psychosocial and spiritual needs are made
- Patient's chief complaint, subjective and objective assessment is documented
- Performs and documents immunization and lead screening per policy
- Fully documents care and response to care so as to give a full accounting of patient visit and discharge

Comments: _____

III. Evaluation/Planning

5

- Plans and organizes self to meet patient and unit needs within shift
- Able to prioritize patient care
- Plans and provides immediate comfort needs
- Uses appropriate equipment and room for patient care (i.e., negative pressure room,, monitored room,)
- Assures emergency equipment is readily available (i.e., crash cart, glucometer, etc.)
- Completes and documents necessary referrals (i.e. social work, health department, etc.)
- Establishes discharge teaching plan utilizing resources available to meet patient educational needs

Comments: _____

IV. Implementation

5

- Administers optimal patient care according to Emergency Department policies and procedures
- Prepares patient for MD visit
- Accurately follows through with MD orders in a timely manner
- Administers and documents medications timely and accurately according to hospital policy
- Reassesses and documents response to medications
- Reassesses patients on an ongoing basis during their ICCU stay and documents based on ICCU standard
- Maintains calm, therapeutic atmosphere while discussing all nursing care
- Implements and reinforces patient teaching within scope of practice
- Able to effectively monitor and intervene in the care of chemically impaired and emotionally unstable patients
- Performs effectively as member of ABC Alert and CAT Team

Comments: _____

V. Risk Management/Safety

5

- Anticipates potential and actual environmental safety hazards and takes appropriate actions
- Demonstrates standard precautions and infection control techniques in daily patient care activities
- Equipment in need of repair is reported, tagged and placed out of use
- Consistently uses proper lifting techniques
- Follows restraint policy/procedures for patient observations and patient checks
- Consistently uses fall prevention techniques and equipment
- Completes quality assurance forms and follow up telephone calls

Comments: _____

VI. Leadership

4

- Able to function as Charge Nurse
- Recognizes and assures appropriate staffing levels based on established standard
- Effectively supervises the triage process
- Able to assign and direct patient care appropriately based on education, experience and competency of staff members
- Able to handle difficult situations with diplomacy

Comments: _____

VII. Information Management

4

- Accurately uses the hospital information system to enter and retrieve data
- Demonstrates computer skills to enter all tests and procedures

Position Specific Performance Standards Summary

Total the categories rated in this Section	7
Divide the number by categories rated. This is the Section D Total	4.71

Note: If any score for any component for this section is at a 1 or below, the overall score for this section will be limited to a maximum of 3.0. Any component receiving a score of 1 will require a written plan of correction.

SECTION E: PERSONAL ACCOUNTABILITY EXPECTATIONS. Check "Yes" or "No". If "No" is checked for any of the statements, a plan of correction will be written in Section H.

- ☑ Maintains all appropriate certifications and licenses for position
- ☑ Completes all required competencies/Mandatory Education by established deadline dates
- ☑ Meets the expectations of the attendance policy
- ☑ Is compliant with all Red\Rules

If any item in the Personal Accountability Section is indicated as no, the overall evaluation score will be reduced by 1 rating level.

SECTION F: Personal Expectations

Ratings for this section will integrate feedback from peer evaluations when a peer evaluation is completed. If the peer evaluation program is not used, evaluation on this section will be completed by the director with input provided by the employee. Each standard will be evaluated on a 1 – 5 scale.

5 Helps others without prompting when work needs to be accomplished.

5 Is independent in his/her performance and is self directed.
5 Work is completed in a timely fashion.
5 Maintains a positive attitude in stressful working situations.
5 Is supportive, shares knowledge and skills, and is an approachable resource to others
5 Communicates with others in a positive and respectful manner.
5 Provides excellent customer service to patients, families, guests and other employees.
4 Is flexible and willing to make changes for the benefit of the team.
5 Demonstrates a high level of personal and professional accountability
5 Is receptive to learning and feedback, and demonstrates a willingness to learn and accept change
5 Is capable of providing quality care or service to patients or customers

Total the categories rated in this Section 11

Divide the number above by categories rated. This is the Section E Total 4.91

SECTION G: GOAL EVALUATION: This section will document and evaluate the performance on goals established Section F in the prior years evaluation. Performance on achieving the goal will be rated using the 1,2,3,4,5 scoring system.

	Rating	Weight	Score
1. Service Excellence Assist orienting new staff	5	33%	1.65
2. Position Specific Core member to train staff to pull sheaths	5	33%	1.65
3. Personal Development Complete 8 education hours beyond required mandatories	5	34%	1.70
		100%	
		Total for Section G	5.00

SECTION H: Annual GOALS:

Each medical center employee will identify 3 goals for this year. One goal **each** will be related to Service Excellence, Position Specific responsibilities, Personal Development. Total weight of all 3 goals should be 100%

	Weight
1. Service Excellence Continue orienting new staff	33%
2. Position Specific Fill in charge as needed	33%
3. Personal Development Prepere for CCRN	34%
	100%

SECTION I: PLAN OF CORRECTION, IF REQUIRED

SECTION J: SUMMARY STATEMENT. This section is to be used to summarize strengths, contributions and developmental goals

Anne is very self directed and provides her patients and their visitors/families with the highest quality care. She is always among the first to complete assigned education, and is consistent in maintaining her ongoing education. She takes on difficult assignments without complaint and always does a great job. Anne has also proven to be a great resource to her co-workers. I look forward to working with Anne for a long time into the future. Anne is simply an outstanding nurse and employee.

SECTION K: EMPLOYEE COMMENTS

Distribution: Original: Human Resources Copy: Employee Copy: Supervisor File

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HUMAN RESOURCES
JUN 15 2012
CAYUGA MEDICAL CENTER
AT ITHACA

ASP
RB

Cayuga Medical Center at Ithaca
Position Description Performance Evaluation

Registered Nurse, ICCU

Evaluation Cover Page and Summary

SECTION A. EMPLOYEE & SALARY INFORMATION

Employee Name: Anne Marshall	**Department Name:** ICCU 2012

☒ **Annual Performance Evaluation Rating Summary - To Be Completed at Conclusion of Evaluation**

	Points Available	Points Earned		Weight	Total
Section C Service Excellence Standards	5	4.88	x	40%	1.95
Section D Position Specific Standards	5	4.71	x	40%	1.89
Section F Personal Expectations	5	4.91	x	10%	0.49
Section G Annual Goals	5	4.32	x	10%	0.43
Total Points (no rounding)					4.76

☐ **Introductory Performance Evaluation Rating Summary - To Be Completed at Conclusion of Evaluation**

	Points Available	Points Earned		Weight	Total
Section C Service Excellence Standards	5	4.88	x	50%	2.44
Section D Position Specific Standards	5	4.71	x	50%	2.36
Total Points					4.79

Preliminary Performance Rating Score from Above 4.76

Personal Accountability Adjustment 0.00

Final Performance Evaluation Score 4.76

Final Performance Rating using score from above right

	Does Not Perform as Expected	1.0 - 1.5 Points
	Inconsistently Meets Expectations	1.6 - 2.5 Points
	Regularly Performs as Expected	2.6 - 3.5 Points
	Frequently Performs Beyond Expectations	3.6 - 4.5 Points
X	Consistently Exceeds Expectations	4.6 - 5.0 Points

SIGNATURES: (Evaluation will be returned if signatures are not present)

Anne Marshall — 6/12/12
Employee **Date**

*Employee's signature indicates that he/she has reviewed the completed evaluation but does not imply agreement.

Supervisor **Date** 6/12/12

Department Director Susan Wheatly **Date** 6/18/12

C.P. Exhibit 29e

Section B: POSITION PURPOSE AND REQUIREMENTS

Position Purpose

The Registered Professional Nurse is responsible for the provision of direct patient care to a designated group of patients. These responsibilities will include the assessment, planning, implementation and evaluation of the patients' physical, psychological, emotional, educational and spiritual needs.

Reporting Relationships

This position reports to the Director of the ICCU. May function as a designated charge nurse. Supervision may be exercised over Licensed Practical Nurses, Clinical Technicians, Hospital Aides, and Ward Clerks.

Employment Criteria

1. Possession of a current NYS Registered Nursing License
2. Strong interpersonal, oral and written communication skills
3. One year medical/surgical experience
4. Ability to move or lift patients with assistance
5. One year RN experience in an acute care facility
6. Current CPR certification
7. ACLS certification within one year

Section C: MEDICAL CENTER SERVICE EXCELLENCE STANDARDS

I understand that Cayuga Medical Center is committed to providing the highest level of healthcare services to our customers, and takes pride in having staff and volunteers who will go out of their way to achieve this mission. I also understand that our hospital's success depends on my effort to helping earn our customers confidence and trust.

To meet the expectations for Service Excellence, the employee should exhibit performance in this section that is applicable to his/her position. The employee will receive 1,2,3,4 or 5 points for each Service Excellence Standard according to the following criteria, with the score for each section listed to left of each category.

1- Does not meet expectations
2- Inconsistently meets expectations
3 - Regularly meets expectations
4 - Consistently meets expectations and goes beyond what is expected when appropriate
5 - Consistently goes beyond what is expected and demonstrates the the highest level of service possible. Serves as a role model for others

5 **I. Standard 1 - Maintain a safe & clean environment for our patients, visitors & staff**

- Follow all Cayuga Medical Center safety guidelines and policies, keep hallways clear, and keep your work area safe and clean of clutter
- Know your role in an emergency and understand all safety codes
- Use equipment properly and report all unsafe issues promptly

Comments _____

very safe in her practice _____

_____

_____

5 II. Standard 2 - Treat the people we serve as guests

- Welcome all patients, visitors and staff in a warm friendly manner.
- Introduce yourself by name and, when appropriate position, address people by name when possible and appropriate
- Escort people to their destinations
- Always treat people with courtesy, as rude or inappropriate behavior is never acceptable.

Comments always pleasant and accomodating

5 III. Standard 3 - Respect the privacy & confidentiality of patients, visitors & staff

- Be sensitive to issues of private space and personal dignity and when entering a patient room always knock and introduce yourself. If possible close doors or patient cubicles.
- Take all steps to protect patient confidentiality being careful not to discuss patient or hospital business in elevators and public places. Remember to only discuss information with people who have a need and right to know.
- Conduct phone and other discussions with discretion
- Refrain from speaking negatively about others, if you have an issue discuss it directly with the person involved.

Comments

5 IV. Standard 4 - Present a professional image.

- Wear your name badge at all times
- Make sure your appearance is appropriate for your role
- Practice good personal hygiene and grooming. Please avoid cologne, perfume or aftershave

Comments always professional and uses name badge appropriately.

5 **V. Standard 5 - Use the telephone professionally**

- Answer the phone promptly
- Introduce yourself and your department, offer assistance if appropriate
- Use a pleasant tone of voice
- Be a good listener and follow through on requests
- Adhere to a call transfer policy
- Eliminate overhead pages whenever possible

Comments always very professional on the phone.

5 **VI. Standard 6 - Listen to patients, visitors & staff then act promptly to address concerns**

- Stop to pay attention to the person in front of you. Make eye contact, acknowledge and provide assistance to each person.
- Take time to listen and explain next steps
- Validate what you've heard by repeating back the message
- Respond to call lights or concerns promptly

Comments

5 **VII. Standard 7 - Anticipate what services & information people need & take action to provide it**

- Ask people if you can help them
- If you anticipate a delay take the time to explain the reason to the patient/family or staff
- Communicate frequently
- Encourage people to ask questions, explain you are there to help
- Be sensitive to the cultural, emotional or spiritual needs of our guests
- Use white boards to communicate information.

Comments very good at anticipating upcoming events / issues.

4 **VIII. Standard 8 - Be a positive part of our service team**

- Recognize those who exemplify excellent customer service
- Take pride in what we do
- Remember that the customer is #1
- Never use the term "it's not my job"
- Address employee interpersonal issues appropriately and positively.
- Communicate clearly and positively with co-workers
- Positively represent Cayuga Medical Center in the workplace and in our community

Comments generally positive and outgoing.

Medical Center Performance Standards Summary

Total the ratings for each standard in this Section	39
Divide the number above by 8. This is the Section C Total	4.88

Note: If any score for any component for this section is at a 1 or below, the overall score for this section will be limited to a maximum of 3.0. Any component receiving a score of 1 will require a written plan of correction.

Additional Comments:

Section D: POSITION SPECIFIC PERFORMANCE STANDARDS

AGE SPECIFIC CRITERIA: If the employee has clinical contact with patients, circle yes or no to indicate whether the employee has exhibited clinical proficiency with the age groups served. Be sure that only the age groups served in the course of performing the job are checked. Lack of demonstration of proficiency may be due to not having the opportunity to work with patients in the age group. If "No" is checked, an action plan should be written in Section G.

Age of Patients Served

Neonate	☑	Adolescent	☑	Geriatric	☑
Pediatric	☑	Adult	☑	Does Not Have Patient Contact	☐

POSITION SPECIFIC PERFORMANCE STANDARDS

To meet the expectations for Position Specific Performance Standards, the employee will demonstrate Standards that are applicable to his/her position. The employee will receive 1,2,3,4 or 5 points for each Performance Standard according to the following criteria, with the score for each section placed in the box to the left of each category.

1 - Does not meet expectations
2 - Inconsistently meets expectations
3 - Regularly meets expectations
4 - Consistently meets expectations and goes beyond what is expected when appropriate
5 - Consistently goes beyond what is expected and demonstrates the highest level of service possible. Serves as a role model for others

I. Observation/Data Collection

5

- Demonstrates accuracy in data collection
  1. Vital signs
  2. Weights
  3. Glucometer/Finger Sticks
  4. Laboratory Specimens
  5. EKG's
  6. Cardiac Monitoring
- Assures patient's knowledge of Advance Directives and patient rights and documentation support

Comments: _____

II. Documentation

5

- Performs and documents a triage assessment upon patient arrival
- Documents pertinent pre-hospital care
- Assessment and documentation of social, psychosocial and spiritual needs are made
- Patient's chief complaint, subjective and objective assessment is documented
- Performs and documents immunization and lead screening per policy
- Fully documents care and response to care so as to give a full accounting of patient visit and discharge

Comments: solid documentation

III. Evaluation/Planning

5

- Plans and organizes self to meet patient and unit needs within shift
- Able to prioritize patient care
- Plans and provides immediate comfort needs
- Uses appropriate equipment and room for patient care (i.e., negative pressure room,, monitored room,)
- Assures emergency equipment is readily available (i.e., crash cart, glucometer, etc.)
- Completes and documents necessary referrals (i.e. social work, health department, etc.)
- Establishes discharge teaching plan utilizing resources available to meet patient educational needs

Comments: work and shift always well planned and organized

IV. Implementation

5

- Accurately follows through with MD orders in a timely manner
- Administers and documents medications timely and accurately according to hospital policy
- Reassesses and documents response to medications
- Reassesses patients on an ongoing basis during their ICCU stay and documents based on ICCU standard
- Maintains calm, therapeutic atmosphere while discussing all nursing care
- Implements and reinforces patient teaching within scope of practice
- Able to effectively monitor and intervene in the care of chemically impaired and emotionally unstable patients
- Performs effectively as member of ABC Alert and CAT Team
- Administers optimal patient care according to ICCU policies and procedures
- Prepares patient for MD visit

Comments: Gives excellent care

V. Risk Management/Safety

5

- Anticipates potential and actual environmental safety hazards and takes appropriate actions
- Demonstrates standard precautions and infection control techniques in daily patient care activities
- Equipment in need of repair is reported, tagged and placed out of use
- Consistently uses proper lifting techniques
- Follows restraint policy/procedures for patient observations and patient checks
- Consistently uses fall prevention techniques and equipment
- Completes quality assurance forms and follow up telephone calls

Comments: very safe in her practice

VI. Leadership

4

- Able to function as Charge Nurse
- Recognizes and assures appropriate staffing levels based on established standard
- Effectively supervises the triage process
- Able to assign and direct patient care appropriately based on education, experience and competency of staff members
- Able to handle difficult situations with diplomacy

Comments: Has done an excellent job as charge nurse and has recently moved into the new team leader role

VII. Information Management

4

- Accurately uses the hospital information system to enter and retrieve data
- Demonstrates computer skills to enter all tests and procedures

Position Specific Performance Standards Summary

Total the categories rated in this Section	7
Divide the number by categories rated. **This is the Section D Total**	4.71

Note: If any score for any component for this section is at a 1 or below, the overall score for this section will be limited to a maximum of 3.0. Any component receiving a score of 1 will require a written plan of correction.

SECTION E: PERSONAL ACCOUNTABILITY EXPECTATIONS. Check "Yes" or "No". If "No" is checked for any of the statements, a plan of correction will be written in Section H.

- ☑ Maintains all appropriate certifications and licenses for position
- ☑ Completes all required competencies/Mandatory Education by established deadline dates
- ☑ Meets the expectations of the attendance policy
- ☑ Is compliant with all Red\Rules

If any item in the Personal Accountability Section is indicated as no, the overall evaluation score will be reduced by 1 rating level.

SECTION F: Personal Expectations

Ratings for this section will integrate feedback from peer evaluations when a peer evaluation is completed. If the peer evaluation program is not used, evaluation on this section will be completed by the director with input provided by the employee. Each standard will be evaluated on a 1 – 5 scale.

5 Helps others without prompting when work needs to be accomplished.

5	Is independent in his/her performance and is self directed.
5	Work is completed in a timely fashion.
5	Maintains a positive attitude in stressful working situations.
5	Is supportive, shares knowledge and skills, and is an approachable resource to others
5	Communicates with others in a positive and respectful manner.
5	Provides excellent customer service to patients, families, guests and other employees.
4	Is flexible and willing to make changes for the benefit of the team.
5	Demonstrates a high level of personal and professional accountability
5	Is receptive to learning and feedback, and demonstrates a willingness to learn and accept change
5	Is capable of providing quality care or service to patients or customers

Total the categories rated in this Section 11

Divide the number above by categories rated. This is the Section E Total 4.91

SECTION G: GOAL EVALUATION: This section will document and evaluate the performance on goals established Section F in the prior years evaluation. Performance on achieving the goal will be rated using the 1,2,3,4,5 scoring system.

		Rating	Weight	Score
1. Service Excellence	Continue orienting new staff	5	33%	1.65
2. Position Specific	Fill in charge as needed	5	33%	1.65
3. Personal Development	Prepare for CCRN	3	34%	1.02
			100%	
			Total for Section G	4.32

SECTION H: Annual GOALS:

Each medical center employee will identify 3 goals for this year. One goal **each** will be related to Service Excellence, Position Specific responsibilities, Personal Development. Total weight of all 3 goals should be 100%

		Weight
1. Service Excellence	Precept staff to charge role	33%
2. Position Specific	Learn Kronos and QA systems	33%
3. Personal Development	Take CCRN prep class	34%
		100%

SECTION I: PLAN OF CORRECTION, IF REQUIRED

SECTION J: SUMMARY STATEMENT. This section is to be used to summarize strengths, contributions and developmental goals

Anne is an excellent employee. She is honest and straight forward. She does an excellent job when in charge and because of this earned a team leader position recently. She is a strong ICCU nurse who is always willing to share her knowledge. She maintains a calm positive attitude and is a good role model for others. Overall she does a great job and I look forward to working with Anne in her new role.

SECTION K: EMPLOYEE COMMENTS

Distribution: Original: Human Resources Copy: Employee Copy: Supervisor File

RECEIVED
HUMAN RESOURCES

BB AZP

Cayuga Medical Center at Ithaca
Position Description Performance Evaluation

Registered Nurse, ICCU

Evaluation Cover Page and Summary

CAYUGA MEDICAL CENTER
AT ITHACA

SECTION A. EMPLOYEE & SALARY INFORMATION

Employee Name: Anne Marshall	Department Name: ICCU 2013

☒ **Annual Performance Evaluation Rating Summary - To Be Completed at Conclusion of Evaluation**

	Points Available	Points Earned		Weight	Total
Section C Service Excellence Standards	5	4.88	x	40%	1.95
Section D Position Specific Standards	5	4.71	x	40%	1.89
Section F Personal Expectations	5	4.82	x	10%	0.48
Section G Annual Goals	5	4.66	x	10%	0.47
Total Points (no rounding)					4.78

☐ **Introductory Performance Evaluation Rating Summary - To Be Completed at Conclusion of Evaluation**

	Points Available	Points Earned		Weight	Total
Section C Service Excellence Standards	5	4.88	x	50%	2.44
Section D Position Specific Standards	5	4.71	x	50%	2.36
Total Points					4.79

Preliminary Performance Rating Score from Above	4.78
Personal Accountability Adjustment	0.00
Final Performance Evaluation Score	4.78

Final Performance Rating using score from above right

	Does Not Perform as Expected	1.0 - 1.5 Points
	Inconsistently Meets Expectations	1.6 - 2.5 Points
	Regularly Performs as Expected	2.6 - 3.5 Points
	Frequently Performs Beyond Expectations	3.6 - 4.5 Points
X	Consistently Exceeds Expectations	4.6 - 5.0 Points

SIGNATURES: (Evaluation will be returned if signatures are not present)

Anne Marshall — 6/24/13
Employee **Date**

*Employee's signature indicates that he/she has reviewed the completed evaluation but does not imply agreement.

Supervisor **Date** 6/24/13

Department Director Susan Kohlerly **Date** 6/27/13

C.C. Exhibit 29f

Section B: POSITION PURPOSE AND REQUIREMENTS

Position Purpose

The Registered Professional Nurse is responsible for the provision of direct patient care to a designated group of patients. These responsibilities will include the assessment, planning, implementation and evaluation of the patients' physical, psychological, emotional, educational and spiritual needs.

Reporting Relationships

This position reports to the Director of the ICCU. May function as a designated charge nurse. Supervision may be exercised over Licensed Practical Nurses, Clinical Technicians, Hospital Aides, and Ward Clerks.

Employment Criteria

1. Possession of a current NYS Registered Nursing License
2. Strong interpersonal, oral and written communication skills
3. One year medical/surgical experience
4. Ability to move or lift patients with assistance
5. One year RN experience in an acute care facility
6. Current CPR certification
7. ACLS certification within one year

Section C: MEDICAL CENTER SERVICE EXCELLENCE STANDARDS

I understand that Cayuga Medical Center is committed to providing the highest level of healthcare services to our customers, and takes pride in having staff and volunteers who will go out of their way to achieve this mission. I also understand that our hospital's success depends on my effort to helping earn our customers confidence and trust.

To meet the expectations for Service Excellence, the employee should exhibit performance in this section that is applicable to his/her position. The employee will receive 1,2,3,4 or 5 points for each Service Excellence Standard according to the following criteria, with the score for each section listed to left of each category.

1- Does not meet expectations
2- Inconsistently meets expectations
3 - Regularly meets expectations
4 - Consistently meets expectations and goes beyond what is expected when appropriate
5 - Consistently goes beyond what is expected and demonstrates the the highest level of service possible. Serves as a role model for others

5 **I. Standard 1 - Maintain a safe & clean environment for our patients, visitors & staff**

- Follow all Cayuga Medical Center safety guidelines and policies, keep hallways clear, and keep your work area safe and clean of clutter
- Know your role in an emergency and understand all safety codes
- Use equipment properly and report all unsafe issues promptly

Comments _____

_____

_____

_____

5 II. Standard 2 - Treat the people we serve as guests

- Welcome all patients, visitors and staff in a warm friendly manner.
- Introduce yourself by name and, when appropriate position, address people by name when possible and appropriate
- Escort people to their destinations
- Always treat people with courtesy, as rude or inappropriate behavior is never acceptable.

Comments _____

5 III. Standard 3 - Respect the privacy & confidentiality of patients, visitors & staff

- Be sensitive to issues of private space and personal dignity and when entering a patient room always knock and introduce yourself. If possible close doors or patient cubicles.
- Take all steps to protect patient confidentiality being careful not to discuss patient or hospital business in elevators and public places. Remember to only discuss information with people who have a need and right to know.
- Conduct phone and other discussions with discretion
- Refrain from speaking negatively about others, if you have an issue discuss it directly with the person involved.

Comments _____

5 IV. Standard 4 - Present a professional image.

- Wear your name badge at all times
- Make sure your appearance is appropriate for your role
- Practice good personal hygiene and grooming. Please avoid cologne, perfume or aftershave

Comments _____

5 **V. Standard 5 - Use the telephone professionally**

- Answer the phone promptly
- Introduce yourself and your department, offer assistance if appropriate
- Use a pleasant tone of voice
- Be a good listener and follow through on requests
- Adhere to a call transfer policy
- Eliminate overhead pages whenever possible

Comments always very professional on the phone.

5 **VI. Standard 6 - Listen to patients, visitors & staff then act promptly to address concerns**

- Stop to pay attention to the person in front of you. Make eye contact, acknowledge and provide assistance to each person.
- Take time to listen and explain next steps
- Validate what you've heard by repeating back the message
- Respond to call lights or concerns promptly

Comments

5 **VII. Standard 7 - Anticipate what services & information people need & take action to provide it**

- Ask people if you can help them
- If you anticipate a delay take the time to explain the reason to the patient/family or staff
- Communicate frequently
- Encourage people to ask questions, explain you are there to help
- Be sensitive to the cultural, emotional or spiritual needs of our guests
- Use white boards to communicate information.

Comments

4 **VIII. Standard 8 - Be a positive part of our service team**

- Recognize those who exemplify excellent customer service
- Take pride in what we do
- Remember that the customer is #1
- Never use the term "it's not my job"
- Address employee interpersonal issues appropriately and positively.
- Communicate clearly and positively with co-workers
- Positively represent Cayuga Medical Center in the workplace and in our community

Comments _____

Medical Center Performance Standards Summary

Total the ratings for each standard in this Section	39
Divide the number above by 8. This is the Section C Total	4.88

Note: If any score for any component for this section is at a 1 or below, the overall score for this section will be limited to a maximum of 3.0. Any component receiving a score of 1 will require a written plan of correction.

Additional Comments:

Section D: POSITION SPECIFIC PERFORMANCE STANDARDS

AGE SPECIFIC CRITERIA: **If** the employee has clinical contact with patients, circle yes or no to indicate whether the employee has exhibited clinical proficiency with the age groups served. Be sure that only the age groups served in the course of performing the job are checked. Lack of demonstration of proficiency may be due to not having the opportunity to work with patients in the age group. If "No" is checked, an action plan should be written in Section G.

Age of Patients Served

Neonate	☑ N/A	Adolescent	☑	Geriatric	☑
Pediatric	☑	Adult	☑	Does Not Have Patient Contact	☐

POSITION SPECIFIC PERFORMANCE STANDARDS

To meet the expectations for Position Specific Performance Standards, the employee will demonstrate Standards that are applicable to his/her position. The employee will receive 1,2,3,4 or 5 points for each Performance Standard according to the following criteria, with the score for each section placed in the box to the left of each category.

1 - Does not meet expectations
2 - Inconsistently meets expectations
3 - Regularly meets expectations
4 - Consistently meets expectations and goes beyond what is expected when appropriate
5 - Consistently goes beyond what is expected and demonstrates the highest level of service possible. Serves as a role model for others

I. Observation/Data Collection

5

- Demonstrates accuracy in data collection
  1. Vital signs
  2. Weights
  3. Glucometer/Finger Sticks
  4. Laboratory Specimens
  5. EKG's
  6. Cardiac Monitoring
- Assures patient's knowledge of Advance Directives and patient rights and documentation support

Comments: _____

II. Documentation

5

- Performs and documents a triage assessment upon patient arrival
- Documents pertinent pre-hospital care
- Assessment and documentation of social, psychosocial and spiritual needs are made
- Patient's chief complaint, subjective and objective assessment is documented
- Performs and documents immunization and lead screening per policy
- Fully documents care and response to care so as to give a full accounting of patient visit and discharge

Comments: _____

III. Evaluation/Planning

5

- Plans and organizes self to meet patient and unit needs within shift
- Able to prioritize patient care
- Plans and provides immediate comfort needs
- Uses appropriate equipment and room for patient care (i.e., negative pressure room,, monitored room,)
- Assures emergency equipment is readily available (i.e., crash cart, glucometer, etc.)
- Completes and documents necessary referrals (i.e. social work, health department, etc.)
- Establishes discharge teaching plan utilizing resources available to meet patient educational needs

Comments: _____

IV. Implementation

5

- Accurately follows through with MD orders in a timely manner
- Administers and documents medications timely and accurately according to hospital policy
- Reassesses and documents response to medications
- Reassesses patients on an ongoing basis during their ICCU stay and documents based on ICCU standard
- Maintains calm, therapeutic atmosphere while discussing all nursing care
- Implements and reinforces patient teaching within scope of practice
- Able to effectively monitor and intervene in the care of chemically impaired and emotionally unstable patients
- Performs effectively as member of ABC Alert and CAT Team
- Administers optimal patient care according to ICCU policies and procedures
- Prepares patient for MD visit

Comments: _____

V. Risk Management/Safety

5

- Anticipates potential and actual environmental safety hazards and takes appropriate actions
- Demonstrates standard precautions and infection control techniques in daily patient care activities
- Equipment in need of repair is reported, tagged and placed out of use
- Consistently uses proper lifting techniques
- Follows restraint policy/procedures for patient observations and patient checks
- Consistently uses fall prevention techniques and equipment
- Completes quality assurance forms and follow up telephone calls

Comments: _____

VI. Leadership

4

- Able to function as Charge Nurse
- Recognizes and assures appropriate staffing levels based on established standard
- Effectively supervises the triage process
- Able to assign and direct patient care appropriately based on education, experience and competency of staff members
- Able to handle difficult situations with diplomacy

Comments: Anne is a very good Charge Nurse and is developing into a strong team leader.

VII. Information Management

4

- Accurately uses the hospital information system to enter and retrieve data
- Demonstrates computer skills to enter all tests and procedures

Position Specific Performance Standards Summary

Total the categories rated in this Section	7
Divide the number by categories rated. This is the Section D Total	4.71

Note: If any score for any component for this section is at a 1 or below, the overall score for this section will be limited to a maximum of 3.0. Any component receiving a score of 1 will require a written plan of correction.

SECTION E: PERSONAL ACCOUNTABILITY EXPECTATIONS. Check "Yes" or "No". If "No" is checked for any of the statements, a plan of correction will be written in Section H.

- ☑ Maintains all appropriate certifications and licenses for position
- ☑ Completes all required competencies/Mandatory Education by established deadline dates
- ☑ Meets the expectations of the attendance policy
- ☑ Is compliant with all Red\Rules

If any item in the Personal Accountability Section is indicated as no, the overall evaluation score will be reduced by 1 rating level.

SECTION F: Personal Expectations

Ratings for this section will integrate feedback from peer evaluations when a peer evaluation is completed. If the peer evaluation program is not used, evaluation on this section will be completed by the director with input provided by the employee. Each standard will be evaluated on a 1 – 5 scale.

5 Helps others without prompting when work needs to be accomplished.

5 Is independent in his/her performance and is self directed.
5 Work is completed in a timely fashion.
4 Maintains a positive attitude in stressful working situations.
5 Is supportive, shares knowledge and skills, and is an approachable resource to others
5 Communicates with others in a positive and respectful manner.
5 Provides excellent customer service to patients, families, guests and other employees.
4 Is flexible and willing to make changes for the benefit of the team.
5 Demonstrates a high level of personal and professional accountability
5 Is receptive to learning and feedback, and demonstrates a willingness to learn and accept change
5 Is capable of providing quality care or service to patients or customers

Total the categories rated in this Section 11

Divide the number above by categories rated. This is the Section E Total 4.82

SECTION G: GOAL EVALUATION: This section will document and evaluate the performance on goals established Section F in the prior years evaluation. Performance on achieving the goal will be rated using the 1,2,3,4,5 scoring system.

		Rating	Weight	Score
1. Service Excellence	Precept staff to charge role	5	33%	1.65
2. Position Specific	Learn Kronos and QA systems	5	33%	1.65
3. Personal Development	CCRN Prep Class	4	34%	1.36
			100%	
			Total for Section G	4.66

SECTION H: Annual GOALS:

Each medical center employee will identify 3 goals for this year. One goal **each** will be related to Service Excellence, Position Specific responsibilities, Personal Development. Total weight of all 3 goals should be 100%

		Weight
1. Service Excellence	patient rounds on all patients when unassigned.	33%
2. Position Specific	Super user for zolls	33%
3. Personal Development	Obtain CCRN	34%
		100%

SECTION I: PLAN OF CORRECTION, IF REQUIRED

SECTION J: SUMMARY STATEMENT. This section is to be used to summarize strengths, contributions and developmental goals

Anne is becoming a strong team leader and has adapted well to her new role over the past year. She does an excellent job with following up on CMS indicators, QA's and kronos needs. As a team leader I want to see Anne work on being more positive about organizational structure and hospital leadership. Overall she is doing an outstanding job and I am fortunate to have her as part of my leadership team.

SECTION K: EMPLOYEE COMMENTS

Distribution: Original: Human Resources Copy: Employee Copy: Supervisor File

1

Cayuga Medical Center at Ithaca
Position Description Performance Evaluation

Registered Nurse, ICCU

Evaluation Cover Page and Summary

RB AZP

SECTION A. EMPLOYEE & SALARY INFORMATION

Employee Name: Anne Marshall	**Department Name:** ICCU 2014

☐ **Annual Performance Evaluation Rating Summary - To Be Completed at Conclusion of Evaluation**

	Points Available	Points Earned		Weight	Total
Section C Service Excellence Standards	5	4.75	x	40%	1.90
Section D Position Specific Standards	5	4.71	x	40%	1.89
Section F Personal Expectations	5	4.73	x	10%	0.47
Section G Annual Goals	5	4.67	x	10%	0.47
Total Points (no rounding)					4.73

☐ **Introductory Performance Evaluation Rating Summary - To Be Completed at Conclusion of Evaluation**

	Points Available	Points Earned		Weight	Total
Section C Service Excellence Standards	5	4.75	x	50%	2.38
Section D Position Specific Standards	5	4.71	x	50%	2.36
Total Points					4.73

Preliminary Performance Rating Score from Above	4.73
Personal Accountability Adjustment	0.00
Final Performance Evaluation Score	4.73

Final Performance Rating using score from above right

	Does Not Perform as Expected	1.0 - 1.5 Points
	Inconsistently Meets Expectations	1.6 - 2.5 Points
	Regularly Performs as Expected	2.6 - 3.5 Points
	Frequently Performs Beyond Expectations	3.6 - 4.5 Points
X	Consistently Exceeds Expectations	4.6 - 5.0 Points

SIGNATURES: (Evaluation will be returned if signatures are not present)

Anne Marshall — **Employee** — **Date** 6/18/14

*Employee's signature indicates that he/she has reviewed the completed evaluation but does not imply agreement.

Supervisor — **Date** 6/18/14

Department Director — Susan Holiday — **Date** 6/25/14

C.C. Exhibit 29g

2

Section B: POSITION PURPOSE AND REQUIREMENTS

Position Purpose

The Registered Professional Nurse is responsible for the provision of direct patient care to a designated group of patients. These responsibilities will include the assessment, planning, implementation and evaluation of the patients' physical, psychological, emotional, educational and spiritual needs.

Reporting Relationships

This position reports to the Director of the ICCU. May function as a designated charge nurse. Supervision may be exercised over Licensed Practical Nurses, Clinical Technicians, Hospital Aides, and Ward Clerks.

Employment Criteria

1. Possession of a current NYS Registered Nursing License
2. Strong interpersonal, oral and written communication skills
3. One year medical/surgical experience
4. Ability to move or lift patients with assistance
5. One year RN experience in an acute care facility
6. Current CPR certification
7. ACLS certification within one year

Section C: MEDICAL CENTER SERVICE EXCELLENCE STANDARDS

I understand that Cayuga Medical Center is committed to providing the highest level of healthcare services to our customers, and takes pride in having staff and volunteers who will go out of their way to achieve this mission. I also understand that our hospital's success depends on my effort to helping earn our customers confidence and trust.

To meet the expectations for Service Excellence, the employee should exhibit performance in this section that is applicable to his/her position. The employee will receive 1,2,3,4 or 5 points for each Service Excellence Standard according to the following criteria, with the score for each section listed to left of each category.

1- Does not meet expectations
2- Inconsistently meets expectations
3 - Regularly meets expectations
4 - Consistently meets expectations and goes beyond what is expected when appropriate
5 - Consistently goes beyond what is expected and demonstrates the the highest level of service possible. Serves as a role model for others

5 **I. Standard 1 - Maintain a safe & clean environment for our patients, visitors & staff**

- Follow all Cayuga Medical Center safety guidelines and policies, keep hallways clear, and keep your work area safe and clean of clutter
- Know your role in an emergency and understand all safety codes
- Use equipment properly and report all unsafe issues promptly

Comments _____

_____

_____

_____

3

5 **II. Standard 2 - Treat the people we serve as guests**

- Welcome all patients, visitors and staff in a warm friendly manner.
- Introduce yourself by name and, when appropriate position, address people by name when possible and appropriate
- Escort people to their destinations
- Always treat people with courtesy, as rude or inappropriate behavior is never acceptable.

Comments _____

5 **III. Standard 3 - Respect the privacy & confidentiality of patients, visitors & staff**

- Be sensitive to issues of private space and personal dignity and when entering a patient room always knock and introduce yourself. If possible close doors or patient cubicles.
- Take all steps to protect patient confidentiality being careful not to discuss patient or hospital business in elevators and public places. Remember to only discuss information with people who have a need and right to know.
- Conduct phone and other discussions with discretion
- Refrain from speaking negatively about others, if you have an issue discuss it directly with the person involved.

Comments _____

4 **IV. Standard 4 - Present a professional image.**

- Wear your name badge at all times
- Make sure your appearance is appropriate for your role
- Practice good personal hygiene and grooming. Please avoid cologne, perfume or aftershave

Comments _____

4

5 **V. Standard 5 - Use the telephone professionally**

- Answer the phone promptly
- Introduce yourself and your department, offer assistance if appropriate
- Use a pleasant tone of voice
- Be a good listener and follow through on requests
- Adhere to a call transfer policy
- Eliminate overhead pages whenever possible

Comments always very professional on the phone.

5 **VI. Standard 6 - Listen to patients, visitors & staff then act promptly to address concerns**

- Stop to pay attention to the person in front of you. Make eye contact, acknowledge and provide assistance to each person.
- Take time to listen and explain next steps
- Validate what you've heard by repeating back the message
- Respond to call lights or concerns promptly

Comments

5 **VII. Standard 7 - Anticipate what services & information people need & take action to provide it**

- Ask people if you can help them
- If you anticipate a delay take the time to explain the reason to the patient/family or staff
- Communicate frequently
- Encourage people to ask questions, explain you are there to help
- Be sensitive to the cultural, emotional or spiritual needs of our guests
- Use white boards to communicate information.

Comments

5

4 **VIII. Standard 8 - Be a positive part of our service team**

- Recognize those who exemplify excellent customer service
- Take pride in what we do
- Remember that the customer is #1
- Never use the term "it's not my job"
- Address employee interpersonal issues appropriately and positively.
- Communicate clearly and positively with co-workers
- Positively represent Cayuga Medical Center in the workplace and in our community

Comments _____

Medical Center Performance Standards Summary

Total the ratings for each standard in this Section	38
Divide the number above by 8. This is the Section C Total	4.75

Note: If any score for any component for this section is at a 1 or below, the overall score for this section will be limited to a maximum of 3.0. Any component receiving a score of 1 will require a written plan of correction.

Additional Comments:

6

Section D: POSITION SPECIFIC PERFORMANCE STANDARDS

AGE SPECIFIC CRITERIA: If the employee has clinical contact with patients, circle yes or no to indicate whether the employee has exhibited clinical proficiency with the age groups served. Be sure that only the age groups served in the course of performing the job are checked. Lack of demonstration of proficiency may be due to not having the opportunity to work with patients in the age group. If "No" is checked, an action plan should be written in Section G.

Age of Patients Served

Neonate	☑ N/A	Adolescent	☑	Geriatric	☑
Pediatric	☑	Adult	☑	Does Not Have Patient Contact	☐

POSITION SPECIFIC PERFORMANCE STANDARDS

To meet the expectations for Position Specific Performance Standards, the employee will demonstrate Standards that are applicable to his/her position. The employee will receive 1,2,3,4 or 5 points for each Performance Standard according to the following criteria, with the score for each section placed in the box to the left of each category.

1 - Does not meet expectations
2 - Inconsistently meets expectations
3 - Regularly meets expectations
4 - Consistently meets expectations and goes beyond what is expected when appropriate
5 - Consistently goes beyond what is expected and demonstrates the highest level of service possible. Serves as a role model for others

I. Observation/Data Collection

5

- Demonstrates accuracy in data collection
  1. Vital signs
  2. Weights
  3. Glucometer/Finger Sticks
  4. Laboratory Specimens
  5. EKG's
  6. Cardiac Monitoring
- Assures patient's knowledge of Advance Directives and patient rights and documentation support

Comments: _____

II. Documentation

5

- Performs and documents a triage assessment upon patient arrival
- Documents pertinent pre-hospital care
- Assessment and documentation of social, psychosocial and spiritual needs are made
- Patient's chief complaint, subjective and objective assessment is documented
- Performs and documents immunization and lead screening per policy
- Fully documents care and response to care so as to give a full accounting of patient visit and discharge

Comments: _____

1

III. Evaluation/Planning

5

- Plans and organizes self to meet patient and unit needs within shift
- Able to prioritize patient care
- Plans and provides immediate comfort needs
- Uses appropriate equipment and room for patient care (i.e., negative pressure room,, monitored room,)
- Assures emergency equipment is readily available (i.e., crash cart, glucometer, etc.)
- Completes and documents necessary referrals (i.e. social work, health department, etc.)
- Establishes discharge teaching plan utilizing resources available to meet patient educational needs

Comments: _____

IV. Implementation

5

- Accurately follows through with MD orders in a timely manner
- Administers and documents medications timely and accurately according to hospital policy
- Reassesses and documents response to medications
- Reassesses patients on an ongoing basis during their ICCU stay and documents based on ICCU standard
- Maintains calm, therapeutic atmosphere while discussing all nursing care
- Implements and reinforces patient teaching within scope of practice
- Able to effectively monitor and intervene in the care of chemically impaired and emotionally unstable patients
- Performs effectively as member of ABC Alert and CAT Team
- Administers optimal patient care according to ICCU policies and procedures
- Prepares patient for MD visit

Comments: _____

V. Risk Management/Safety

5

- Anticipates potential and actual environmental safety hazards and takes appropriate actions
- Demonstrates standard precautions and infection control techniques in daily patient care activities
- Equipment in need of repair is reported, tagged and placed out of use
- Consistently uses proper lifting techniques
- Follows restraint policy/procedures for patient observations and patient checks
- Consistently uses fall prevention techniques and equipment
- Completes quality assurance forms and follow up telephone calls

Comments: _____

8

VI. Leadership

4

- Able to function as Charge Nurse
- Recognizes and assures appropriate staffing levels based on established standard
- Effectively supervises the triage process
- Able to assign and direct patient care appropriately based on education, experience and competency of staff members
- Able to handle difficult situations with diplomacy

Comments: _____

VII. Information Management

4

- Accurately uses the hospital information system to enter and retrieve data
- Demonstrates computer skills to enter all tests and procedures

Position Specific Performance Standards Summary

Total the categories rated in this Section	7
Divide the number by categories rated. **This is the Section D Total**	4.71

Note: If any score for any component for this section is at a 1 or below, the overall score for this section will be limited to a maximum of 3.0. Any component receiving a score of 1 will require a written plan of correction.

SECTION E: PERSONAL ACCOUNTABILITY EXPECTATIONS. Check "Yes" or "No". If "No" is checked for any of the statements, a plan of correction will be written in Section H.

- ☑ Maintains all appropriate certifications and licenses for position
- ☑ Completes all required competencies/Mandatory Education by established deadline dates
- ☑ Meets the expectations of the attendance policy
- ☑ Is compliant with all Red\Rules

If any item in the Personal Accountability Section is indicated as no, the overall evaluation score will be reduced by 1 rating level.

SECTION F: Personal Expectations

Ratings for this section will integrate feedback from peer evaluations when a peer evaluation is completed. If the peer evaluation program is not used, evaluation on this section will be completed by the director with input provided by the employee. Each standard will be evaluated on a 1 – 5 scale.

5 Helps others without prompting when work needs to be accomplished.

9

5	Is independent in his/her performance and is self directed.
5	Work is completed in a timely fashion.
4	Maintains a positive attitude in stressful working situations.
5	Is supportive, shares knowledge and skills, and is an approachable resource to others
5	Communicates with others in a positive and respectful manner.
5	Provides excellent customer service to patients, families, guests and other employees.
4	Is flexible and willing to make changes for the benefit of the team.
4	Demonstrates a high level of personal and professional accountability
5	Is receptive to learning and feedback, and demonstrates a willingness to learn and accept change
5	Is capable of providing quality care or service to patients or customers

Total the categories rated in this Section 11

Divide the number above by categories rated. This is the Section E Total 4.73

SECTION G: GOAL EVALUATION: This section will document and evaluate the performance on goals established Section F in the prior years evaluation. Performance on achieving the goal will be rated using the 1,2,3,4,5 scoring system.

		Rating	Weight	Score
1. Service Excellence	patient rounds on all patients when unassigned.	4	33%	1.32
2. Position Specific	Super user for zolls	5	33%	1.65
3. Personal Development	Obtain CCRN	5	34%	1.70
		Total for Section G		4.67

SECTION H: Annual GOALS:

Each medical center employee will identify 3 goals for this year. One goal **each** will be related to Service Excellence, Position Specific responsibilities, Personal Development. Total weight of all 3 goals should be 100%

		Weight
1. Service Excellence	Orient staff to charge	33%
2. Position Specific	Pals cert and renew ACLS	33%
3. Personal Development	Inservices / conferences	34%

10

SECTION I: PLAN OF CORRECTION, IF REQUIRED

SECTION J: SUMMARY STATEMENT. This section is to be used to summarize strengths, contributions and developmental goals

Anne is a good team leader and charge nurse. She has strong clinical skills, is reliable, and has a strong work ethic. She does a nice job of assisting with payroll and following up on issues. She is helpful and always looking out for the staff. One thing I would like her to work on is the example she sets with her cell phone and texting throughout the day. Overall I think Ann does a great job and am pleased with her performance.

SECTION K: EMPLOYEE COMMENTS

Distribution: Original: Human Resources Copy: Employee Copy: Supervisor File

Cayuga Medical Center at Ithaca
Position Description Performance Evaluation

Registered Professional Nurse, ICCU

Evaluation Cover Page and Summary

SECTION A. EMPLOYEE & SALARY INFORMATION 2015

Employee Name: Anne Marshall		Department Name:

☐ Annual Performance Evaluation Rating Summary - To Be Completed at Conclusion of Evaluation

		Points Available	Points Earned		Weight	Total
Section C	Service Excellence Standards	5	____	x	40%	____
Section D	Position Specific Standards	5	____	x	40%	____
Section F	Personal Expectations	5	____	x	10%	____
Section G	Annual Goals	5	____	x	10%	____
	Total Points (no rounding)				Total	____

☐ Introductory Performance Evaluation Rating Summary - To Be Completed at Conclusion of Evaluation

		Points Available	Points Earned		Weight	Total
Section C	Service Excellence Standards	5	____	x	50%	____
Section D	Position Specific Standards	5	____	x	50%	____
	Total Points (no rounding)				Total	____

Preliminary Performance Rating Score from Above 2014 4.73

Personal Accountability Adjustment -1.00

Final Performance Evaluation Score 2015 3.73
Final Performance Rating using score from above right

____	Does Not Perform as Expected	1.0 - 1.5 Points
____	Inconsistently Meets Expectations	1.6 - 2.5 Points
____	Regularly Performs as Expected	2.6 - 3.5 Points
✓	Frequently Performs Beyond Expectations	3.6 - 4.5 Points
____	Consistently Exceeds Expectations	4.6 - 5.0 Points

SIGNATURES: (Evaluation will be returned if signatures are not present)

Employee _____ Date _____

*Employee's signature indicates that he/she has reviewed the completed evaluation but does not imply agreement.

Supervisor _____ Date _____

Department Director _____ Date 10/30/15

G.C Exhibit 29h

2

Assignment Completion Report - Drill-Through

HealthStream

REPORT GENERATED: Oct 31, 2015, 10:29 pm ET

Cayuga Medical Center Ithaca

Student Detail (Based on Due Date)

MARSHALL, ANNE

Due Date Range: Apr 15, 2014 through Oct 27, 2015

Data as of: Oct 31, 2015, 1:00 am ET

Report Generated: Oct 31, 2015, 10:29 pm ET

Scores

Unique Students Involved: 1

Supervisor: Not Selected

Total Completed:	**100.00%**
On Time:	94.12%
Late:	5.88%
Failed:	0.00%
Not Yet Due:	**0.00%**
Past Due:	**0.00%**
Delinquent:	**0.00%**
Total:	**100.00%**
Exempt:	**0**

ASSIGNMENT COMPLETION DETAILS

Total Completed: 100.00%

	NOT YET DUE	COMPLETED			PAST DUE	DELINQUENT		
COURSE	IS DUE ON	ON TIME	LATE	FAILED	WAS DUE ON.	AS OF..	EXEMPT	DUE DATE
2014 CAT EDUCATION		09/18/2014						10/15/2014
2014 Chest Pain Center Education for Cardiac Nurses		09/13/2014						11/30/2014
2014 Department Specific Safety		03/10/2014						04/15/2014
2014 ICU Acetadote self learn		08/22/2014						09/01/2014

3

2014 ICU Cyanokit	03/10/2014		04/19/2014
2014 ICU REGITINE DRUG OF THE MONTH	10/17/2014		11/01/2014
2014 K centra	05/30/2014		06/01/2014
2014 Moderate Sedation	08/16/2014		11/30/2014
2014 Nursing Skills Day	04/03/2014		04/15/2014
2014 Point of Care Testing--Unit Specific	04/11/2014		04/15/2014
2014 Policy and Procedure Review - April - RN/LPN		05/28/2014	04/30/2014
2014 Policy and Procedure Review - August RN/LPN	08/16/2014		08/31/2014
2014 Policy and Procedure Review - December	12/08/2014		12/31/2014
2014 Policy and Procedure Review - June - RN/LPN		07/30/2014	06/30/2014
2014 Policy and Procedure Review - October	10/03/2014		10/31/2014
2014 Policy and Procedure Review - Sept - RN/LPN	09/10/2014		09/30/2014
2014 Propofol	11/24/2014		12/31/2014
2014 Regulatory Compliance: Clinical Part I	01/22/2014		04/15/2014
2014 Regulatory Compliance: Clinical Part II	02/16/2014		04/15/2014

4

2014 Restraint Competency	03/13/2014	04/15/2014
2014 Safety Training: Response to Patient Safety Events and Proactive Risk Assessment	10/03/2014	10/31/2014
2014 Stroke Education	09/13/2014	11/30/2014
2015 Chest Pain Center Education for Cardiac RNs	05/11/2015	09/30/2015
2015 Cisatracurium	02/13/2015	02/28/2015
2015 DANTRIUM	04/17/2015	05/31/2015
2015 Department Specific Safety	02/27/2015	04/15/2015
2015 Nursing Skills Day	04/13/2015	04/15/2015
2015 Policy and Procedure Review - August - Nurses	08/29/2015	08/31/2015
2015 Policy and Procedure Review - February - Nurses	02/09/2015	02/28/2015
2015 Policy and Procedure Review - January - Nurses and Aides/Techs	01/19/2015	01/31/2015
2015 Policy and Procedure Review - July - Nurses	07/01/2015	07/31/2015
2015 Policy and Procedure Review - June - Nurses	06/10/2015	06/30/2015

2015 Policy and Procedure Review - March - Nurses	03/04/2015		03/31/2015
2015 Policy and Procedure Review - May - Nurses	05/11/2015		05/31/2015
2015 Policy and Procedure Review - September - Nurses	09/21/2015		09/30/2015
2015 Regulatory Compliance: Clinical Part I	02/09/2015		04/15/2015
2015 Regulatory Compliance: Clinical Part II	02/09/2015		04/15/2015
2015 Temporary Pacemaker Competency	05/19/2015		06/26/2015
Bariatric Perioperative Care and Preventing Surgical Site Infection	08/16/2014		11/30/2014
Basal Bolus Insulin Therapy initial training	10/02/2015		10/06/2015
CPR		02/28/2015	01/28/2015
Ebola Monthly Reassessment	04/08/2015		04/30/2015
Ebola Monthly Reassessment	09/21/2015		09/30/2015
Ebola Monthly Reassessment	08/03/2015		08/30/2015
Ebola Monthly Reassessment	05/11/2015		05/30/2015
Ebola Monthly Reassessment	06/10/2015		06/30/2015

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Ebola Monthly Reassessment		07/13/2015						07/30/2015
Ebola PPE Training		08/31/2015						08/31/2015
Nursing Documentation Essentials 2015		03/04/2015						03/31/2015
Oral Chemotherapy		09/13/2014						11/30/2014
Sepsis, CLABSI and Anticoagulation		08/16/2014						11/30/2014
Student Totals	0.00%	94.12%	5.88%	0.00%	0.00%	0.00%	0	---

Completed Late date shows date completed after the due date where permitted by assignment rules. Past Due date is the assignment due date, indicating the student is incomplete but permitted to complete the assignment. Delinquent date is the assignment due date, indicating the student is incomplete but not permitted to complete the assignment. Exemptions are not scored and shows exemption date. Dates in parenthesis indicate the learning items and/or assessments has not been completed.

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9

✓ Yes ___ No	Follows laws and regulations applicable to the operations of department and organization
___ Yes ✓ No	Demonstrates a sense of right and wrong by exhibiting honest, ethical behavior
✓ Yes ___ No	Brings concerns forward to management, human resources or Compliance Officer
✓ Yes ___ No	Preserves confidentiality of patient and employee information "written or electronic" and observes patient rights
✓ Yes ___ No	Maintains all appropriate certifications and licenses appropriate for position
✓ Yes ___ No	Completes all required competencies/Mandatory Education/Health Requirements by established deadline dates
✓ Yes ___ No	Meets the expectations of the attendance policy
✓ Yes ___ No	Compliant with meeting hospital reporting deadlines for performance evaluations and budget

If any item in the Personal Accountability Section is indicated as no, the overall evaluation score will be reduced by 1 rating level.

SECTION F: MEDICAL CENTER PERFORMANCE OBJECTIVES: This section will be used to evaluate performance on the medical center performance objectives that are established on an annual basis and reported on the Medical Center Accountability Chart. Each of the 5 category areas will be eligible for a score of 0 or 5.

		Score
1. People	ESQ	___
	Rounds on Employees	___
2. Customer	% of 5's	___
	Rounds on Customers	___
3. Clinical	Falls	___
	Skin Integrity	___
4. Fiscal	FTE Performance	___
	Overall Budget	___
5. Safety	Safety Training	___
	Survey Participation	___
6. Total		___
7. Number of components scored		___
8. Divide line 6 by line 7	Section Score	___

Scoring Instructions

Total the individual scores for all of the individual components, and place that number on the line 6. Add up the number of components rated and then place that number on line 7. Divide line 6 by line 7 and put that score on line 8.

SECTION G: GOAL EVALUATION: This section will be used to evaluate the goals that were established for this year. Goals will be evaluated using the 1,2,3,4,5 scoring system

8 10

SECTION H: Annual GOALS: Each medical center employee will identify 3 goals for this year. One goal will be related to Service Excellence and one goal will be related to Position Specific responsibilities, and one goal will be focused on Personal Development. Total weigh of all 3 goals should be 100%

	Weight
1.Service Excellence continued excellent customer service	___%
2.Position Specific Re instate in previous position	___%
3.Personal Development PARS	___%
	100%

SECTION I: PLAN OF CORRECTION, IF REQUIRED

SECTION J: SUMMARY STATEMENT. This section is to be used to summarize strengths, contributions and developmental goals.

SECTION K: EMPLOYEE COMMENTS

Distribution: Original: Human Resources Copy: Employee Copy: Supervisor File

Litigation

From: noreply@cayugamed.org
Sent: Thursday, April 28, 2016 12:21 PM
To: Litigation
Subject: Fwd: ED-Union Info

Importance: High

From: <amathews@CAYUGAMED.org>
Sent: Fri, 22 May 2015 16:57:51 +0000
To: <APedersen@CAYUGAMED.org>
Subject: ED-Union Info

Alan,
From what I am told today from Kathy Fox there is about a 50/50 split in the ED. I was also told that there are frequent meetings being held on State Street at the BPOE building. She said that a lot of the staff does not care about what is going on in other departments specifically, only concerned about their work life and function within their own department. Kathy said that many staff just want to know that their cries for help are heard (mental health/hall beds) because they want to get back to business, back to staff being happy, and work being an enjoyable place to be. The comment was made from her that she really feels that the reason why the senior team is listening is because of the fear of the union.

Known Pro: Cheryl Durkee, Scott, Kelli Breslin, Jill Whitener, Brian Simkin, Sharey Selover, Alicia Steele, Teresa Dodge, ? Michelle Meckley, ? Erin Bell

Anti: Kathy Fox, Randa Best, Rosie Carpenter, Johannah Shortle, Kristin Treat, Deb Scott, Elaina Sheiman, Liz Laue, Kevin Harris, ? Johanna Belcher, ? Louise McGarry

I am not sure I could accurately guess who would be pro or con team at this point . I know a few of our newer people have been involved in unions during their past employment and seem to not care either way when I had a brief discussion with them because the environment had changed between the time that they interviewed and actually started their job.
Amy

GC Exhibit 30

Litigation

From: noreply@cayugamed.org
Sent: Thursday, April 28, 2016 12:22 PM
To: Litigation
Subject: Fwd: Meal Breaks

-----Original Message-----

From: <snohelty@CAYUGAMED.org>

Sent: Thu, 11 Jun 2015 16:44:15 +0000

To: <amathews@CAYUGAMED.org>, <LCrumb@CAYUGAMED.org>

Subject: Meal Breaks

Amy and Linda:
One of the major complaints by staff in the ED is their inability to take meal breaks. In light of the union activity, John would like a plan to be put in place as to how we can get staff to take their meal breaks. Let me know what I can do to assist with this.
Thanks
Susan

Sent from my iPad

GC Exhibit 31

CAYUGA MEDICAL CENTER

EMPLOYEE COUNSELING FORM

EMPLOYEE NAME: Scott Marsland DATE: 09/24/2015

DEPARTMENT: Emergency Department

__X__ **WRITTEN VERBAL WARNING #1** _____ **WRITTEN WARNING #2**

_____ **SUSPENSION** _____ **FINAL WARNING (Optional)**

_____ **TERMINATION**

Code of Conduct Violation

- Criticizes co-workers or other staff in the presence of others in the workplace or in the presence of patients.
- Publicly shames others

Reason for Counseling:

In the 0715 staff meeting on 09/24/2015 the Emergency Department Team was discussing strategies used to successfully implement lunch breaks during the previous days in the department.

In front of 11 team members during this staff meeting Scott verbally and in a bullying manner criticized ED team member, Deb Scott, who was not present at the meeting. Scott was openly verbalizing that Deb Scott was "not a competent Emergency Department RN to care for his patients"

Scott was instructed that his comments were inappropriate and that the staff meeting was not the forum for such conversation. Scott continued repeatedly in a persistent manner to openly criticize and verbally ridicule Deb Scott regardless of being instructed to stop his behavior. Scott then began to openly criticize another RN, Gail Peck who has just begun cross training in the ED because she needed significant help mixing a patient medication.

Expectations:

The expectations are that you will:

- Follow the Nursing Code of Conduct.
- You will not criticize staff in the presence of others in the work place.
- You will not publicly shame others

Failure to comply with the Nursing Code of Conduct and further incidents will result in progression of the disciplinary process. A written copy of the Nursing Code of Conduct has been provided to you and is also available via the Maxima eLibrary Policy and Procedure web server.

_____ _____

Employee's Signature/Date Director/Reviewer's Signature/Date

G.C. Exhibit 32

CMC VERBAL WARNING 10 5 15

03-CA-156375

Cayuga Medical Center

AUDIO RECORDING

Transcribed for the

National Labor Relations Board

Transcript 1 of 1

2016 FEB 21 AM 10:32
BUFFALO, NY
R.C. BUFFALO
NLRB

By: Mary E. Dring

Burke Court Reporting, LLC

GC Exhibit 34b

TRANSCRIPTION OF AUDIO PROVIDED

MANAGEMENT REP: So my issue with that whole thing is about talking -- somebody {indiscernible}.

SCOTT: I agree.

MANAGEMENT REP: That's what my -- that's the only portion of what we had in staff meeting that was unacceptable.

SCOTT: I agree.

MANAGEMENT REP: And with that being -- like, when I asked you to stop, we can't do that here, and we just continue, you know, to stop. It's inappropriate. Like, I wouldn't want anybody to talk about you that way in an open staff meeting, either. I would be like, you need to stop.

SCOTT: I appreciate that.

MANAGEMENT REP: So, you know, regardless, whether our views meet on some things or don't --

SCOTT: Yeah.

MANAGEMENT REP: -- on others, that's okay. We're two separate people.

SCOTT: Right.

MANAGEMENT REP: I'm okay with that. But like the aftermath of staff, like, saying -- all right, it's done. Like, and getting all worked up and upset about it, too, you know. And then to have to calm down the staff

1 member who's talked about is a whole other thing. I'm
2 just like this is out of control.
3 SCOTT: Yeah, I'm sorry for that.
4 MANAGEMENT REP: Out of control. So that's my
5 thing. And that's a -- that's our code of conduct. And
6 I'm going to give you just a verbal for the code of
7 conduct.
8 SCOTT: Okay.
9 MANAGEMENT REP: I'm going to give you a copy of
10 the code of conduct.
11 SCOTT: Okay.
12 MANAGEMENT REP: Because we went from there
13 right to Gail. And Gail is --
14 SCOTT: Gail?
15 MANAGEMENT REP: This Gail Peckis (ph), she's --
16 SCOTT: Oh, I see.
17 MANAGEMENT REP: -- cross training for -- from
18 short stay. She shouldn't -- she is a new nurse. She
19 absolutely is new to us. Absolutely is new to us, so
20 she's not going to know how to do things. The girl's
21 probably never mixed a banana bag. She's probably never
22 had to.
23 SCOTT: Uh-huh.
24 MANAGEMENT REP: She's a surgical nurse.
25 SCOTT: Right.

MANAGEMENT REP: You know --

SCOTT: Oh, you don't think I should have been talking about Gail?

MANAGEMENT REP: I don't think that she should have come up in the open forum, either. I think if there's a concern, absolutely. Do I think that she should be left in an area by herself? No. I don't think she should be left in an area --

SCOTT: Right.

MANAGEMENT REP: -- by herself. I don't. But I think that in a way that she is new to us and just newly -- like, I know what her mission is here. She's learning and she'll cross-train. She needs to be hip-to-hip with somebody.

SCOTT: Um-hum.

MANAGEMENT REP: You know. And you know, you still need to be hip-to-hip in Fast Track, because we all know we bring people in and --

SCOTT: Um-hum.

MANAGEMENT REP: But there's also --

SCOTT: So, I mean, just -- just for what it's worth, I mean, if we're going to start throwing around verbal warnings and written warnings, and we all know the context of this, it's going to be --

MANAGEMENT REP: Context of what?

1 SCOTT: Of the union attempt. You know, it's
2 just like I --
3 MANAGEMENT REP: It has nothing to do with
4 union.
5 SCOTT: You know, I have trouble believing that
6 because you and I have worked together as long as we have,
7 and there have been plenty of things that have come up
8 with me, and this is the first time you're giving me a
9 verbal warning.
10 MANAGEMENT REP: It has nothing to do with the
11 union.
12 SCOTT: If you -- you can say that. But it's
13 hard for me --
14 MANAGEMENT REP: And we have --
15 SCOTT: -- to believe that.
16 MANAGEMENT REP: We have talked about this kind
17 of stuff and pulling aside and not out in the open forum.
18 And we've even talked about --
19 SCOTT: You and I have.
20 MANAGEMENT REP: -- stepping back.
21 SCOTT: You and I have.
22 MANAGEMENT REP: Stepping back.
23 SCOTT: Yeah.
24 MANAGEMENT REP: So I will let you read.
25 SCOTT: I'm not going to sign anything. I'll

1 read it but I'm not going to sign it.
2 MANAGEMENT REP: Okay.
3 SCOTT: I'll take it -- I'll take a copy of it.
4 MANAGEMENT REP: It's about being asked -- it's
5 about being asked to stop being told that's inappropriate.
6 SCOTT: Yeah.
7 MANAGEMENT REP: You can openly --
8 SCOTT: Well --
9 MANAGEMENT REP: -- condemn somebody out in
10 front --
11 SCOTT: No --
12 MANAGEMENT REP: -- of a group of people.
13 SCOTT: I -- I understand. And I agree with
14 you. And I acknowledge my mistake. And I made a good
15 faith effort to communicate with her about it. But you know,
16 it's -- in terms of the degree to which I have done that
17 in the past, I mean, you've, in annual reviews of me
18 before, you've complimented me for not gossiping about
19 people.
20 You know, you've got Kathy Fox out there who is
21 such a poisonous, destructive ailment to the morale of
22 this group because of how much she badmouths everybody.
23 It just depends on who she's talking to. And if you want
24 to talk about code of conduct, you talk about Deb Scott
25 and Rosy and Kathy standing outside of patient rooms in

1 Fast Track, "F-this, f-that, f-union, f-this, ain't f-ing
2 coming in," you know, I'm just going to whip out my -- my
3 iPhone and start recording. And then let's talk about
4 code of conduct. Because we're talking about 10 different
5 points on your code of conduct.
6 MANAGEMENT REP: This is the first time that I'm
7 hearing about that occurring outside of Fast Track.
8 SCOTT: Okay. And you know --
9 MANAGEMENT REP: So if I'm --
10 SCOTT: -- and the whole --
11 MANAGEMENT REP: -- hearing that or it's coming
12 back, then I need to go back to --
13 SCOTT: Okay. And let's see the write-up.
14 MANAGEMENT REP: -- I'll see Deb and Kathy --
15 SCOTT: Kathy and Rosy.
16 MANAGEMENT REP: -- and ask them about that.
17 This was blatant, Scott. No -- about it.
18 SCOTT: I -- I understand, but this is
19 contextual. You know, it's just like the -- the Medical
20 Center came up with this code of conduct and it's -- it's
21 not applied to management. You know, the reason they
22 finally got rid of that -- that bastard who was in the
23 ICU, who was -- who violated every single line on that
24 code of conduct. You know, who -- who engaged in sexual
25 harassment, who engaged in intimidation --

1 MANAGEMENT REP: See, I wouldn't know --
2 SCOTT: -- he was a rat --
3 MANAGEMENT REP: -- about that with --
4 SCOTT: But you -- I Have trouble believing that
5 you don't know about it. You're a director. You go to
6 director's meetings. They talked about that in director's
7 meetings.
8 MANAGEMENT REP: They talked that he was gone.
9 And they talked about allegations. But I didn't
10 physically -- I don't know --
11 SCOTT: You've got ears.
12 MANAGEMENT REP: -- what the mix-up --
13 SCOTT: I mean, they -- and they used that code
14 of conduct as a baton to try to beat up --
15 MANAGEMENT REP: This isn't about Joel (ph).
16 SCOTT: Yeah, I -- you know, I -- what did we --
17 we started off with me saying I -- I agree. I agree with
18 what you're saying about not talking about people in front
19 of the meeting. Honestly, I thought what I said about
20 Gail was benign. So I -- what I think the message you're
21 telling me, I'm not supposed to use anybody's name in a
22 staff meeting. Pro or con. You just don't want people
23 talking about --
24 MANAGEMENT REP: Not when -- not when you're
25 talking openly about people in a derogatory sense --

1 SCOTT: Okay.
2 MANAGEMENT REP: -- in front of other people.
3 If you have a concern, you have a concern about Gail, you
4 have a concern -- if you have a concern about her seeming
5 new or whatever, then maybe you don't know that she's down
6 here as a cross-trainer.
7 SCOTT: No, I know she --
8 MANAGEMENT REP: That she is --
9 SCOTT: No, I know who she is and what she's
10 doing. And -- and she's recently out of retirement or not
11 working in nursing, and it's kind of like working with a
12 nursing student.
13 You know, we need -- we need to be able to talk
14 to each other, not just me talk to you. Like -- I mean,
15 that's part of why we want a union. Like, nurses need to
16 be able to talk to each other, exactly. That's what I'm
17 saying about Deb.
18 You know, Deb -- Deb wanted to mix another
19 medication with Diltiazem on a critical patient in 14.
20 It's not like she hasn't been in the ED for long enough to
21 know, you don't mix -- you don't -- she didn't check the
22 compatibility. Like, I -- I don't want her touching my
23 critical patients. She's not -- she -- and it's not that
24 she's not able. It's not that maybe someday she won't
25 know it, which is part of what I talked about in my email

to her. But she is not there. And it's not apples for apples to have her relieve somebody in that corner. She doesn't belong in that corner. And it's not that she's a bad nurse. She's got a lot of -- she can do a lot of things I can't do.

MANAGEMENT REP: All right.

SCOTT: Including start IVs on really young kids. And you know, I'm grateful that she does the same work. And I'm grateful she does the education work. But it's not apples for apples.

And the other thing I brought up in my email to her, so while we're talking about these things, is she violates HIPAA on a regular basis. And you know, and I -- I -- I'm not coming to you with that. You know, I mean, this is contextual. I'm not saying that to get her in trouble. But she knows everybody and their brother and their cousin and their sister and their neighbor, and she will regularly step out of her own group --

I mean, and the example I gave to her in the email I wrote her, was that I was in a room with a patient who came by ambulance who was unstable, I'm still triaging him, trying to get a line. Christiane (ph) is there at the bedside as soon as he came in, and she walks in and said, the family member didn't come and get her. She saw someone she knew, she walked in, it was a purely social thing.

1 Hey, how are you? What are you doing here? Literally
2 talking like that while we're triaging the person.
3 MANAGEMENT REP: I would have excused her.
4 SCOTT: Who ended up dying 24 hours later.
5 MANAGEMENT REP: I would have excused her
6 immediately.
7 SCOTT: And then she came back to me and said,
8 oh that patient you took care of yesterday, he ended up
9 dying. Who the fuck are you?
10 MANAGEMENT REP: I mean, I would have -- that's
11 inappropriate. If that's the way it happened --
12 SCOTT: It's more than inappropriate.
13 MANAGEMENT REP: -- then I would have been like,
14 you know what, excuse me, but --
15 SCOTT: It's --
16 MANAGEMENT REP: -- you need to leave.
17 SCOTT: I'll go -- okay, I'll go make a copy of
18 this. I'm not going to sign it.
19 MANAGEMENT REP: You can take one right here.
20 SCOTT: Okay. Just make a copy of it. It's
21 contextual. I don't need that piece of propaganda. I
22 mean, you --
23 MANAGEMENT REP: (Indiscernible).
24 SCOTT: Management invented that so they can --
25 MANAGEMENT REP: Nurse Practice invented that.

SCOTT: Yeah, well --

MANAGEMENT REP: That's Nurse Practice. That's not management.

SCOTT: You say -- if you say so. I have yet to see that applied to a single nurse manager in this hospital. The day I see that, I'm going to fall out of my chair.

Thanks for that. We're done?

MANAGEMENT REP: (No response.)

SCOTT: We're done?

MANAGEMENT REP: (No response.)

SCOTT: Okay.

(Whereupon, the above audio was concluded.)

CERTIFICATION

I, Mary E. Dring, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings on CMC Verbal Warning 10 5 15, Track 01, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded.

NJ AOC AD/T 582

4/20/2016

Signature/Date

Burke Court Reporting, LLC

Pedersen, Alan

From: MATHEWS, Amy
Sent: Wednesday, September 30, 2015 5:36 PM
To: Pedersen, Alan
Subject: Scott

Is there anything more than the code of conduct that we can use with Scott's incident? Does it only get a written verbal for his actions?

Amy

GC 35 ✓
Exh. No: ____ Received ____ Rejected ____
Case No: 03-CA-156375
Case Name: CAYUGA MEDICAL
No. Pgs: 1 Date: 5/2/16 Rep.: R.B

G.C. Exhibits

OGUNDELE

Cayuga Medical Center
Case 03-CA-156375

GC EX-36

Confidential Witness Affidavit

I, Florence O. Ogundele, being first duly sworn upon my oath, state as follows:

I have been given assurances by an agent of the National Labor Relations Board (NLRB) that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the NLRB and will not be disclosed unless it becomes necessary to produce this Confidential Witness Affidavit in connection with a formal proceeding.

I reside at 156 Beartown Road, Painted Post, NY 14870.

My home telephone number (including area code) is 607-937-4448.

My cell phone number (including area code) is 607-329-1874.

My e-mail address is fogundele@cayugamed.org.

I am employed by Cayuga Medical Center,

located at 101 Dates Drive, Ithaca, NY 14850.

Background

1. I have been working at Cayuga Medical Center since about April 19, 2010. I am the house supervisor. It is my business to know what is going on in the whole organization. I help place patients in beds and determine where patients should be placed. I also help the charge nurses with staffing. I have no one who directly reports to me. I am a supervisor. I tell staff what to do, I send staff home for low census, and I could also send staff home for misbehavior though I've never done that.
2. In the ICU there are supposed to be six nurses. There are supposed to be two patients per nurse for ICU critical care. If the ICU has taken non-critical patients on an overflow basis then the ratio can be three to one. If there are more than three or four overflows we get

Privacy Act Statement

The NLRB is asking you for the information on this form on the authority of the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the NLRB in processing representation and/or unfair labor practice cases and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). Additional information about these uses is available at the NLRB website, www.nlrb.gov. Providing this information to the NLRB is voluntary. However, if you do not provide the information, the NLRB may refuse to continue processing an unfair labor practice or representation case, or may issue you a subpoena and seek enforcement of the subpoena in federal court.

Initials FO

nurses from another floor to take care of the overflow patients. Only an ICU nurse can take care of a critical care patient. Sometimes we have people that have ICU experience to cover and we try to have people train in ICU. If we cannot get enough nurses that are qualified then we ship them to a different facility like Strong Memorial Hospital (Rochester), a hospital in Pennsylvania, or Upstate Medical (Syracuse).

3. Team leaders are responsible for ensuring that there are enough nurses in the department. When patient needs require more staff than scheduled, the team leader is supposed to make calls to see if there are nurses who are willing to come in. Most of the time the team leaders are not assigned their own patients, they need to be available to respond to paged critical calls. If they are responsible for patients, they have fewer patients than a non-team leader nurse. The team leaders have a list of every staff member's phone number. The team leader calls and determines who can come in to help. This happens about once a week because a lot of times the ratio of nurse to patient needs to be one to one. Last year was a very busy year and we were frequently full. There are times that the team leader has exhausted the list and cannot get enough nurses. The team leader then calls me and I call internal people to try to float into the department. We will also talk to the hospitalist to see if a patient can be downgraded out of the ICU to a lower level of care. If not, then the director will come and be part of the staff, but that rarely happens. If the patient cannot be downgraded and we do not have enough nurses to provide care, then patients are transferred to a different facility. This happens once or twice a month.

Background

prior calls

4. On about June 2015 after the 2pm bed meeting Anne Marshall called me and told me that we would not able take more patients into the ICU because there were not enough nurses. The ICU was short staffed because someone had called in sick. The bed meeting is when

 Initials: FO

we determine how many patients are in the house, who is on call, and who can come in. After I received Anne's call I went to talk to Joel Brown (former interim director of the ICU) about what we should do. Joel, Anne, and I went to the board to see what we can do. The board lists all the nurses that are going to be working for the 24 hours. Joel asked Anne if she had called anybody. Anne said yes, I've called everybody and nobody is coming in. He asked whether she had called this person or that person and she said yes. He went into his office and called one person. That first person he called was willing to come in. Joel then came back out of his office and asks her who she called so he would not call them twice. Anne then said that she didn't call anybody. She did not give any reason why she did not call anyone. Joel went back to his office and started calling people. Then I left. Joel got enough staff to cover the shift.

5. Linda Crumb called me and asked me to meet her in the ICU conference room. This was about ten minutes after the conversation with Joel, Anne, and I at the board about the understaffed shift. At this meeting was me, Linda Crumb, Joel Brown, and Anne Marshall. Linda told Anne that she was not doing her job as a team leader and would be suspended for the weekend. Anne argued that it was not her job to make sure that they have staff. Linda said that was her job as the team leader. Linda asked why she had lied about making calls. Anne defended herself by saying that was not her job to make the calls. She did not ask who said that she had lied. If she had asked I would have said that I was the one who told them that she had lied. In this meeting Anne acknowledged that she never made the calls. The meeting ended after Linda said Anne was suspended.

6. Typically team leaders do not get in trouble for failing to find enough nurses to cover the shift because it is not their fault. All we ask is that they try to find nurses to come in.

process calls

Initials: FO

They are asked to exhaust the entire list before I am called. When the team leader is busy the director of the ICU makes calls to try to bring in nurses. Sometimes the nurses will come in if they receive a call from the director rather than the team leader. In this case, however, Anne admitted to not having made the calls at all after saying that she had, which is why she got in trouble.

7. I did not attend Anne's meeting after her suspension.
8. Employees post flyers for personal things on the bulletin board on the ground floor near the cafeteria. I have never seen flyers in break rooms or on other bulletin boards. Even though I am salaried I still have to clock in. I have not seen personal flyers posted by the time clocks; only hospital flyers.
9. I have nothing further to add at this time.

I am being provided a copy of this Confidential Witness Affidavit for my review. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this Confidential Witness Affidavit consisting of 4 pages, including this page, I fully understand it, and I state under penalty of perjury that it is true and correct. However, if after reviewing this affidavit again, I remember anything else that is important or I wish to make any changes, I will immediately notify the Board agent.

Date: September 8, 2015 **Signature:** Florence Ogundele
Florence Ogundele

Signed and sworn to before me on 9/8/15 **at**

Ithaca, NY

JESSICA L. NOTO
Board Agent
National Labor Relations Board

 Initials: FO

Pedersen, Alan

From:	Pedersen, Alan
Sent:	Thursday, May 07, 2015 4:13 PM
To:	^LEADERSHIP TEAM
Subject:	Employee Letter 05072015 5
Attachments:	Stubbed Attachments.htm

Employee Letter 05072015 5.pdf

We have prepared the attached letter that we'll plan to have you hand deliver to your RN staff tomorrow, and wanted you to have a preview copy. At this juncture we do not want to do an email distribution and will therefore have hard copies for you to pick up and distribute at our Directors Huddle tomorrow morning. I want to thank each of you for all of your efforts in helping to communicate with your staff, your efforts really make a difference As always, we're here to help and provide support. See you tomorrow at 10. Alan

GC 39

To: Cayuga Medical Center RN's

From: Alan Pedersen, Vice President Human Resources

Re: Union Activity

Date: May 7, 2015

We wanted to take the opportunity to reach out to you to inform you that there is an active campaign underway to establish a union for Registered Nurses at Cayuga Medical Center.

As a CMC Registered Nurse, it is very important that you know the facts.

- You may be approached by one or more employees that are in favor of establishing a union at Cayuga Medical Center. While we believe that the best way to address issues is through open dialogue, there are others that are in favor of 3rd party representation.

- You will at some point be asked or more likely pressured to sign a union authorization card. You should understand that signed authorization card is used by the union to determine support. It is a legal document and written endorsement that you want the union to represent you.

- Your signature does not mean you are only signing the card to get more information. The union only wants your signed card to petition for an election. Once you sign a card it is highly unlikely that you will be able to get it back if you change your mind

- You have rights as employee. You cannot be forced to sign a card. You have the right to say no and tell them you are not interested. You have the right to ask them to leave you alone and not bother you.

- If you feel you are being harassed or intimidated feel free to contact your supervisor, director or security.

- There have been many incorrect claims being made. If someone is telling you information that does not seem true, or does not seem consistent with what you know about CMC, please take the time to ask us.

- We promise to tell you the truth.

Pedersen, Alan

From: Pedersen, Alan
Sent: Wednesday, May 06, 2015 7:04 AM
To: ^LEADERSHIP TEAM
Subject: Talking Points for May 5.docx
Attachments: Talking Points for May 5.docx

Attached for your information are the talking points we discussed yesterday. Please be sure to communicate these specifically with your RN staff. If you have any questions, please let me or your VP know. Thanks, Alan

60 40

Talking Points

- There is an active campaign underway by some individuals looking to establish a union for nurses at CMC
- We want you to have the facts.
- You may be approached by one or more employees that are in favor of organizing
- You will at some point be asked to sign an authorization card
    - It is important to understand all of the facts.
    - An signed authorization card is used by the union to determine support. It is a legal document and written endorsement that you want the union to represent you
    - The union will use your signed card to petition for an election
    - Do not sign the card unless you are willing to relinquish your rights as an employee and have a union represent you,
    - Once you sign a card it is highly unlikely that you will be able to get it back if you change your mind
    - You are not obligated to sign a card, have the right to say no and also have the right to tell them you are not interested
- You can-not be solicited while you are on duty and on your unit. Contact can be made only during breaks and meal periods.
- You have the right to ask the organizer to leave.
- If you have any questions please ask me.

Clarifying incorrect organizer statements

1. It has been reported that GN's are being hired at hourly rates that are above those of current RN's – this is false.

2. It is being reported that SLT received a bonus for 2014 when no one else did. This is false – no one in the organization received a bonus for our 2014 performance.

Interview with staff about the incident with Joel Brown and Anne Marshall

Robert Stires: Telephone call: did not see anything directly or overhear anything

Robert asked me to hold so he could speak on a phone where he would not be overheard by other staff

Anne told Robert that she went to Joel to ask for help and Joel was in his doorway leaving but went back to get something. Robert felt Anne was upset because of the incident report that Joel entered.

Joe Bissah {traveler}

Did not see or hear any interaction between Joel and Anne.

Loren Lamb:

She did not hear or see any interaction between Joel and Anne

She did hear from Anne that Joel entered an incident because he was in his personal space Loren suggested that Anne go back and ask Joel if they could talk about the incident. Anne went back to talk with Joel .Anne reported back to Loren that it wasn't any help because Joel asked her to leave and if she didn't he was going to claim harassment.

Anita Tourville-Knapp:

She did not hear or see interaction between Joel and Anne.

Joan Tregaskis:

I think I heard something about the schedule but nothing negative

Amy Linton:

I did not hear or see any interaction between Joel and Anne

Julia Munteanu:

I did not hear or see any interaction between Joel and Anne

Michelle Pabis:

I did not hear or see any interaction between Joel and Anne

Dr.Pete Hannon:

GC Exhibit 41

From his office next to Joel's office he heard Anne say can we talk about this and Joel's response was stop harassing me. He could not hear anything else and the conversation was brief.

Cynthia Sullivan:

Reviewed her rewritten statement.

Joel Brown:

Reviewed the incident report and had nothing to add.

Anne Marshall:

On Friday July 3rd they were short staffed . With no ward clerk and 8 pages of Admission orders.A patient needed to leave the unit for testing. Robert had asked Joel for help and Joel told him to ask his Charge Nurse. Anne approached Joel and asked him when he could help or help with problem solving finding additional help. They were standing in the back hall Joel was next to Shawn's office and she was standing in the doorway to the kitchen. Joel made a phone call from a phone on the back desk to the House Supervisor{Cindy Brown} and she said she would send a ward clerk to help with the orders.Joel told Anne that she did need to stand next to him, She replied that she did need to stand there because she needed to know the plan because she was going to be off the floor.Patient went for HIDA scan but they could not complete so the patient returned to the unit planning on completing the scan later.Anne went to Joel's doorway and he said he could absolutely not help. Anne called the AOC {Tony Votaw} and asked him to come to the unit.Joel was talking with Tony at Café express as witnessed by Robert. Anne reported to Tony that Joel did not help even though he was asked twice. Joel did not secure staffing and they are not working as a team.

GC 42

Exh. No. GC42 Received ✓ Rejected
Case No. 03-CA-156375
Case Name CAYUGA MEDICAL
No. Pgs. 4 Date 5/2/16 Rep. RB

My Summary

Incident - Joel & Ann July 3rd

She asked for help - he was busy & asked what she needed - 10:15am - he called HS for w/c help - she was too close (personal space) for Joel he asked her to move back - She said I can stand wherever I want. -

Joel entered QA -
She saw it went to his office stood in doorway. She wanted to talk with him about it (he felt trapped)
She refused.
Asked her to leave repeatedly stop harassing him -
he told her he would call security.
she asked who was AOC & left.
Joel informed Tony - spoke with him @ Gimmee
Anne called Tony & spoke with him in ICU

Interviewed. 8 staff on that day.

Asked if they saw or heard any interaction between Joel & Anne -?

were they aware of any?

All 8 did not witness anything
1 heard them talking about staffing with no negativity
2 said Anne told them about it. I advised her to try to talk with him about the situation.
1 nurse needed help with taking pt to testing
Ann too busy w/c - told to ask Joel
and then told nurse Anne was unassigned charge & the

GC 42

Applied Biosystems

Cont'd helps

~~Cyn~~ Cynthia — inter ch. w/ Joel + Anne on unprofess. al & embarrassing

Dr Hannon - pleasant + non judgmental
over heard Anne asked Joel -
Anne - Can we talk about his?
Joel - Stop harassing me?
heard no raw + conversation only lasted a few more minutes -
- Joel has only helped on the unit me + functioned more as an orderly.
- Teri Ellis - asked Joel for help + he refused - feels unsupported
- Sharon ~~a~~ Joel just wants to find a way to fire them
- hopeful we can find a way to right this ship

Robert Strier

Asked to speak privately - 1 hour conversation -
both acting unprofessional
Joel as Director should set the bar for professionalism
Anne fights for enough staff - holds grudge

Joel - well help sometimes when asked + not other
Linda Beeson - lunch emerge + did

Adm doesn't listen about the true staffing needs etc

Joel offered extra money to some + not others
offered more to Anne than others

2

Telephone

Robert Stires

did not directly hear or oversee an
Ann → told Robert wanted to talk in private -
went to back hall -

She went to Joel to ask for help + in his
doorway he got up then went back into office
to get something - Robert thought Ann was
frustrated b/c
of QA in

Joe Bissah - Did not see or hear any interaction b/w Joel + Ann
no knowledge of incident

Loren Lumb → interaction bt
no knowledge
→ Did hear from Ann - that Joel
QA b/c Ann was in his personal space
Loren] why don't you go back + talk with him
Ann went back to Joel's office
to talk with him
Ann then told Loren that wasn't any
help b/c Joel asked her to leave + if
she didn't he was going to claim
harassment.

Applied Biosystems

3

✓ Anita T-Knapp NO/NO Tourville Knapp

Joan T. Tregaskis NO/NO
I think I heard something about the schedule but nothing negative

✓ Michelle ~~Shelby~~ Pabis NO/NO

✓ Amy Lintop NO/NO
saw Ann talk Tony

✓ Julia Munteanu NO/NO

4

THIS FILE IS A CONFIDENTIAL QUALITY ASSURANCE DOCUMENT

File ID: 34479
Entry Date: 07/03/2015

Person Information
Last Name: BROWN
First Name: JOEL
Title: Mr.
Sex: M
Street1: 36 Cinema Road
Street2: #221
City: Ithaca
State: NY
ZIP: 14850
Phone: 575-418-9491
Number of Years in Job at Time of Incident: 0
Job Classification at time of Incident: Nurse
Employee Department: Intensive Care Unit
Employment Status: Contract

General Incident Information
Classification of Person Affected: EMPLOYEE
General Incident Type: SAFETY/SECURITY/CONDUCT
Injury Incurred: No/Unknown
Equipment Involved/Malfunction: No/Unknown

Incident Details
Incident Date: 07/03/2015
Incident Time: 11:40
Day of Week: Friday
Site: Main Campus
Department: Intensive Care Unit
Specific Location: hallway
Other Service(s)/Dept(s) Involved:
- other employee

Entered Date: 07/03/2015
Entered Time: 13:51

Anne —
Friday Short staffed
no ward clerk - 8 pages of orders
Admissions
Pt to testing
Robert asked Joel if he could go with pt. Ann asked Joel when he could help. - problem staring could he find help.
Back hall - Shawn's desk - Ann doorway to kitchen.
called HS - to send w/c

Reported By (Click "Add" to add your name if you wish to receive feedback from the director of the involved department)
- Name (First and Last Name): Brown, Norman J.
  Feedback Requested?:
  Phone/CMC Email:
  Date: 07/03/2015
  Time: 13:51

- Name (First and Last Name): Brown, Norman J.
  Feedback Requested?: Yes- I would like Feedback
  Phone/CMC Email: 4491/njbrown@cayugamed.org
  Date: 07/03/2015
  Time: 13:56

you don't need to stand - needed to know plan b/c she was going to be off floor

Specific Incident Details
Specific Incident Type: disruptive behavior by a healthcare professional
Contributing Factors:
- action by employee/affiliate

Immediate Actions Taken:
- other

Reported Incident Severity: Severity Level 1-No Harm/Damage
Any Contributing Factors related to Alarms (i.e. Alarm fatigue)?: No
Brief Factual Description:

Ann → HIDAScan only option - 20 later - Repeat needed w/c

I was asked by Ms Anne Marshall to get a ward clerk to assist her. At this point I took two steps back and picked up the phone to call the house supervisor. While it was ringing Ms. Marshall had entered my personal space. I looked at her and told her "you do not have to stand there" Her response was "I can stand where I want" I then turned my back to her and secured a UC from the house supervisor. I hung up the phone and advised Ms. Marshall, who was still in my personal space that a clerk was on their way. She said "where from?" I replied I

can't the go - I can't take pt.

JS

am unsure and I walked away the opposite direction. Forgetting my paperwork, returned to my office and saw that I still had the schedule book in my office. I took it and on my way out Ms. Marshall was standing at the nurses station with her cell phone in hand. I handed her the schedule book and turned away. Ms. Marshall stated aloud: "did you fix it?" I stated "I did what I could" She said "like what" I said that "I have Joseph (our Traveler) picking up some of the shifts and I emailed critical needs out to everyone"
She stated aloud "like that's going to help" I then left the unit.

Notification Details

Followup List

- **Note to file by Votaw, Polly to Alan Pedersen on Monday, July 06, 2015 at 08:14**

FEEDBACK GIVEN?: Not applicable

Description:

Per Alan's request.

P. Votaw

If you require assistance with this application, call the Risk Manager at x4326

Ann went to doorway
Joel Absolutely not help.

Dr. Hannon – was there.
office –

Call to Confirm story.

570-594-0723

please have AOC to
come to unit –
Joel spoke with Tony
@ gimme coffee
Robert was @ gimme

Ann called Tony –
– Ann is picking on
Joel –
Joel entered QA
not Ann.
Did not help even
when asked x2
Did not secure
staffing –
not working as a
Team.

VIDEO FROM CAFETERIA

CAYUGA MEDICAL CENTER

03-CA-156375

VIDEO RECORDING

Transcribed for the

National Labor Relations Board

Transcript 1 of 1

By: Mary E. Dring

Burke Court Reporting, LLC

GC Exhibit 43

1 TRANSCRIPTION OF VIDEO PROVIDED

2 EMPLOYER REP: Excuse me, are you employed by
3 Cayuga Medical Center?
4 FEMALE NURSE: Yes.
5 EMPLOYER REP: Okay.
6 FEMALE NURSE: I'm a nurse.
7 EMPLOYER REP: And so the situation is you're
8 not allowed to set up a fixed presence in the cafeteria.
9 You can, if you want to talk and solicit and have
10 conversations with people, you can do that. You are not
11 allowed to do this. And I've just checked with legal.
12 You are not --
13 SCOTT: No, we --
14 EMPLOYER REP: Scott --
15 SCOTT: -- we check with --
16 EMPLOYER REP: Well --
17 SCOTT: -- our lawyer, and we checked with our
18 union representatives. Our understanding is this is --
19 EMPLOYER REP: Scott --
20 SCOTT: -- a federally protected activity.
21 EMPLOYER REP: Scott, you can -- you can walk
22 through and you can talk with people, if you want to do
23 that. You cannot set up a designated presence in this
24 area.
25 SCOTT: Okay. Well, let us talk to our people.

EMPLOYER REP: So I'll have security come and take this away then.

SCOTT: You can have them come and talk to us.

EMPLOYER REP: I can have them come and you -- you can remove it.

SCOTT: Okay. Well, we're --

FEMALE NURSE: They certainly can't take our possessions.

EMPLOYER REP: You cannot set up a fixed set in this cafeteria, Scott.

SCOTT: I -- that sounds like a clarification of law that maybe we need to --

EMPLOYER REP: Okay.

SCOTT: -- address. But --

EMPLOYER REP: I know --

SCOTT: -- my understanding is that this is --

EMPLOYER REP: You don't have the authority to set up a fixed solicitation within the cafeteria or fixed distribution.

SCOTT: I -- I hear what you're saying. That's not my understanding of the law.

EMPLOYER REP: Okay.

(Video concluded.)

CERTIFICATION

I, Mary E. Dring, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings on Unnamed Video from Cafeteria, Track 01, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded.

NJ AOC AD/T 582

5/17/2016

Signature/Date

Burke Court Reporting, LLC

Pedersen, Alan

From: Brown, Norman J.
Sent: Tuesday, May 19, 2015 12:33 PM
To: Pedersen, Alan
Subject: Postings

I have removed postings from the restrooms, a staff member complained that they were offensive, so I removed. It was amongst our inservice material.

Thank you for allowing me to serve,

N. Joel Brown
Director of ICU/Respiratory Therapy, Interim
Cayuga Medical Center
Office: 607-274-4491
Cell: 575-418-9491
njbrown@cayugamed.org

"This we do, So Others May Live." USAF Pararescue Credo

G.C. Exhibit 44

Pedersen, Alan

From: Brown, Norman J.
Sent: Friday, June 19, 2015 10:30 PM
To: Pedersen, Alan
Subject: Re: paper

Seems that Ms Marshall really ramps up when I am away. I apologize for her behavior

Sent from my iPhone

On Jun 19, 2015, at 11:13 AM, Pedersen, Alan <APedersen@CAYUGAMED.org> wrote:

Thanks.

Alan E. Pedersen
Vice President Human Resources
Cayuga Medical Center at Ithaca
101 Dates Drive
Ithaca, NY 14850
(607) 274-4321

<image001.png>

From: Brown, Norman J.
Sent: Friday, June 19, 2015 2:11 PM
To: Pedersen, Alan
Subject: Fwd: paper

FYI

Sent from my iPhone

Begin forwarded message:

From: "Sullivan, Cynthia" <CSullivan@CAYUGAMED.org>
Date: June 19, 2015 at 11:09:57 AM PDT
To: "Crumb, Linda" <LCrumb@CAYUGAMED.org>, "Brown, Norman J." <njbrown@CAYUGAMED.org>
Subject: FW: paper

Must be I threw out enough of hers because now she's using hospital paper & green paper is in our copier right now.

-----Original Message-----
From: Cynthia Sullivan [mailto:csullivan.msn@gmail.com]
Sent: Friday, June 19, 2015 2:05 PM
To: Sullivan, Cynthia
Subject:

G.C. Exhibit 45

Pedersen, Alan

From: Brown, Norman J.
Sent: Friday, June 19, 2015 1:32 PM
To: Pedersen, Alan
Subject: Fwd: union propaganda

Just FYI

Sent from my iPhone

Begin forwarded message:

> **From:** "Sullivan, Cynthia" <CSullivan@CAYUGAMED.org>
> **Date:** June 19, 2015 at 10:31:10 AM PDT
> **To:** "Brown, Norman J." <njbrown@CAYUGAMED.org>, "Crumb, Linda" <LCrumb@CAYUGAMED.org>
> **Subject: union propaganda**
>
> It's really annoying that Anne has to spend her time hanging up union postings instead of doing her job as the charge RN.
> She now has taped it to the bathroom mirror, & the back of the bathroom door.
> As fast as they are thrown away off the breakroom table she puts out new ones.
>
> Cynthia Sullivan MSN, CRNI, CCRN, VA-BC
> PICC Coordinator ICCU (607) 274-4466

G.C. Exhibit 46

Pedersen, Alan

From: Brown, Norman J.
Sent: Monday, June 01, 2015 8:27 AM
To: Pedersen, Alan; ^LEADERSHIP TEAM
Subject: RE: Follow Up

I came in Saturday to do staffing calls and removed a ton of Union material from the restroom again. I did have 2 of our team ask why I was allowing the propaganda to be placed and not enforced that it is not placed. It seems to be making them more angry the more they post. The division amongst the team is almost palpable. I also had multiple team members that came to voice support for the unit and leadership.

Thank you for allowing me to serve,

N. Joel Brown
Director of ICU/Respiratory Therapy, Interim
Office: 607-274-4491
Cell: 575-418-9491
njbrown@cayugamed.org

"This we do, So Others May Live." USAF Pararescue Credo

From: Pedersen, Alan
Sent: Monday, June 01, 2015 8:24 AM
To: ^LEADERSHIP TEAM
Subject: Follow Up

I hope everyone was able to get our response letters distributed to your RN's. As you know it's important that we continue to communicate on a timely basis. If you have received any feedback please let me know. Thanks, Alan

Alan E. Pedersen
Vice President Human Resources
Cayuga Medical Center at Ithaca
101 Dates Drive
Ithaca, NY 14850
(607) 274-4321

Cayuga
MEDICAL CENTER
A Member of Cayuga Health System

GC-Exhibit 47

Pedersen, Alan

From: Brown, Norman J.
Sent: Tuesday, June 02, 2015 12:26 PM
To: Pedersen, Alan
Cc: Nohelty, Susan
Subject: RE: Anne

Asking people to not follow my leadership regarding evaluation, scheduling and telling them that "we are trying to get him fired".
While on shift and in a leadership position she continues to post, call and have conversations about unionization. She is also rude to those that are loyal to CMC and to any leadership that she come in contact with(i.e. Cindy Williams, Cynthia Sullivan, and Ms Barr.)

Thank you for allowing me to serve,

N. Joel Brown RN CLNC CFNE
Director of ICU/Respiratory Therapy, Interim
Office: 607-274-4491
Cell: 575-418-9491
nibrown@cayugamed.org

"This we do, So Others May Live." USAF Pararescue Credo

From: Pedersen, Alan
Sent: Tuesday, June 02, 2015 11:38 AM
To: Brown, Norman J.
Cc: Nohelty, Susan
Subject: Anne

Joel, could you give some of the specifics regarding Anne that I can share with Ray. Thanks, Alan

Alan E. Pedersen
Vice President Human Resources
Cayuga Medical Center at Ithaca
101 Dates Drive
Ithaca, NY 14850
(607) 274-4321

Cayuga
MEDICAL CENTER
A Member of Cayuga Health System

G.C. Exhibit 48

Thank you for allowing me to serve,

N. Joel Brown RN CLNC CFNE
Director of ICU/Respiratory Therapy, Interim
Office: 607-274-4491
Cell: 575-418-9491
njbrown@cayugamed.org

"This we do, So Others May Live." USAF Pararescue Credo

From: Brown, Norman J.
Sent: Friday, July 03, 2015 11:55 AM
To: ~ICCU; ~House Supervisors
Cc: Crumb, Linda; Nohelty, Susan; Underwood, Kansas A; Fuller, Sandra; MATHEWS, Amy; Miller, Bernice; MacCheyne (Koski), Terri
Subject: Staffing Needs.

Looking forward; here are our critical needs(RN) if our census stays at it has in the past few days. At least one Voluntary on call for days with areas that are BLACK would be appreciated.

Day/Date	Skill	Days (07-19)	Nights (19-07)
Sat 07/04/15	TL/CHG		1-4hr (19-23)
	RN	1-12hr, 1-4hr (15-19) **HOLIDAY**	
	Aide		1
Sun 07/05/15	TL/CHG		
	RN	1- 4hr (07-11)	1-12hr
Mon 07/06/15	TL/CHG	1-12hr	
	RN	1-4hr (15-19)	
	UC	1-12hr	
Tue 07/07/15	TL/CHG		
	RN		1-12hr
	Aide		1-12hr
	UC	1-2hr (17-19)	
Wed 07/08/15	TL/CHG		
	UC	1-2hr (17-19)	
Thu 07/09/15	TL/CHG	1-12hr	
	RN	1-4hr (07-15)	
	UC	1-2hr (17-19)	
Fri 07/10/15	TL/CHG		
	RN	1-4hr (15-19), 1-12hr	
Sat 07/11/15	TL/CHG		
	RN		2-12hr

Thank you for allowing me to serve,

N. Joel Brown RN CLNC CFNE
Director of ICU/Respiratory Therapy, Interim

G.C. Exhibit 49

From: "Brown, Norman J." <njbrown@CAYUGAMED.org<mailto:njbrown@CAYUGAMED.org>>
To: "Pedersen, Alan" <APedersen@CAYUGAMED.org<mailto:APedersen@CAYUGAMED.org>>
Subject: Timeline

Events from 06/24/2015

- 1141- Contacted by House Supervisor Cindy Brown regarding Team Leader Ann Marshall calling stating that she could take no new patients due to patients that "might need ICU placement from the Cath Lab after 1700. I stated to House Supervisor Cindy Brown that the Acuity of the patients when I left at 1130 was low except for one vented patient and that as I was leaving the facility to go to an offsite meeting Team Leader Ann Marshall was heading out to the parking area.

- At 1407 I was contacted via text by House Supervisor Cindy Brown that Team Leader Ann Marshall that only 3 RNs were on tomorrow and no charge. I asked if Team Leader Ann Marshall had made calls to supplement staffing. House Supervisor Cindy Brown said she was enroute to the unit to follow up.

- At 1431, House Supervisor Cindy Brown advised via text that Team Leader Anne Marshall stated that no one is coming in and I have been aware of this for a week.

- At approx. 1435 I was called out of our retreat meeting by John Turner, Admin on Call. I was joined outside by AVP Linda Crumb, Sandra Fuller Director of Cath Lab. House Supervisor Cindy Brown was on the phone which Mr. Turner had on speaker. Team Leader Anne Marshall was asking permission to not take patients in the ICCU and transfer them out of the hospital secondary to "Very Critical Patients" I asked House Supervisor Cindy Brown to relay to the group the patient report on the patients currently in the ICCU so that we could assess the situation. Team Leader Ann Marshall stated that she had 8 critical patients. After hearing the situation and patient report, I as the Director of the unit advised the House Supervisor Cindy Brown to instruct Team Leader Ann Marshall to assign an RN 3 patients and that would be the tactic we will use. Team Leader Ann Marshall was heard in the background by Mr. Turner, Ms. Crumb, and Ms. Fuller adamantly refusing to assign a nurse 3 patients by stating that "if he wants that done he can come in and do it because I will not." At that time AVP Linda Crumb stated that Ms DiBartolo was in the ED and would come up and take Charge at 1500 and make the assignments since Team Leader Ann Marshall would be leaving at that time.

- At approx. 1450 Team Leader Ann Marshall went into Dr. Hannons office and remained there until 1500.

AL 7 1

Ex. 1(a) pg

· At approx. 1500 Ms. DiBartolo came in and received report from House Supervisor Cindy Brown on the unit. It was discovered that in fact that one patient had orders to down grade to a med surg floor that was written at 1330 and another that was to be transferred to med surg or discharged home.

· 1707 Email received from House Supervisor Cindy Brown:

o The ICU started with 8 patients. 1 patient was discharged. They received a Stemi from the ED.

I received a call that rm 5 could transfer to medical. As I was getting that bed arranged I received a call from cath lab that the 1st outpt was getting intervention. I then called Anne to get a bed for cath patient she informed me that she needed the medical patient out before cath patient could come and that they would not take anymore after that as they go to 4 nurses at 3. I got her the medical bed and received a bed for the cath lab patient.

I then called John Turner AOC to see what the plan would be for more admissions. I was told to deal with the immediate and we would face the rest as it comes. John said to call him if we get another patient. The cath lab called for a bed for the 2nd outpt that was receiving intervention. Ann said she could not take it and by the way there are only 3 nurses on tomorrow and no charge. I asked her if she had made calls she replied no one is coming Joel has been aware of this for a week and a half. Jess the cath lab manager was present along with Cynthia Sullivan witnessing this conversation. I again said did you make calls she said all calls had been made and emails sent no one is coming. Sharon Newton then came by and said Joel can do charge tomorrow and Ann said he will have to. Ann again is condescending and unprofessional. I then again called John Turner who in turn got other administration present and talked on speaker phone. Cynthia Sullivan witnessed the entire conversation. I asked Ann for the charge book to tell Joel about the patients that are in ICU. She said I can tell you about them I relayed the info to the administrative group. Joel said that it sounded as if 1 RN could take a third patient and to tell Ann to assign them. Ann replied she will not assign anyone 3 patients it's not safe and if Joel wanted someone to have 3 he better come in and assign them because she wasn't. It was then discussed that Deb Dibartola was present in ED and ask her to come up to ICU and do charge. Deb agreed but needed to finish documenting there so I came up to take charge report. Right after I received report I called Lori Davis about rm 3 to be told that she was waiting on Dr Stefek that the patient would either go home or to Tele. I then called Dr Delima to ask about rm 4 she informed me she had written a transfer order at 1;30 to transfer to medical. So out of 8 patients that are not safe to have more than 2 patients per nurse 2 of them didn't even belong there. I am also concerned that Ann is so critical of the staffing but is able to go outside off the property to smoke on 4 occasions that I witnessed today.

§ 1706 received an email from Cath Lab Manager Jessica Miller

"Joel,

My staff and I had a really unfortunate interaction with Ann Marshall today (6/24/15) while she was acting in the role of a charge nurse. Ann was confrontational, unprofessional and certainty did not conduct herself in a manner befitting a team leader. When you have an opportunity, I would really like to sit down and discuss specific examples of what we experienced. "

· 1754 received a call from Cath Lab Manager Jessica Miller regarding the issue with TLAM earlier in the day.

o Highlights of the call included:

§ TLAM stating that the ICCU team could not handle a sheath removal.

§ Cath Nurse called for room for patient and was told by TLAM that room 2 needed to be cleaned. (6 other rooms were available)

§ 20 minutes passed and cath nurse called and spoke to TLAM and the nurse taking the patient was at lunch. (TLAM did not have a patient assignment)

R (b)

Events from 06/25/2015

- 1055 Team Leader Ann Marshall emailed me and CC'd team leaders and Clinical Educator Sharon Newton the following:

"Joel,

I am aware that you were away when I emailed you my request, and this is one of the big issues of having an interim director who is not local and gone for extended periods of work days.However, as you pointed out in yesterday's Team Leader meeting, you are always checking your email. This being the case, I am sure you were aware of my request. In the past multiple people have been approved to attend TRENDS and seeing as I have never been to a conference I hoped I would have a good chance to attend. Further, when I spoke with Sharon yesterday I was told that I was the first person to formally request to attend the conference. I cannot help but feel that your decision to deny my request was unprofessional and based on a personal bias you have against me. I am requesting you reconsider your decision.

Anne

- 1038 my response to Team Leader Ann Marshall:

"As Sharon is not the Director, she would not have knowledge of the individuals that approached me prior to your request."

- 1424 Email received from Melissa Clark RT:

"Hi Joel,

This is just a follow-up to the meeting that I had with you this morning.

Over this past weekend (June 20th and 21st) some of the staff in the ICU made statements such as – "We'll just give it to the GI when he gets back to take care of". On one occasion Sharon Newton was standing there and she never commented pro or con to these employees.

This again happen yesterday (June 24th) by other staff in the ICU behind the nurses' station at the assignment board. The same sort of statement was made – "The GI is aware of it, he signed off on the schedule and he can take care of it". This time Anne Marshall was standing there and she never tried to correct the conversation or stop it.

Along with this multiple hand copy of letters were delivered to me which I have scanned into this email as well.

Thank you for allowing me to serve,

N. Joel Brown RN CI NC CFNE
Director of ICU/Respiratory Therapy, Interim Cayuga Medical Center
Office: 607-274-4491
Cell: 575-418-9491
njbrown@cayugamed.org<mailto:njbrown@cayugamed.org><mailto:njbrown@cayugamed.org>

"This we do, So Others May Live." USAF Pararescue Credo

R 1 (c)

Brown, Norman J.

From: Miller, Jessica
Sent: Wednesday, June 24, 2015 5:06 PM
To: Brown, Norman J.
Cc: Fuller, Sandra
Subject: Ann Marshall

Joel,

My staff and I had a really unfortunate interaction with Ann Marshall today (6/24/15) while she was acting in the role of a charge nurse. Ann was confrontational, unprofessional and certainly did not conduct herself in a manner befitting a team leader. When you have an opportunity, I would really like to sit down and discuss specific examples of what we experienced.

Jessica G. Miller, RN

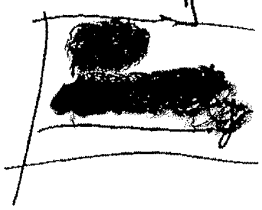
Clinical Manager
Cayuga Heart Institute
101 Dates Dr.
Ithaca NY 14850
607.274.4590

Brown, Norman J.

From: Brown, Cindy
Sent: Wednesday, June 24, 2015 5:07 PM
To: Brown, Norman J.
Cc: Crumb, Linda
Subject: events of 6/24/15

The ICU started with 8 patients. 1 patient was discharged. They received a stemi from the ED.
I received a call that rm 5 could transfer to medical. As I was getting that bed arranged I received a call from cath lab that the 1st outpt was getting intervention. I then called Anne to get a bed for cath patient she informed me that she needed the medical patient out before cath patient could come and that they would not take anymore after that as they go to 4 nurses at 3. I got her the medical bed and received a bed for the cath lab patient.
I then called John Turner AOC to see what the plan would be for more admissions. I was told to deal with the immediate and we would face the rest as it comes. John said to call him if we get another patient. The cath lab called for a bed for the 2nd outpt that was receiving intervention. Ann said she could not take it and by the way there are only 3 nurses on tomorrow and no charge. I asked her if she had made calls she replied no one is coming Joel has been aware of this for a week and a half. Jess the cath lab manager was present along with Cynthia Sullivan witnessing this conversation. I again said did you make calls she said all calls had been made and emails sent no one is coming. Sharon Newton then came by and said Joel can do charge tomorrow and Ann said he will have to. Ann again is condescending and unprofessional. I then again called John Turner who in turn got other administration present and talked on speaker phone. Cynthia Sullivan witnessed the entire conversation. I asked Ann for the charge book to tell Joel about the patients that are in ICU. She said I can tell you about them I relayed the info to the administrative group. Joel said that it sounded as if 1 RN could take a third patient and to tell Ann to assign them . Ann replied she will not assign anyone 3 patients its not safe and if Joel wanted someone to have 3 he better come in and assign them because she wasn't. It was then discussed that Deb Dibartola was present in ED and ask her to come up to ICU and do charge. Deb agreed but needed to finish documenting there so I came up to take charge report. Right after I received report I called Lori Davis about rm 3 to be told that she was waiting on Dr Stefek that the patient would either go home or to Tele. I then called Dr Delima to ask about rm 4 she informed me she had written a transfer order at 1;30 to transfer to medical. So out of 8 patients that are not safe to have more than 2 patients per nurse 2 of them didn't even belong there. I am also concerned that Ann is so critical of the staffing but is able to go outside off the property to smoke on 4 occasions that I witnessed today.

Cindy L. Brown, RN
House Suprervisor
Cayuga Medical Center



R
FR 1(e)

Jessica Miller;

STEMI – met ō hostility,

Sheath pulling; "we can't do or handle"

– Room needed to be cleared. – 6 empty beds.

20 min Later – pt transfer out ~~6 clean beds~~

20 min Later Lunch. – Anne Ø patients assigned

~~20 min~~

NO ONE IS ~~called~~ coming in.; when Cindy asked.

I haven't called Anyone. then recanted.

quickly when questioned.

Sandy assisted in pulling sheath

Crystal Rott.

387-4140

607-216-7817

Joseph. to days

R

A1(F)

Brown, Norman J.

From: Brown, Cindy
Sent: Wednesday, June 24, 2015 5:43 PM
To: Brown, Norman J.
Cc: Crumb, Linda
Subject: disrespect 6/24/15

Hi Joel,

From the moment Deb Debartola walked into the ICU ANGIE YOUR HOSPITAL AIDE WAS CONFRONTATIONAL AND DISRESPECTFUL TO HER. She was downright angry that I was placing a ED patient in the ICU that would be transferred to Rochester tomorrow at 6AM.

Cindy L. Brown, RN
House Suprervisor
Cayuga Medical Center

R 1 (g)

Brown, Norman J.

From: Brown, Cindy
Sent: Wednesday, June 24, 2015 6:04 PM
To: Brown, Norman J.
Cc: Crumb, Linda
Subject: direct order

Hi Joel,

The more I think about this I have to say for an employee to disobey a direct order from your director should result in serious consequences. I am appalled that Ann will not only disobey a direct order but then be disrespectful to the director and witnessed by several staff.

Cindy L. Brown, RN
House Suprervisor
Cayuga Medical Center

*

R1 (h)

At approximately 1300-1400 on 06.24.2015 I was sitting at my desk in ICU when Cindy Brown the supervisor walked back talking on her phone. She sat two chairs down from me. Anne Marshall the ICU charge nurse was following behind. Cindy was on the phone trying to describe the status of the ICU and the staffing situation. She talked to multiple people , Anne repeatedly stated that there was no charge nurse at 3 and that they could not take the patients from the cath lab or the ED. That the situation was not safe. She confirmed that calls had been made and that emails had gone out with no response. At one point Cindy stated that "I told her that"...Anne demanded to know what Cindy was referring to. Cindy did not respond as she was continuing to try to work out a plan. Anne demanded again. Cindy told Anne that Joel indicated that someone needed to take 3 patients so we could take the patient from the cath lab. Anne stated "I will not do that to my nurses, it is not safe". Cindy repeated this back to Joel. Anne again stated "you tell him I will not do that to my nurses, it is not safe". Her voice was slightly raised the second time. The conversation continued and it was decided that Deb Dibartolo would come and be in charge. I left at that point in time. On Anne's part, there was no attempt at problem solving, no indication that any discussion of alternative plans would be acceptable to her. I was disappointed that a charge nurse would not further utilize critical thinking skills to provide patient safety, leading me to believe that she may have had an alternative agenda.

Sharon Newton RN BSN CCRN

The only thing more expensive than education is ignorance

R1(A)

Miller, Jessica

From: McVey, Mary
Sent: Wednesday, June 24, 2015 7:14 PM
To: Miller, Jessica
Subject: ICU experience 6/24/15

On 6/24/15, we had a cath lab patient who needed an ICU bed. Around 1200, we were told that the patient would be going to ICU bed 2, but the bed was not clean. We would have to take the patient to CHI until the room was ready. I took the patient to CHI at 1215. Shortly after, Ann came over to CHI. I asked her how long she thought it would be. Ann replied that she thought it would be about 20 or 25 minutes. I cared for the patient for about 45 minutes, then went over to ICU to check on the status of the room, as I had not heard anything. When I walked in, Ann was sitting at the desk. I asked where we were with getting the patient over. I could see that the room appeared clean and ready. Ann said that "they had to get rid of their patient", and then they could take my patient. I again asked how long she thought it would be. Ann replied it would be about 20 minutes. I asked her to give me a call so that I did not have to keep bothering them. She said she would. Around 1400, my manager informed me that the house supervisor said that we needed to get the patient moved over. I again walked over to the ICU and asked Ann when I could bring the patient over. I informed her of what the house supervisor had said. She said that "they" were taking their patient out and should be back soon. I went back to CHI. I informed my manager of what Ann had said. At 1415, our manager went and checked on the room. She returned and we took the patient over to bed 2.
This patient and his wife were extremely anxious. The delay in getting to the ICU seemed to add to their anxiety. Ann seemed very resistant to taking patients. She came over to CHI twice that I saw, demanding to speak to our director in an aggressive manner. She repeatedly did not take the patient when she said she would and seemed to be completely halting patient flow. This was disruptive to all parties involved, especially for the patient.

Feel free to contact me with any questions.

Mary McVey, RN
CHI

Sent from my iPhone

*

R1(j)
E(j)

R-2

6/25/2015

Jessica G. Miller
Cayuga Heart Institute

Joel Brown
Intensive Care Unit

Joel,

My staff and I experienced a rather unfortunate day with the ICU under Ann Marshalls leadership. All of the requests we made for ICU bed placement for our PCI patients were met with hostility and badgering. We were told repeatedly that they did not have the staff and that we would have to do something about "your" patients.

I witnessed Ann Marshall wandering throughout the CHI unit separate times asking my staff where Sandy was and each time she was informed that Sandy was attending a meeting, Ann was visibly exasperated. She would huff, "Still!"

The STEMI patient was brought to the ICU with his femoral sheath in place. Dr. Stefek had concerns regarding post cath care. He originally wanted the cath lab to pull the sheath because he lacks confidence in the ICU team's abilities. Sandy and I discussed the issue and agreed that in continuing this fashion, we inevitably do the ICU a disservice. Sandy and I agreed that we would opt for a team approach by supervising the sheath pull with the ICU RN, but would not take sole responsibility for the pull.

The house supervisor and I were in the ICU discussing potential bed assignments for the PCI outpatients and the potential ED patients when Ann approached us; the house supervisor asked an about her staffing issues. Ann said "Nobody is coming in," then Cindy asked, "Who have you called?" Ann's response was, "Nobody." Cindy repeated the exchange and Ann confirmed that nobody was called and nobody was coming in.

At that point I was so frustrated with her unwillingness to negotiate or work towards a solution that I left the conversation and returned to my department.

Thank you for your time,

Jessica G. Miller
Clinical Manager
Cayuga Heart Institute

R 1 (K)

Cayuga Heart Institute

Crumb, Linda

From: Brown, Norman J
Sent: Friday, June 26, 2015 1:25 PM
To: Nohelty, Susan; Pedersen, Alan
Cc: Crumb, Linda
Subject: Interaction

I was approached by Anne that we had a possible bed/staffing/patient issue. I asked her to elaborate and she read off a list of possible patients that we may end up getting. I asked her if she was assigned patients and she stated "I have 3". I thanked her and she stood there waiting and I told her that she may go and I will follow up with Flo and get back with her.

I immediately contacted Flo and asked her if she could come to the unit and run the board with me to see where we are.

Upon Flo's arrival we went to the desk and had Anne run through the board with us. Upon looking at the board Anne only had one patient and then stated that she would have 3 at 1500 when Joan left. Anne then stated " we may have a call in" I asked her to elaborate. She stated "I have been talking to Abby all day and she may not be coming in" I instructed Anne to call Abby back and verify if she was or was not coming in. Anne restated that I have been talking to her and she may or may not be coming in" I stated, "Let me rephrase, I need you to call Abby and confirm if she is or is not coming in." Anne again stated with her arms crossed, "I have been talking to her" I again stated, "Let me rephrase, I need you to call Abby and confirm if she is or is not coming in." Again Anne stood her ground and repeated her statement. Flo had earlier asked if calls had been made and Anne told her that she had called. I stepped away with Flo and advised her we should have an emergency bed meeting to solidify plans for the evening.

I texted Linda the request to which she replied immediately to move forward with the emergency meeting. I went out with Flo and asked Anne if calls were made to not duplicate calls. Anne stated that she did not make any calls.

I took the schedule book and called Scott Goldsmith and asked if he could work this evening and take the charge role. Scott agreed to come in without hesitation. I then went out to the staffing board and told Anne that I have Scott coming in to do charge. She asked, "What's wrong with Jessica being Charge?" I told her that it was my decision to place Scott in charge. She then stated rudely, "then YOU need to call Jessica and let her know so she doesn't come in early" I replied that I would do so.

I went back to my office and called Jessica Hardy to let her know she would not be in charge.

I delegated calls to Cynthia Sullivan who called Abby Dann and confirmed that she would indeed be here this evening. Cynthia then volunteered to call the rest of the team to shore up staffing just in case.

This is the second time this week that Ms Marshall has been rude, condescending and insubordinate, not to mention not stating facts inappropriately which could have put patients at risk and cost the hospital loss of revenue secondary to unnecessarily transferring patients out of our facility.

Thank you for allowing me to serve

N. Joel Brown RN CLNC CFNE
Director of ICU/Respiratory Therapy Service
Cayuga Medical Center
Office: 607-274-4491

R, (2)
E/18

R3

Crumb, Linda

From: Ogundele, Florence
Sent: Friday, June 26, 2015 1:38 PM
To: Brown, Norman J.
Cc: Crumb, Linda; Nohelty, Susan; Pedersen, Alan
Subject: ICU Team Leader (Anne Marshall)

Hello,
This afternoon, June 26, 2015 around 12:30 pm got a called from Anne Marshall (ICU team Leader) about staffing because they are going down a nurse or two at 3pm.
I asked her if there was anyone that she can called in for overtime she said she called everyone and no one called back.

Anne, myself and Joel Brown went to the board to see what we can do, Joel was asking more questions about staffing but the way she was answering him was as if they just finished fighting. That is the only way I can described it , or I can say insubordination. He had to repeat himself several times because she wasn't listening to what He was saying. In the meantime Joel texted Linda Crumb and I called emergency bed meeting to see if we can get extra staff. Joel went to his office to call one of the nurse who said he will come in tonight. Joel then asked Anne to give him the names of the nurses she had called so that he doesn't have to call them again, then she said she did not call anyone after she told me she called everybody.

Been in ICU in that very moment was the most stressful thing I experienced, only because I can't do anything but to just observed. My question is how long is this going to continue?

I need to know what I need to do when something like this happen again.

Thanks,
Florence Ogundele RN, BSN
House supervisor

R1 (m)

R-2

6/25/2015

Jessica G. Miller
Cayuga Heart Institute

Joel Brown
Intensive Care Unit

Joel,

My staff and I experienced a rather unfortunate day with the ICU under Ann Marshalls leadership. All of the requests we made for ICU bed placement for our PCI patients were met with hostility and badgering. We were told repeatedly that they did not have the staff and that we would have to do something about "your" patients.

I witnessed Ann Marshall wandering throughout the CHI unit separate times asking my staff where Sandy was and each time she was informed that Sandy was attending a meeting, Ann was visibly exasperated. She would huff, "Still!"

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The house supervisor and I were in the ICU discussing potential bed assignments for the PCI outpatients and the potential ED patients when Ann approached us; the house supervisor asked an about her staffing issues. Ann said "Nobody is coming in," then Cindy asked, "Who have you called?" Ann's response was, "Nobody." Cindy repeated the exchange and Ann confirmed that nobody was called and nobody was coming in.

At that point I was so frustrated with her unwillingness to negotiate or work towards a solution that I left the conversation and returned to my department.

Thank you for your time,

Jessica G. Miller
Clinical Manager
Cayuga Heart Institute

Cayuga Heart Institute

R 3

Crumb, Linda

From: Ogundele, Florence
Sent: Friday, June 26, 2015 1:38 PM
To: Brown, Norman J.
Cc: Crumb, Linda; Nohelty, Susan; Pedersen, Alan
Subject: ICU Team Leader (Anne Marshall)

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Thanks,
Florence Ogundele RN, BSN
House supervisor

Cayuga
Medical Center
at Ithaca

R4

EMPLOYEE COUNSELING FORM

EMPLOYEE NAME: Florence Ogundele DATE: 11/13/15

DEPARTMENT: House Supervisor

X VERBAL WARNING ____ WRITTEN WARNING #1

____ SUSPENSION ____ FINAL WARNING (Optional)

____ TERMINATION

Policy, as stated in the Policy & Procedure Manual: See patient minimum of every hr

Reason for Counseling: posting inappropriate comments

Expectations:
no further postings of this nature

Employee's Signature/Date
Florence Ogundele RN 11/18/15

Director/Reviewer's Signature/Date

Pedersen, Alan

From: Brown, Norman J.
Sent: Thursday, June 25, 2015 3:14 PM
To: Pedersen, Alan
Subject: Timeline
Attachments: emails and docs.pdf; code of conduct violations.pdf; outline .pdf

Events from 06/24/2015

- 1141- Contacted by House Supervisor Cindy Brown regarding Team Leader Ann Marshall calling stating that she could take no new patients due to patients that "might need ICU placement from the Cath Lab after 1700. I stated to House Supervisor Cindy Brown that the Acuity of the patients when I left at 1130 was low except for one vented patient and that as I was leaving the facility to go to an offsite meeting Team Leader Ann Marshall was heading out to the parking area.
- At 1407 I was contacted via text by House Supervisor Cindy Brown that Team Leader Ann Marshall that only 3 RNs were on tomorrow and no charge. I asked if Team Leader Ann Marshall had made calls to supplement staffing. House Supervisor Cindy Brown said she was enroute to the unit to follow up.
- At 1431, House Supervisor Cindy Brown advised via text that Team Leader Anne Marshall stated that no one is coming in and I have been aware of this for a week.
- At approx. 1435 I was called out of our retreat meeting by John Turner, Admin on Call. I was joined outside by AVP Linda Crumb, Sandra Fuller Director of Cath Lab. House Supervisor Cindy Brown was on the phone which Mr. Turner had on speaker. Team Leader Anne Marshall was asking permission to not take patients in the ICCU and transfer them out of the hospital secondary to "Very Critical Patients" I asked House Supervisor Cindy Brown to relay to the group the patient report on the patients currently in the ICCU so that we could assess the situation. Team Leader Ann Marshall stated that she had 8 critical patients. After hearing the situation and patient report, I as the Director of the unit advised the House Supervisor Cindy Brown to instruct Team Leader Ann Marshall to assign an RN 3 patients and that would be the tactic we will use. Team Leader Ann Marshall was heard in the background by Mr. Turner, Ms. Crumb, and Ms. Fuller adamantly refusing to assign a nurse 3 patients by stating that "if he wants that done he can come in and do it because I will not." At that time AVP Linda Crumb stated that Ms DiBartolo was in the ED and would come up and take Charge at 1500 and make the assignments since Team Leader Ann Marshall would be leaving at that time.
- At approx. 1450 Team Leader Ann Marshall went into Dr. Hannons office and remained there until 1500.
- At approx. 1500 Ms. DiBartolo came in and received report from House Supervisor Cindy Brown on the unit. It was discovered that in fact that one patient had orders to down grade to a med surg floor that was written at 1330 and another that was to be transferred to med surg or discharged home.
- 1707 Email received from House Supervisor Cindy Brown:
    - The ICU started with 8 patients. 1 patient was discharged. They received a Stemi from the ED.
      I received a call that rm 5 could transfer to medical. As I was getting that bed arranged I received a call from cath lab that the 1st outpt was getting intervention. I then called Anne to get a bed for cath patient she informed me that she needed the medical patient out before cath patient could come and that they would not take anymore after that as they go to 4 nurses at 3. I got her the medical bed and received a bed for the cath lab patient.
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could not take it and by the way there are only 3 nurses on tomorrow and no charge. I asked her if she had made calls she replied no one is coming Joel has been aware of this for a week and a half. Jess the cath lab manager was present along with Cynthia Sullivan witnessing this conversation. I again said did you make calls she said all calls had been made and emails sent no one is coming. Sharon Newton then came by and said Joel can do charge tomorrow and Ann said he will have to. Ann again is condescending and unprofessional. I then again called John Turner who in turn got other administration present and talked on speaker phone. Cynthia Sullivan witnessed the entire conversation. I asked Ann for the charge book to tell Joel about the patients that are in ICU. She said I can tell you about them I relayed the info to the administrative group. Joel said that it sounded as if 1 RN could take a third patient and to tell Ann to assign them. Ann replied she will not assign anyone 3 patients it's not safe and if Joel wanted someone to have 3 he better come in and assign them because she wasn't. It was then discussed that Deb Dibartola was present in ED and ask her to come up to ICU and do charge. Deb agreed but needed to finish documenting there so I came up to take charge report. Right after I received report I called Lori Davis about rm 3 to be told that she was waiting on Dr Stefek that the patient would either go home or to Tele. I then called Dr Delima to ask about rm 4 she informed me she had written a transfer order at 1;30 to transfer to medical. So out of 8 patients that are not safe to have more than 2 patients per nurse 2 of them didn't even belong there. I am also concerned that Ann is so critical of the staffing but is able to go outside off the property to smoke on 4 occasions that I witnessed today.

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  My staff and I had a really unfortunate interaction with Ann Marshall today (6/24/15) while she was acting in the role of a charge nurse. Ann was confrontational, unprofessional and certainty did not conduct herself in a manner befitting a team leader. When you have an opportunity, I would really like to sit down and discuss specific examples of what we experienced. "

- 1754 received a call from Cath Lab Manager Jessica Miller regarding the issue with TLAM earlier in the day.
  - Highlights of the call included:
    - TLAM stating that the ICCU team could not handle a sheath removal.
    - Cath Nurse called for room for patient and was told by TLAM that room 2 needed to be cleaned. (6 other rooms were available)
    - 20 minutes passed and cath nurse called and spoke to TLAM and the nurse taking the patient was at lunch. (TLAM did not have a patient assignment)

Events from 06/25/2015

- 1055 Team Leader Ann Marshall emailed me and CC'd team leaders and Clinical Educator Sharon Newton the following:

  "Joel,
  I am aware that you were away when I emailed you my request, and this is one of the big issues of having an interim director who is not local and gone for extended periods of work days.However, as you pointed out in yesterday's Team Leader meeting, you are always checking your email. This being the case, I am sure you were aware of my request. In the past multiple people have been approved to attend TRENDS and seeing as I have never been to a conference I hoped I would have a good chance to attend. Further, when I spoke with Sharon yesterday I was told that I was the first person to formally request to attend the conference. I cannot help but feel that your decision to deny my request was unprofessional and based on a personal bias you have against me. I am requesting you reconsider your decision.
  Anne

- 1038 my response to Team Leader Ann Marshall:

"As Sharon is not the Director, she would not have knowledge of the individuals that approached me prior to your request."

- 1424 Email received from Melissa Clark RT:

"Hi Joel,
This is just a follow-up to the meeting that I had with you this morning.
Over this past weekend (June 20th and 21st) some of the staff in the ICU made statements such as – "We'll just give it to the GI when he gets back to take care of". On one occasion Sharon Newton was standing there and she never commented pro or con to these employees.
This again happen yesterday (June 24th) by other staff in the ICU behind the nurses' station at the assignment board. The same sort of statement was made – "The GI is aware of it, he signed off on the schedule and he can take care of it". This time Anne Marshall was standing there and she never tried to correct the conversation or stop it.

Along with this multiple hand copy of letters were delivered to me which I have scanned into this email as well.

Thank you for allowing me to serve,

N. Joel Brown RN CLNC CFNE
Director of ICU/Respiratory Therapy, Interim
Cayuga Medical Center
Office: 607-274-4491
Cell: 575-418-9491
njbrown@cayugamed.org

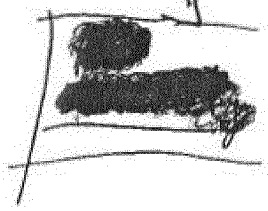
"This we do, So Others May Live." USAF Pararescue Credo

Brown, Norman J.

From:	Brown, Cindy
Sent:	Wednesday, June 24, 2015 5:07 PM
To:	Brown, Norman J.
Cc:	Crumb, Linda
Subject:	events of 6/24/15

The ICU started with 8 patients. 1 patient was discharged. They received a stemi from the ED.
I received a call that rm 5 could transfer to medical. As I was getting that bed arranged I received a call from cath lab that the 1st outpt was getting intervention. I then called Anne to get a bed for cath patient she informed me that she needed the medical patient out before cath patient could come and that they would not take anymore after that as they go to 4 nurses at 3. I got her the medical bed and received a bed for the cath lab patient.
I then called John Turner AOC to see what the plan would be for more admissions. I was told to deal with the immediate and we would face the rest as it comes. John said to call him if we get another patient. The cath lab called for a bed for the 2nd outpt that was receiving intervention. Ann said she could not take it and by the way there are only 3 nurses on tomorrow and no charge. I asked her if she had made calls she replied no one is coming Joel has been aware of this for a week and a half. Jess the cath lab manager was present along with Cynthia Sullivan witnessing this conversation. I again said did you make calls she said all calls had been made and emails sent no one is coming. Sharon Newton then came by and said Joel can do charge tomorrow and Ann said he will have to. Ann again is condescending and unprofessional. I then again called John Turner who in turn got other administration present and talked on speaker phone. Cynthia Sullivan witnessed the entire conversation. I asked Ann for the charge book to tell Joel about the patients that are in ICU. She said I can tell you about them I relayed the info to the administrative group. Joel said that it sounded as if 1 RN could take a third patient and to tell Ann to assign them . Ann replied she will not assign anyone 3 patients its not safe and if Joel wanted someone to have 3 he better come in and assign them because she wasn't. It was then discussed that Deb Dibartola was present in ED and ask her to come up to ICU and do charge. Deb agreed but needed to finish documenting there so I came up to take charge report. Right after I received report I called Lori Davis about rm 3 to be told that she was waiting on Dr Stefek that the patient would either go home or to Tele. I then called Dr Delima to ask about rm 4 she informed me she had written a transfer order at 1:30 to transfer to medical. So out of 8 patients that are not safe to have more than 2 patients per nurse 2 of them didn't even belong there. I am also concerned that Ann is so critical of the staffing but is able to go outside off the property to smoke on 4 occasions that I witnessed today.

Cindy L. Brown, RN
House Suprervisor
Cayuga Medical Center



Jessica Miller;

stemt – met ō hostility

Sheath pulling; "we can't do or handle"

– Room needed to be cleared – 6 empty beds.

20 min later – pt transfer out ~~6 clean beds~~

20 min later – Lunch – Have Ø patients assigned

~~20 min~~

NO ONE IS ~~called~~ coming in.; when Cindy asked.

I haven't called anyone. then recanted.

quickly when questioned.

Sandy assisted in pulling – ~~sheath~~

Crystal ~~Rott~~

387-4140

607-216-7817

Joseph – to days

mind on

Brown, Norman J.

From: Brown, Cindy
Sent: Wednesday, June 24, 2015 6:04 PM
To: Brown, Norman J.
Cc: Crumb, Linda
Subject: direct order

Hi Joel,

The more I think about this I have to say for an employee to disobey a direct order from your director should result in serious consequences. I am appalled that Ann will not only disobey a direct order but then be disrespectful to the director and witnessed by several staff.

Cindy L. Brown, RN
House Suprervisor
Cayuga Medical Center

At approximately 1300-1400 on 06.24.2015 I was sitting at my desk in ICU when Cindy Brown the supervisor walked back talking on her phone. She sat two chairs down from me. Anne Marshall the ICU charge nurse was following behind. Cindy was on the phone trying to describe the status of the ICU and the staffing situation. She talked to multiple people, Anne repeatedly stated that there was no charge nurse at 3 and that they could not take the patients from the cath lab or the ED. That the situation was not safe. She confirmed that calls had been made and that emails had gone out with no response. At one point Cindy stated that "I told her that"...Anne demanded to know what Cindy was referring to. Cindy did not respond as she was continuing to try to work out a plan. Anne demanded again. Cindy told Anne that Joel indicated that someone needed to take 3 patients so we could take the patient from the cath lab. Anne stated "I will not do that to my nurses, it is not safe". Cindy repeated this back to Joel. Anne again stated "you tell him I will not do that to my nurses, it is not safe". Her voice was slightly raised the second time. The conversation continued and it was decided that Deb Dibartolo would come and be in charge. I left at that point in time. On Anne's part, there was no attempt at problem solving, no indication that any discussion of alternative plans would be acceptable to her. I was disappointed that a charge nurse would not further utilize critical thinking skills to provide patient safety, leading me to believe that she may have had an alternative agenda.

Sharon Newton RN BSN CCRN

The only thing more expensive than education is ignorance

Miller, Jessica

From: McVey, Mary
Sent: Wednesday, June 24, 2015 7:14 PM
To: Miller, Jessica
Subject: ICU experience 6/24/15

On 6/24/15, we had a cath lab patient who needed an ICU bed. Around 1200, we were told that the patient would be going to ICU bed 2, but the bed was not clean. We would have to take the patient to CHI until the room was ready. I took the patient to CHI at 1215. Shortly after, Ann came over to CHI. I asked her how long she thought it would be. Ann replied that she thought it would be about 20 or 25 minutes. I cared for the patient for about 45 minutes, then went over to ICU to check on the status of the room, as I had not heard anything. When I walked in, Ann was sitting at the desk. I asked where we were with getting the patient over. I could see that the room appeared clean and ready. Ann said that "they had to get rid of their patient", and then they could take my patient. I again asked how long she thought it would be. Ann replied it would be about 20 minutes. I asked her to give me a call so that I did not have to keep bothering them. She said she would. Around 1400, my manager informed me that the house supervisor said that we needed to get the patient moved over. I again walked over to the ICU and asked Ann when I could bring the patient over. I informed her of what the house supervisor had said. She said that "they" were taking their patient out and should be back soon. I went back to CHI. I informed my manager of what Ann had said. At 1415, our manager went and checked on the room. She returned and we took the patient over to bed 2.
This patient and his wife were extremely anxious. The delay in getting to the ICU seemed to add to their anxiety. Ann seemed very resistant to taking patients. She came over to CHI twice that I saw, demanding to speak to our director in an aggressive manner. She repeatedly did not take the patient when she said she would and seemed to be completely halting patient flow. This was disruptive to all parties involved, especially for the patient.

Feel free to contact me with any questions.

Mary McVey, RN
CHI

Sent from my iPhone

Crumb, Linda

From:	Brown, Norman J.
Sent:	Friday, June 26, 2015 1:25 PM
To:	Nohelty, Susan; Pedersen, Alan
Cc:	Crumb, Linda
Subject:	Interaction

I was approached by Anne that we had a possible bed/staffing/patient issue. I asked her to elaborate and she read off a list of possible patients that we may end up getting. I asked her if she was assigned patients and she stated "I have 3". I thanked her and she stood there waiting and I told her that she may go and I will follow up with Flo and get back with her.

I immediately contacted Flo and asked her if she could come to the unit and run the board with me to see where we are.

Upon Flo's arrival we went to the desk and had Anne run through the board with us. Upon looking at the board Anne only had one patient and then stated that she would have 3 at 1500 when loan left. Anne then stated " we may have a call in" I asked her to elaborate. She stated "I have been talking to Abby all day and she may not be coming in" I instructed Anne to call Abby back and verify if she was or was not coming in. Anne restated that I have been talking to her and she may or may not be coming in" I stated, "Let me rephrase, I need you to call Abby and confirm if she is or is not coming in." Anne again stated with her arms crossed, "I have been talking to her" I again stated, "Let me rephrase, I need you to call Abby and confirm if she is or is not coming in." Again Anne stood her ground and repeated her statement. Flo had earlier asked if calls had been made and Anne told her that she had called. I stepped away with Flo and advised her we should have an emergency bed meeting to solidify plans for the evening.

I texted Linda the request to which she replied immediately to move forward with the emergency meeting. I went out with Flo and asked Anne if calls were made to not duplicate calls. Anne stated that she did not make any calls.

I took the schedule book and called Scott Goldsmith and asked if he could work this evening and take the charge role. Scott agreed to come in without hesitation. I then went out to the staffing board and told Anne that I have Scott coming in to do charge. She asked, "What's wrong with Jessica being Charge?" I told her that it was my decision to place Scott in charge. She then stated rudely, "then YOU need to call Jessica and let her know so she doesn't come in early" I replied that I would do so.

I went back to my office and called Jessica Hardy to let her know she would not be in charge.

I delegated calls to Cynthia Sullivan who called Abby Dann and confirmed that she would indeed be here this evening. Cynthia then volunteered to call the rest of the team to shore up staffing just in case.

This is the second time this week that Ms Marshall has been rude, condescending and insubordinate, not to mention not stating facts inappropriately which could have put patients at risk and cost the hospital loss of revenue secondary to unnecessarily transferring patients out of our facility.

Thank you for allowing me to serve

N. Joel Brown RN CLNC CFNE
Director of ICU/Respiratory Therapy
Cayuga Medical Center
Office: 607-274-4491

R13

Litigation

From: noreply@cayugamed.org
Sent: Thursday, April 28, 2016 12:23 PM
To: Litigation
Subject: Fwd: RE: Anne Marshall

From: <SBeasley@CAYUGAMED.org>
Sent: Fri, 28 Aug 2015 21:09:30 +0000
To: <snohelty@CAYUGAMED.org>, <APedersen@CAYUGAMED.org>, <LCrumb@CAYUGAMED.org>
Cc: <kunderwood@cayugamed.org>
Subject: RE: Anne Marshall

Thank you.

We haven't resolved the shortage for Sunday.

So well will have to see how the weekend goes.

Have an great weekend and I will see everyone on Monday.

Sandra B.

From: Nohelty, Susan
Sent: Friday, August 28, 2015 5:04 PM
To: Beasley, Sandra; Pedersen, Alan; Crumb, Linda
Cc: Underwood, Kansas A
Subject: RE: Anne Marshall

Thanks Sandra. This is the behavior that Ann has displayed all along. It certainly did not take her long to show her true colors. We will have to address her behavior first thing Monday morning when Alan returns. If you need me over the weekend, you now have all my numbers. If you need me to come in, I can do that as well.
Susan

From: Beasley, Sandra
Sent: Friday, August 28, 2015 4:52 PM
To: Pedersen, Alan; Nohelty, Susan; Crumb, Linda
Cc: Underwood, Kansas A
Subject: RE: Anne Marshall

Hi Alan,
It was a necessity to meet with Anne Marshall today based on her behavior and work performance throughout the day. Please see the email below.

Today is Anne's first day back from vacation and it has been an interesting case of events.
It started out inappropriate behavior as a leader and then moved on to actual behavior.
Therefore, I asked Kansas to sit in on my meeting with Anne at 2:30pm today.
I had the three of us meet off of the unit in the ICU consultation room.

2

Code of Conduct Incident #1

- I opened the meeting with, Anne you now Kansas. Kansas is here to listen and monitor our meeting.
- I started the conversation by asking Ann, "how do you think our initial conversation went this morning when I asked to meet with you sometime today." Ann stated, "it went okay, I agreed to meet with you."
- I shared with Anne my perception of that she "flipped" me off during our morning introduction which I found to be unkind, disrespectful, and unprofessional.
  This morning when I asked Anne to meet with me sometime today so that we can get to know one another, she rolled her eyes and flipped her hand in a dismissing gesture then verbally stated, "well, okay."
- I asked Ann, "how would that made you feel if I had treated you that way?"
  Anne stated, "it would not have bothered me, you are taking it personal."
- I informed Anne that I am not taking it personal. That is about being courteous and respectful.
- Anne stated, "I am just going to do my job and not all this warm and fuzzy stuff, I'm over it."

Code of Conduct Incident #2

- After receiving the morning charge nurse report, I verbally informed Anne that I was going to 0830 bed huddle "with" her.
- At 0830, I went onto the unit looking for Anne and she had already gone down to the bed huddle without me.
- At the end of bed huddle, I approached Anne and asked, "what happened, you did not inform me that you were leaving to go to bed huddle and I specifically told you that I was going to go with you."
- Anne stated, "you are grown, I don't have to hold your hand like a baby, you know where it is."
- I stated to Anne, "no, I'm not a baby, but I did tell you that I was going to go to bed huddle with you and I have gone to bed huddle before but each time end up taking a different route."
- I shared with Anne during the 2:30pm meeting that I found that action of leaving me without notice to go to the bed huddle was disrespectful to me as a person and as the director of the unit.
- I asked Anne how do she think she would have felt if I had done that to her. Anne stated, "it would not have bothered me, I had things to do, I don't have to hold your hand, you knew where to go, and I think you are taking this personal."

Work Performance

- It was bought to Anne's attention that there are a total of 4 nurses scheduled for this Sunday (8/30) by Sharon Newton around 0930.
- Sharon was informing Anne so that Ann could try to fix the severe shortage of nursing staff for Sunday day shift.
- Per Sharon, "Anne told me to take it to Sandra."
- I informed Anne to call staff to see if someone would switch because the unit is over staffed on Tuesday (9/1) but short on Sunday (8/30).
- Anne stated, "it doesn't matter because no one is going to come in, we are all tired and over worked."
- Anne made this assumption with no attempt to call staff.
- During the 230pm meeting, I informed Anne that it is inappropriate to verbalize that negative result before making any phone calls to the team and as team leader you must true to resolve the issue and not automatically give the team a negative response as the end result.
- Anne stated, "that's just the way it is, it's been that way for months now, I'm not going to cover it, I'm just going to do my work."
- I clearly stated to Anne, "the expectation is for you as the team leader to make the calls to our team when you are aware that the unit will be short, that is your role as a team leader, I need for you to hear me (because Anne kept interrupting me by saying-I'm not going to cover it), the expectation of the team leader is to try to ensure that the unit is staffed, make the calls and if staffing is not fixed, then informed me so we can work together in leading the team and this is an operation expectation of your role as a team leader."
- Anne stated, "we don't have a job description for a team leader, the other 3 directors were supposed to work on it, I don't know what I am supposed to do."

- I informed Anne that she does know what to do, that she has been a team leader and/or charge nurse for a long time and that she knows the expectations of the role. 3

Unprofessional Conduct

- Then Anne stated, "this is harassment and intimidation, you have another director in here with us, it's harassment, I know what is going on here and why."
- Kansas stated, "I am here only to observe the meeting, nothing else."
- I stated, "I have no idea of what you are talking about but this is not harassment, we are not trying to intimidate you, it doesn't matter to me whether the hospital is union or nonunion and having worked in both union and non-union environment-I can assure you this is not harassment."
- Anne jumped up out of her seat, raised her voice and stated, "I am not going to talk union with you, this conversation is over" as she stood in the open door way of the consultation room and then she literally stormed out heading back to the unit.

Anne has displayed several failures in the code of conduct inclusive of poor job performance.

Thanks,
Sandra B.

From: Crumb, Linda
Sent: Friday, August 28, 2015 2:07 PM
To: Beasley, Sandra
Subject: Re: Anne Marshall

Anne's behavior today is the same we have been seeing for months. I agree you need to have Kansas with you and I think your caring style is appropriate. She should expect a meeting with you to review expectations and you will have examples from today that demonstrate what you don't expect from a Team Leader. Give Alan an update when the meeting is over. Good Luck. Call me after

Sent from my iPhone

On Aug 28, 2015, at 1:56 PM, Beasley, Sandra <SBeasley@CAYUGAMED.org> wrote:

Hi Linda,
Kansas and I are going to meet with Anne Marshall today.
I asked Kansas to sit in on my meeting with Anne so that she does not feel threatened nor attacked.

- 1st, This morning around ~ 0700, Anne pretty much flipped me away when I informed her that I would like to meet with her sometime today so that we can get to know one another.
- 2nd, I informed Anne that I was going to bed huddle with her at 0830 and she left without informing that she was heading that way.
- 3rd, There are only 4 people scheduled for this Sunday, and 8 on Tuesday. When Sharon approached Anne about it, Anne informed Sharon to take it to Sandra. I would have expected Anne (the team leader) to facilitate calling staff to manager the direct operations of the unit.
- 4th, I was discussing the schedule with Anne and Crystal. Anne became argumentative when I informed me that we do not staff for all beds. That we staff based on ADC and that is the national hospital standard for all hospitals. Anne insisted that the last place that she worked staffed accounting to the number of beds which we know is impossible.

4

Therefore, I want to have a crucial but caring conversation with her today at 2:30pm and have Kansas there as a witness to the conversation.

Thoughts??

Sandra

Goal Setting

Individualized Performance Improvement Plan

Employee's Name: Scott Marsland Date: February 15, 2006

Manager: Sue, Dana

Service Standard/Issue	Individual Goals for Improvement	Target Date
People/Community -Lost temper -Foul language -Ineffective feedback (angry, "hateful")	MUST maintain professional and respectful demeanor at all times. Courteous interactions with all members of the healthcare team is expected at all times.	Immediate & Sustained

**Another episode of this severity will result in employment termination

Signature of Employee: Scott Marsland

Date: 2/15/06

Educational Verbal Warning Written Warning

Dana Pepper, Director 2/15/2006

Date July 15, 2009

Name: [redacted] RN

Dear [redacted],

This letter will confirm our decision to suspend you for 3 days. This decision was based on the violation of the employee conduct policy which we discussed. By suspending you for your actions, it is important that you recognize that this (behavior/performance) is not acceptable, and that it will be necessary for you to make the necessary corrections that we have discussed immediately. If there are any further violations of the employee conduct policy it will result in immediate termination.

If you have any questions, please don't hesitate to contact me.

Respectfully, Linda C. Crumb RN interim Director 4th Floor

Linda C. Crumb RN

Cc: Personnel file

I have seen this letter and understand the dire situation that Linda and Terri are confronting bringing to my attention the statements made to them by my co workers. Thank you for sharing this opportunity for insight + growth, personally + professionally. [redacted]

Cayuga
Medical Center
at Ithaca

EMPLOYEE COUNSELING FORM

EMPLOYEE NAME: __[redacted]_ DATE: __5/18/12_____

DEPARTMENT: ___**Emergency Department** _

_____**VERBAL WRITTEN WARNING**

_____**2 ND WRITTEN WARNING**

_____ **SUSPENSION**

__X___**FINAL WRITTEN WARNING (Optional)**

_____**TERMINATION**

Policy, as stated in the Policy & Procedure Manual: _____

Reason for Counseling: Response (Add additional documentation as necessary):

[redacted] has demonstrated repeated unprofessional conduct to include explosive and aggressive behavior, hollering profanity, and slamming of patient charts in the patient care area. This behavior was witnessed by patients and their families in the Emergency Department in addition to the entire ED team.

[redacted] behavior was unable to be redirected by team members. [redacted] has been counseled numerous times in the past following the disciplinary process for this exact behavior. [redacted] did demonstrate a significant period of improvement but has been unable to consistently maintain that improvement. The explosive behavior and rage that [redacted] demonstrates makes the entire interdisciplinary team in the Emergency Department and support services feel threatened and unsafe.

After consultation with Susan Nohelty and Alan Pedersen we have decided, as a team, that due to [redacted] significant past period of improvement that he would be moved to the D/E shift where his behavior can be monitored in lieu of immediate termination from the medical center.

Expectations for Improvement (list the acts of improvement, monitoring tools and dates for follow-up): _The expectation is your unprofessional behavior and conduct will cease and desist immediately. There will be no swearing, slamming, or other demonstration of unprofessional conduct or you will be terminated immediately. Your shift will be changed to a day evening rotation along with your new weekend rotation effective June 24, 2012.

_____

_____

[redacted]
Employee's Signature/Date

Laura Matthews 5/18/12
Director/Reviewer's Signature/Date

COPY

Cayuga
MEDICAL CENTER
A Member of Cayuga Health System

EMPLOYEE COUNSELING FORM

EMPLOYEE NAME: [redacted] DATE: October 16, 2015

DEPARTMENT:

_____VERBAL WARNING ____WRITTEN WARNING

___x__ SUSPENSION _____FINAL WARNING

_____TERMINATION

Reason for Counseling:

A) After counseling, coaching, written warning, and improvement plan with goals; [redacted] has been unable to abide to Nursing Code of Conduct. She:

a. Exhibits threatening behavior towards other peers
b. Criticizes coworkers and uses rudeness

Expectations:

[redacted] will be suspended for two days and then will come to days for a minimum of 6 weeks to reevaluate role and behavior

Time Frame:

Immediately

[redacted]
Employee's Signature/Date

10/16/15
Director/Reviewer's Signature/Date

Cayuga
Medical Center
at Ithaca

EMPLOYEE COUNSELING FORM

EMPLOYEE NAME: [redacted]

DATE: 04/01/2016

DEPARTMENT: Pharmacy

__X__VERBAL WARNING

_____WRITTEN WARNING

_____ SUSPENSION

_____FINAL WARNING (Optional)

_____TERMINATION

Additional warning:

Reason for Counseling:

[redacted] and [redacted] got into a loud heated argument concerning an infusion delivery. [redacted] had asked someone to deliver an infusion medication. [redacted] was taking a stocked out medication (heparin drip) to MED, [redacted] was in the IV room and [redacted] was working on paperwork today. [redacted] had asked if she could do anything to help before I went to deliver the 4th floor cart, and I asked her to deliver the ICU cart for [redacted]. According to coworkers, as I was not in the pharmacy for the exchange, [redacted] repeatedly verbally abused [redacted]. I arrived to hear [redacted] call [redacted] an "ass hole." Coworkers said that [redacted] used curse words loudly enough to be heard from the hall. The entire exchange was extremely unprofessional.

Expectations:

I expect [redacted] to treat [redacted] with respect, and to cease verbal abuse of coworkers.

Plan:

If things do not improve, we will have to take further action, but for now we will monitor the situation.

Employee's Signature/Date

Sarah Taber 4/1/16
Director/Reviewer's Signature/Date

[redacted]

From: "Brown, Norman J." <njbrown@CAYUGAMED.org<mailto:njbrown@CAYUGAMED.org>>
To: "Pedersen, Alan" <APedersen@CAYUGAMED.org<mailto:APedersen@CAYUGAMED.org>>
Subject: Timeline

Events from 06/24/2015

- 1141- Contacted by House Supervisor Cindy Brown regarding Team Leader Ann Marshall calling stating that she could take no new patients due to patients that "might need ICU placement from the Cath Lab after 1700. I stated to House Supervisor Cindy Brown that the Acuity of the patients when I left at 1130 was low except for one vented patient and that as I was leaving the facility to go to an offsite meeting Team Leader Ann Marshall was heading out to the parking area.

- At 1407 I was contacted via text by House Supervisor Cindy Brown that Team Leader Ann Marshall that only 3 RNs were on tomorrow and no charge. I asked if Team Leader Ann Marshall had made calls to supplement staffing. House Supervisor Cindy Brown said she was enroute to the unit to follow up.

- At 1431, House Supervisor Cindy Brown advised via text that Team Leader Anne Marshall stated that no one is coming in and I have been aware of this for a week.

- At approx. 1435 I was called out of our retreat meeting by John Turner, Admin on Call. I was joined outside by AVP Linda Crumb, Sandra Fuller Director of Cath Lab. House Supervisor Cindy Brown was on the phone which Mr. Turner had on speaker. Team Leader Anne Marshall was asking permission to not take patients in the ICCU and transfer them out of the hospital secondary to "Very Critical Patients" I asked House Supervisor Cindy Brown to relay to the group the patient report on the patients currently in the ICCU so that we could assess the situation. Team Leader Ann Marshall stated that she had 8 critical patients. After hearing the situation and patient report, I as the Director of the unit advised the House Supervisor Cindy Brown to instruct Team Leader Ann Marshall to assign an RN 3 patients and that would be the tactic we will use. Team Leader Ann Marshall was heard in the background by Mr. Turner, Ms. Crumb, and Ms. Fuller adamantly refusing to assign a nurse 3 patients by stating that "if he wants that done he can come in and do it because I will not." At that time AVP Linda Crumb stated that Ms DiBartolo was in the ED and would come up and take Charge at 1500 and make the assignments since Team Leader Ann Marshall would be leaving at that time.

- At approx. 1450 Team Leader Ann Marshall went into Dr. Hannons office and remained there until 1500.

ALJ 1

Ex. 1(a)

· At approx. 1500 Ms. DiBartolo came in and received report from House Supervisor Cindy Brown on the unit. It was discovered that in fact that one patient had orders to down grade to a med surg floor that was written at 1330 and another that was to be transferred to med surg or discharged home.

· 1707 Email received from House Supervisor Cindy Brown:

o The ICU started with 8 patients. 1 patient was discharged. They received a Stemi from the ED.

I received a call that rm 5 could transfer to medical. As I was getting that bed arranged I received a call from cath lab that the 1st outpt was getting intervention. I then called Anne to get a bed for cath patient she informed me that she needed the medical patient out before cath patient could come and that they would not take anymore after that as they go to 4 nurses at 3. I got her the medical bed and received a bed for the cath lab patient.

I then called John Turner AOC to see what the plan would be for more admissions. I was told to deal with the immediate and we would face the rest as it comes. John said to call him if we get another patient. The cath lab called for a bed for the 2nd outpt that was receiving intervention. Ann said she could not take it and by the way there are only 3 nurses on tomorrow and no charge. I asked her if she had made calls she replied no one is coming Joel has been aware of this for a week and a half. Jess the cath lab manager was present along with Cynthia Sullivan witnessing this conversation. I again said did you make calls she said all calls had been made and emails sent no one is coming. Sharon Newton then came by and said Joel can do charge tomorrow and Ann said he will have to. Ann again is condescending and unprofessional. I then again called John Turner who in turn got other administration present and talked on speaker phone. Cynthia Sullivan witnessed the entire conversation. I asked Ann for the charge book to tell Joel about the patients that are in ICU. She said I can tell you about them I relayed the info to the administrative group. Joel said that it sounded as if 1 RN could take a third patient and to tell Ann to assign them. Ann replied she will not assign anyone 3 patients it's not safe and if Joel wanted someone to have 3 he better come in and assign them because she wasn't. It was then discussed that Deb Dibartola was present in ED and ask her to come up to ICU and do charge. Deb agreed but needed to finish documenting there so I came up to take charge report. Right after I received report I called Lori Davis about rm 3 to be told that she was waiting on Dr Stefek that the patient would either go home or to Tele. I then called Dr Delima to ask about rm 4 she informed me she had written a transfer order at 1;30 to transfer to medical. So out of 8 patients that are not safe to have more than 2 patients per nurse 2 of them didn't even belong there. I am also concerned that Ann is so critical of the staffing but is able to go outside off the property to smoke on 4 occasions that I witnessed today.

§ 1706 received an email from Cath Lab Manager Jessica Miller

"Joel,

My staff and I had a really unfortunate interaction with Ann Marshall today (6/24/15) while she was acting in the role of a charge nurse. Ann was confrontational, unprofessional and certainty did not conduct herself in a manner befitting a team leader. When you have an opportunity, I would really like to sit down and discuss specific examples of what we experienced. "

· 1754 received a call from Cath Lab Manager Jessica Miller regarding the issue with TLAM earlier in the day.

o Highlights of the call included:

§ TLAM stating that the ICCU team could not handle a sheath removal.

§ Cath Nurse called for room for patient and was told by TLAM that room 2 needed to be cleaned. (6 other rooms were available)

§ 20 minutes passed and cath nurse called and spoke to TLAM and the nurse taking the patient was at lunch. (TLAM did not have a patient assignment)

R (b)

Events from 06/25/2015

· 1055 Team Leader Ann Marshall emailed me and CC'd team leaders and Clinical Educator Sharon Newton the following:

"Joel,

I am aware that you were away when I emailed you my request, and this is one of the big issues of having an interim director who is not local and gone for extended periods of work days.However, as you pointed out in yesterday's Team Leader meeting, you are always checking your email. This being the case, I am sure you were aware of my request. In the past multiple people have been approved to attend TRENDS and seeing as I have never been to a conference I hoped I would have a good chance to attend. Further, when I spoke with Sharon yesterday I was told that I was the first person to formally request to attend the conference. I cannot help but feel that your decision to deny my request was unprofessional and based on a personal bias you have against me. I am requesting you reconsider your decision.

Anne

· 1038 my response to Team Leader Ann Marshall:

"As Sharon is not the Director, she would not have knowledge of the individuals that approached me prior to your request."

· 1424 Email received from Melissa Clark RT:

"Hi Joel,

This is just a follow-up to the meeting that I had with you this morning.

Over this past weekend (June 20th and 21st) some of the staff in the ICU made statements such as – "We'll just give it to the GI when he gets back to take care of". On one occasion Sharon Newton was standing there and she never commented pro or con to these employees.

This again happen yesterday (June 24th) by other staff in the ICU behind the nurses' station at the assignment board. The same sort of statement was made – "The GI is aware of it, he signed off on the schedule and he can take care of it". This time Anne Marshall was standing there and she never tried to correct the conversation or stop it.

Along with this multiple hand copy of letters were delivered to me which I have scanned into this email as well.

Thank you for allowing me to serve,

N. Joel Brown RN CLNC CFNE
Director of ICU/Respiratory Therapy, Interim Cayuga Medical Center
Office: 607-274-4491
Cell: 575-418-9491
njbrown@cayugamed.org<mailto:njbrown@cayugamed.org><mailto:njbrown@cayugamed.org>

"This we do, So Others May Live." USAF Pararescue Credo

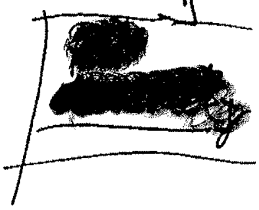
R 1 (c)

Brown, Norman J.

From: Brown, Cindy
Sent: Wednesday, June 24, 2015 5:07 PM
To: Brown, Norman J.
Cc: Crumb, Linda
Subject: events of 6/24/15

The ICU started with 8 patients. 1 patient was discharged. They received a stemi from the ED.
I received a call that rm 5 could transfer to medical. As I was getting that bed arranged I received a call from cath lab that the 1st outpt was getting intervention. I then called Anne to get a bed for cath patient she informed me that she needed the medical patient out before cath patient could come and that they would not take anymore after that as they go to 4 nurses at 3. I got her the medical bed and received a bed for the cath lab patient.
I then called John Turner AOC to see what the plan would be for more admissions. I was told to deal with the immediate and we would face the rest as it comes. John said to call him if we get another patient. The cath lab called for a bed for the 2nd outpt that was receiving intervention. Ann said she could not take it and by the way there are only 3 nurses on tomorrow and no charge. I asked her if she had made calls she replied no one is coming Joel has been aware of this for a week and a half. Jess the cath lab manager was present along with Cynthia Sullivan witnessing this conversation. I again said did you make calls she said all calls had been made and emails sent no one is coming. Sharon Newton then came by and said Joel can do charge tomorrow and Ann said he will have to. Ann again is condescending and unprofessional. I then again called John Turner who in turn got other administration present and talked on speaker phone. Cynthia Sullivan witnessed the entire conversation. I asked Ann for the charge book to tell Joel about the patients that are in ICU. She said I can tell you about them I relayed the info to the administrative group. Joel said that it sounded as if 1 RN could take a third patient and to tell Ann to assign them . Ann replied she will not assign anyone 3 patients its not safe and if Joel wanted someone to have 3 he better come in and assign them because she wasn't. It was then discussed that Deb Dibartola was present in ED and ask her to come up to ICU and do charge. Deb agreed but needed to finish documenting there so I came up to take charge report. Right after I received report I called Lori Davis about rm 3 to be told that she was waiting on Dr Stefek that the patient would either go home or to Tele. I then called Dr Delima to ask about rm 4 she informed me she had written a transfer order at 1;30 to transfer to medical. So out of 8 patients that are not safe to have more than 2 patients per nurse 2 of them didn't even belong there. I am also concerned that Ann is so critical of the staffing but is able to go outside off the property to smoke on 4 occasions that I witnessed today.

Cindy L. Brown, RN
House Suprervisor
Cayuga Medical Center



R
~~FR~~ 1(e)

Jessica Miller;

STEMI – met c̄ hostility,

Sheath pulling; "we can't do or handle"

– Room needed to be cleared. – 6 empty beds.

20 min later – pt transfer out ~~6 clean beds~~

20 min later – Lunch. – Anne Ø patients assigned

~~20 min~~

NO ONE is ~~called~~ coming in.; when Cindy asked.

I haven't called Anyone. then secerted.

quickly when questioned.

Sandy assisted in pulling sheath

Crystal Rott.

387-4140

607-216-7817

Joseph. to days

R

EA1(F)

Brown, Norman J.

From: Brown, Cindy
Sent: Wednesday, June 24, 2015 5:43 PM
To: Brown, Norman J.
Cc: Crumb, Linda
Subject: disrespect 6/24/15

Hi Joel,

From the moment Deb Debartola walked into the ICU ANGIE YOUR HOSPITAL AIDE WAS CONFRONTATIONAL AND DISRESPECTFUL TO HER. She was downright angry that I was placing a ED patient in the ICU that would be transferred to Rochester tomorrow at 6AM.

Cindy L. Brown, RN
House Suprervisor
Cayuga Medical Center

[illegible]

R1(g)
[illegible]

Brown, Norman J.

From: Brown, Cindy
Sent: Wednesday, June 24, 2015 6:04 PM
To: Brown, Norman J.
Cc: Crumb, Linda
Subject: direct order

Hi Joel,

The more I think about this I have to say for an employee to disobey a direct order from your director should result in serious consequences. I am appalled that Ann will not only disobey a direct order but then be disrespectful to the director and witnessed by several staff.

Cindy L. Brown, RN
House Suprervisor
Cayuga Medical Center

*

R1 (h)

~~E.h~~

At approximately 1300-1400 on 06.24.2015 I was sitting at my desk in ICU when Cindy Brown the supervisor walked back talking on her phone. She sat two chairs down from me. Anne Marshall the ICU charge nurse was following behind. Cindy was on the phone trying to describe the status of the ICU and the staffing situation. She talked to multiple people , Anne repeatedly stated that there was no charge nurse at 3 and that they could not take the patients from the cath lab or the ED. That the situation was not safe. She confirmed that calls had been made and that emails had gone out with no response. At one point Cindy stated that "I told her that"...Anne demanded to know what Cindy was referring to. Cindy did not respond as she was continuing to try to work out a plan. Anne demanded again. Cindy told Anne that Joel indicated that someone needed to take 3 patients so we could take the patient from the cath lab. Anne stated "I will not do that to my nurses, it is not safe". Cindy repeated this back to Joel. Anne again stated "you tell him I will not do that to my nurses, it is not safe". Her voice was slightly raised the second time. The conversation continued and it was decided that Deb Dibartolo would come and be in charge. I left at that point in time. On Anne's part, there was no attempt at problem solving, no indication that any discussion of alternative plans would be acceptable to her. I was disappointed that a charge nurse would not further utilize critical thinking skills to provide patient safety, leading me to believe that she may have had an alternative agenda.

Sharon Newton RN BSN CCRN
staff nurse specialist ICU
newtons@saywganed.org
[illegible]

The only thing more expensive than education is ignorance

R1(8)
Ex

Miller, Jessica

From: McVey, Mary
Sent: Wednesday, June 24, 2015 7:14 PM
To: Miller, Jessica
Subject: ICU experience 6/24/15

On 6/24/15, we had a cath lab patient who needed an ICU bed. Around 1200, we were told that the patient would be going to ICU bed 2, but the bed was not clean. We would have to take the patient to CHI until the room was ready. I took the patient to CHI at 1215. Shortly after, Ann came over to CHI. I asked her how long she thought it would be. Ann replied that she thought it would be about 20 or 25 minutes. I cared for the patient for about 45 minutes, then went over to ICU to check on the status of the room, as I had not heard anything. When I walked in, Ann was sitting at the desk. I asked where we were with getting the patient over. I could see that the room appeared clean and ready. Ann said that "they had to get rid of their patient", and then they could take my patient. I again asked how long she thought it would be. Ann replied it would be about 20 minutes. I asked her to give me a call so that I did not have to keep bothering them. She said she would. Around 1400, my manager informed me that the house supervisor said that we needed to get the patient moved over. I again walked over to the ICU and asked Ann when I could bring the patient over. I informed her of what the house supervisor had said. She said that "they" were taking their patient out and should be back soon. I went back to CHI. I informed my manager of what Ann had said. At 1415, our manager went and checked on the room. She returned and we took the patient over to bed 2.
This patient and his wife were extremely anxious. The delay in getting to the ICU seemed to add to their anxiety. Ann seemed very resistant to taking patients. She came over to CHI twice that I saw, demanding to speak to our director in an aggressive manner. She repeatedly did not take the patient when she said she would and seemed to be completely halting patient flow. This was disruptive to all parties involved, especially for the patient.

Feel free to contact me with any questions.

Mary McVey, RN
CHI

Sent from my iPhone

*

R1(j)
EBij

Crumb, Linda

From: Brown, Norman J.
Sent: Friday, June 26, 2015 1:25 PM
To: Nohelty, Susan; Pedersen, Alan
Cc: Crumb, Linda
Subject: Interaction

I was approached by Anne that we had a possible bed/staffing/patient issue. I asked her to elaborate and she read off a list of possible patients that we may end up getting. I asked her if she was assigned patients and she stated "I have 3". I thanked her and she stood there waiting and I told her that she may go and I will follow up with Flo and get back with her.

I immediately contacted Flo and asked her if she could come to the unit and run the board with me to see where we are.

Upon Flo's arrival we went to the desk and had Anne run through the board with us. Upon looking at the board Anne only had one patient and then stated that she would have 3 at 1500 when Joan left. Anne then stated " we may have a call in" I asked her to elaborate. She stated "I have been talking to Abby all day and she may not be coming in" I instructed Anne to call Abby back and verify if she was or was not coming in. Anne restated that I have been talking to her and she may or may not be coming in" I stated, "Let me rephrase, I need you to call Abby and confirm if she is or is not coming in." Anne again stated with her arms crossed, "I have been talking to her" I again stated, "Let me rephrase, I need you to call Abby and confirm if she is or is not coming in." Again Anne stood her ground and repeated her statement. Flo had earlier asked if calls had been made and Anne told her that she had called. I stepped away with Flo and advised her we should have an emergency bed meeting to solidify plans for the evening.

I texted Linda the request to which she replied immediately to move forward with the emergency meeting. I went out with Flo and asked Anne if calls were made to not duplicate calls. Anne stated that she did not make any calls.

I took the schedule book and called Scott Goldsmith and asked if he could work this evening and take the charge role. Scott agreed to come in without hesitation. I then went out to the staffing board and told Anne that I have Scott coming in to do charge. She asked, "What's wrong with Jessica being Charge?" I told her that it was my decision to place Scott in charge. She then stated rudely, "then YOU need to call Jessica and let her know so she doesn't come in early" I replied that I would do so.

I went back to my office and called Jessica Hardy to let her know she would not be in charge.

I delegated calls to Cynthia Sullivan who called Abby Dann and confirmed that she would indeed be here this evening. Cynthia then volunteered to call the rest of the team to shore up staffing just in case.

This is the second time this week that Ms Marshall has been rude, condescending and insubordinate, not to mention not stating facts inappropriately which could have put patients at risk and cost the hospital loss of revenue secondary to unnecessarily transferring patients out of our facility.

Thank you for allowing me to serve

N. Joel Brown RN CLNC CFNE
Director of ICU/Respiratory Therapy/Interim
Cayuga Medical Center
Office: 607-274-4491

R, (R)
EXR

Cayuga
Medical Center
at Ithaca

R4

EMPLOYEE COUNSELING FORM

EMPLOYEE NAME: Florence Ogundele DATE: 11/13/15

DEPARTMENT: House Supervisor

X VERBAL WARNING ____ WRITTEN WARNING #1

____ SUSPENSION ____ FINAL WARNING (Optional)

____ TERMINATION

Policy, as stated in the Policy & Procedure Manual: See patient minimum of every hr

Reason for Counseling: posting inappropriate comments

Expectations:
no further postings of this nature

Employee's Signature/Date
Florence Ogundele RN 11/18/15

Director/Reviewer's Signature/Date

R5

HOSPITAL SAFETY SCORE

< Back to the newsroom

Selecting the Right Hospital Can Reduce Your Risk of Avoidable Death by 50%, According to Analysis of Newly Updated Hospital Safety Score Grades

Washington, D.C., April 25, 2016 – The Leapfrog Group announced today the Spring 2016 Hospital Safety Score update, assigning letter grades to more than 2,500 U.S. hospitals, assessing medical errors, accidents, injuries and infections. Alongside the update, Leapfrog contracted with Johns Hopkins Medicine's Armstrong Institute for Patient Safety and Quality on a new report estimating the number of avoidable deaths at hospitals in each grade level. The analysis finds that despite considerable improvement in the safety of hospital care since the Score's launch in 2012, avoidable deaths remain high. Findings point to a 9% higher risk of avoidable death in B hospitals, 35% higher in C hospitals, and 50% higher in D and F hospitals, than in A hospitals.

The analysis was led by Matt Austin, Ph.D., Assistant Professor at the Armstrong Institute for Patient Safety and Quality and the Department of Anesthesiology and

Press Inquires

We are happy to help members of the press inform the public about the Hospital Safety Score. For interview requests or additional information for print, electronic and broadcast journalists, please contact:

Ashley Duvall
(908) 325-3865

If you are a hospital looking for a template press release to announce your Hospital Safety Score, please contact info@leapfroggroup.org.

Critical Care Medicine at John Hopkins University School of Medicine. In total, the analysis showed an estimated 206,021 avoidable deaths occur in U.S. hospitals each year, a figure described as an underestimate in the analysis because the measure only accounts for a subset of avoidable harms patients may encounter in the hospital. Of the 206,021 avoidable deaths occurring in all hospitals, 162,117 occur in B, C, D, and F hospitals. The analysis concluded an estimated 33,439 lives could be saved each year if all hospitals had the same performance as those receiving an A.

The April 2016 update highlights newly-added patient experience measures shown in the research to have a relationship to improved patient safety outcomes. These include results of patient surveys about: communication about medicines, communication about discharge, nurse communication, doctor communication, and responsiveness of hospital staff. Additionally, for the first time, the Score includes two new infection measures, MRSA Bacteremia and C.difficile.

"It is time for every hospital in America to put patient safety at the top of their priority list, because tens of thousands of lives are stake," said Leah Binder, President and CEO of The Leapfrog Group. "The Hospital Safety Score alerts consumers to the dangers, but as this analysis shows, even A hospitals are not perfectly safe."

Report Highlights Include:

- Of the 2,571 hospitals issued a Hospital Safety Score, 798 earned an A, 639 earned a B, 957 earned a C, 162 earned a D and 15 earned an F.
- Additionally, 153 hospitals earned the "Straight A" since 2013 designation, which calls attention to hospitals who have consistently received an A grade for safety in the last three years of Hospital Safety Scores.
- Maine, which has had the highest percentage of A hospitals for the last four rounds of the Score, dipped to second behind Vermont, where 83 percent of its hospitals achieved an A. This is the first time Vermont has claimed the number-one spot.
- Alternatively, for the third year, zero hospitals in the District of Columbia received an A grade. Similarly, Arkansas and Wyoming had no hospitals with an A grade.

For more information about the Hospital Safety Score or to view the list of state rankings, please visit www.hospitalsafetyscore.org. To learn how employers are footing the bill for hospital errors, visit Leapfrog's Cost Calculator. Journalists

interested in scheduling an interview should contact LeapfrogMediaGroup@sternstrategy.com.

Jordan Derk, M.P.H, Johns Hopkins Medicine's Armstrong Institute for Patient Safety and Quality also assisted in the analysis. This project was funded by The Leapfrog Group and was reviewed by Peter Provonost, M.D., Ph.D., Johns Hopkins University, David Hopkins, Ph.D., Pacific Business Group on Health and Mike Rosen, Ph.D., Johns Hopkins University.

About The Leapfrog Group

Founded in 2000 by large employers and other purchasers, The Leapfrog Group is a national nonprofit organization driving a movement for giant leaps forward in the quality and safety of American health care. The flagship Leapfrog Hospital Survey collects and transparently reports hospital performance, empowering purchasers to find the highest-value care and giving consumers the lifesaving information they need to make informed decisions. Hospital Safety Score, Leapfrog's other main initiative, assigns letter grades to hospitals based on their record of patient safety, helping consumers protect themselves and their families from errors, injuries, accidents, and infections.

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15 hospitals within 50 miles from the center of 14850

HOSPITAL SAFETY SCORE

Cayuga Medical Center at Ithaca

101 Dates Drive
Ithaca, NY 14850-1342

This Hospital's Grade A Spring 2016

Cortland Regional Medical Center

134 Homer Avenue
Cortland, NY 13045-1206

This Hospital's Grade C Spring 2016

Arnot Ogden Medical Center

600 Roe Avenue
Elmira, NY 14905-1629

This Hospital's Grade D Spring 2016

Corning Hospital

176 Denison Parkway E.
Corning, NY 14830-2899

This Hospital's Grade B Spring 2016

UHS Wilson Medical Center

33-57 Harrison St.
Johnson City, NY 13790

This Hospital's Grade C Spring 2016

Our Lady of Lourdes Memorial Hospital

169 Riverside Drive
Binghamton, NY 13905-4246

This Hospital's Grade D Spring 2016

Auburn Community Hospital

17 Lansing Street
Auburn, NY 13021-1943

This Hospital's Grade C Spring 2016

UHS - Binghamton General Hospital

10-42 Mitchell Avenue
Binghamton, NY 13903-1678

This Hospital's Grade C Spring 2016

Geneva General Hospital

196 North Street
Geneva, NY 14456-1694

This Hospital's Grade C Spring 2016

Guthrie Robert Packer Hospital

1 Guthrie Square
Sayre, PA 18840-1698

This Hospital's Grade B Spring 2016

Upstate University Hospital - Community Campus

4900 Broad Road
Syracuse, NY 13215-2293

This Hospital's Grade D Spring 2016

Crouse Hospital

736 Irving Avenue
Syracuse, NY 13210-1690

This Hospital's Grade C Spring 2016

SUNY Upstate Medical University Hospital

750 E. Adams Street
Syracuse, NY 13210-2342

This Hospital's Grade D Spring 2016

St. Joseph's Hospital Health Center

301 Prospect Avenue
Syracuse, NY 13203-1807

This Hospital's Grade

Clifton Springs Hospital and Clinic

2 Coulter Road
Clifton Springs, NY 14432-1189

This Hospital's Grade

LEGAL DISCLAIMER: The Leapfrog Group Hospital Safety Score program fs hospitals on their overall performance in keeping patients safe from preventable harm and medical errors. The grades are derived from expert analysis of publicly available data using 28 evidence-based, national measures of hospital safety. No specific representation is made, nor shall be implied, nor shall The Leapfrog Group be liable with respect to any individual patient's potential or actual outcome as a result of receiving services performed at any of these hospitals. Hospital Safety Scores cannot be republished without expressed written permission from The Leapfrog Group.

TERMS OF USE

R8

Jessica Miller;

STEMI – met ō hostility,

Sheath pulling; "we can't do or handle"

– Room needed to be cleared. – 6 empty beds.

20 min Later – pt transfer OUT ~~bed can beds~~

20 min Later Lunch. – Anne Ø patients assigned

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NO ONE IS ~~called~~ coming in.; when Cindy asked.

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Crystal Rott

387-4140

607-216-7817

Joseph to days

withdrawn

R9

Brown, Norman J.

From:	Brown, Cindy
Sent:	Wednesday, June 24, 2015 6:04 PM
To:	Brown, Norman J.
Cc:	Crumb, Linda
Subject:	direct order

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House Suprervisor
Cayuga Medical Center

R10

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Sharon Newton RN BSN CCRN

The only thing more expensive than education is ignorance

R11

Miller, Jessica

From: McVey, Mary
Sent: Wednesday, June 24, 2015 7:14 PM
To: Miller, Jessica
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Feel free to contact me with any questions.

Mary McVey, RN
CHI

Sent from my iPhone

R12

Crumb, Linda

From: Brown, Norman J.
Sent: Friday, June 26, 2015 1:25 PM
To: Nohelty, Susan; Pedersen, Alan
Cc: Crumb, Linda
Subject: Interaction

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I took the schedule book and called Scott Goldsmith and asked if he could work this evening and take the charge role. Scott agreed to come in without hesitation. I then went out to the staffing board and told Anne that I have Scott coming in to do charge. She asked, "What's wrong with Jessica being Charge?" I told her that it was my decision to place Scott in charge. She then stated rudely, "then YOU need to call Jessica and let her know so she doesn't come in early" I replied that I would do so.

I went back to my office and called Jessica Hardy to let her know she would not be in charge.

I delegated calls to Cynthia Sullivan who called Abby Dann and confirmed that she would indeed be here this evening. Cynthia then volunteered to call the rest of the team to shore up staffing just in case.

This is the second time this week that Ms Marshall has been rude, condescending and insubordinate, not to mention not stating facts inappropriately which could have put patients at risk and cost the hospital loss of revenue secondary to unnecessarily transferring patients out of our facility.

Thank you for allowing me to serve

N. Joel Brown RN CLNC CFNE
Director of ICU/Respiratory Therapy/Interim
Cayuga Medical Center
Office: 607-274-4491

R13 1

Litigation

From: noreply@cayugamed.org
Sent: Thursday, April 28, 2016 12:23 PM
To: Litigation
Subject: Fwd: RE: Anne Marshall

From: <SBeasley@CAYUGAMED.org>
Sent: Fri, 28 Aug 2015 21:09:30 +0000
To: <snohelty@CAYUGAMED.org>, <APedersen@CAYUGAMED.org>, <LCrumb@CAYUGAMED.org>
Cc: <kunderwood@cayugamed.org>
Subject: RE: Anne Marshall

Thank you.

We haven't resolved the shortage for Sunday.

So well will have to see how the weekend goes.

Have an great weekend and I will see everyone on Monday.

Sandra B.

From: Nohelty, Susan
Sent: Friday, August 28, 2015 5:04 PM
To: Beasley, Sandra; Pedersen, Alan; Crumb, Linda
Cc: Underwood, Kansas A
Subject: RE: Anne Marshall

Thanks Sandra. This is the behavior that Ann has displayed all along. It certainly did not take her long to show her true colors. We will have to address her behavior first thing Monday morning when Alan returns. If you need me over the weekend, you now have all my numbers. If you need me to come in, I can do that as well.
Susan

From: Beasley, Sandra
Sent: Friday, August 28, 2015 4:52 PM
To: Pedersen, Alan; Nohelty, Susan; Crumb, Linda
Cc: Underwood, Kansas A
Subject: RE: Anne Marshall

Hi Alan,
It was a necessity to meet with Anne Marshall today based on her behavior and work performance throughout the day. Please see the email below.

Today is Anne's first day back from vacation and it has been an interesting case of events.
It started out inappropriate behavior as a leader and then moved on to actual behavior.
Therefore, I asked Kansas to sit in on my meeting with Anne at 2:30pm today.
I had the three of us meet off of the unit in the ICU consultation room.

2

Code of Conduct Incident #1

- I opened the meeting with, Anne you now Kansas. Kansas is here to listen and monitor our meeting.
- I started the conversation by asking Ann, "how do you think our initial conversation went this morning when I asked to meet with you sometime today." Ann stated, "it went okay, I agreed to meet with you."
- I shared with Anne my perception of that she "flipped" me off during our morning introduction which I found to be unkind, disrespectful, and unprofessional.
  This morning when I asked Anne to meet with me sometime today so that we can get to know one another, she rolled her eyes and flipped her hand in a dismissing gesture then verbally stated, "well, okay."
- I asked Ann, "how would that made you feel if I had treated you that way?"
  Anne stated, "it would not have bothered me, you are taking it personal."
- I informed Anne that I am not taking it personal. That is about being courteous and respectful.
- Anne stated, "I am just going to do my job and not all this warm and fuzzy stuff, I'm over it."

Code of Conduct Incident #2

- After receiving the morning charge nurse report, I verbally informed Anne that I was going to 0830 bed huddle "with" her.
- At 0830, I went onto the unit looking for Anne and she had already gone down to the bed huddle without me.
- At the end of bed huddle, I approached Anne and asked, "what happened, you did not inform me that you were leaving to go to bed huddle and I specifically told you that I was going to go with you."
- Anne stated, "you are grown, I don't have to hold your hand like a baby, you know where it is."
- I stated to Anne, "no, I'm not a baby, but I did tell you that I was going to go to bed huddle with you and I have gone to bed huddle before but each time end up taking a different route."
- I shared with Anne during the 2:30pm meeting that I found that action of leaving me without notice to go to the bed huddle was disrespectful to me as a person and as the director of the unit.
- I asked Anne how do she think she would have felt if I had done that to her. Anne stated, "it would not have bothered me, I had things to do, I don't have to hold your hand, you knew where to go, and I think you are taking this personal."

Work Performance

- It was bought to Anne's attention that there are a total of 4 nurses scheduled for this Sunday (8/30) by Sharon Newton around 0930.
- Sharon was informing Anne so that Ann could try to fix the severe shortage of nursing staff for Sunday day shift.
- Per Sharon, "Anne told me to take it to Sandra."
- I informed Anne to call staff to see if someone would switch because the unit is over staffed on Tuesday (9/1) but short on Sunday (8/30).
- Anne stated, "it doesn't matter because no one is going to come in, we are all tired and over worked."
- Anne made this assumption with no attempt to call staff.
- During the 230pm meeting, I informed Anne that it is inappropriate to verbalize that negative result before making any phone calls to the team and as team leader you must true to resolve the issue and not automatically give the team a negative response as the end result.
- Anne stated, "that's just the way it is, it's been that way for months now, I'm not going to cover it, I'm just going to do my work."
- I clearly stated to Anne, "the expectation is for you as the team leader to make the calls to our team when you are aware that the unit will be short, that is your role as a team leader, I need for you to hear me (because Anne kept interrupting me by saying-I'm not going to cover it), the expectation of the team leader is to try to ensure that the unit is staffed, make the calls and if staffing is not fixed, then informed me so we can work together in leading the team and this is an operation expectation of your role as a team leader."
- Anne stated, "we don't have a job description for a team leader, the other 3 directors were supposed to work on it, I don't know what I am supposed to do."

- I informed Anne that she does know what to do, that she has been a team leader and/or charge nurse for a long time and that she knows the expectations of the role. 3

Unprofessional Conduct

- Then Anne stated, "this is harassment and intimidation, you have another director in here with us, it's harassment, I know what is going on here and why."
- Kansas stated, "I am here only to observe the meeting, nothing else."
- I stated, "I have no idea of what you are talking about but this is not harassment, we are not trying to intimidate you, it doesn't matter to me whether the hospital is union or nonunion and having worked in both union and non-union environment-I can assure you this is not harassment."
- Anne jumped up out of her seat, raised her voice and stated, "I am not going to talk union with you, this conversation is over" as she stood in the open door way of the consultation room and then she literally stormed out heading back to the unit.

Anne has displayed several failures in the code of conduct inclusive of poor job performance.

Thanks,
Sandra B.

From: Crumb, Linda
Sent: Friday, August 28, 2015 2:07 PM
To: Beasley, Sandra
Subject: Re: Anne Marshall

Anne's behavior today is the same we have been seeing for months. I agree you need to have Kansas with you and I think your caring style is appropriate. She should expect a meeting with you to review expectations and you will have examples from today that demonstrate what you don't expect from a Team Leader. Give Alan an update when the meeting is over. Good Luck. Call me after

Sent from my iPhone

On Aug 28, 2015, at 1:56 PM, Beasley, Sandra <SBeasley@CAYUGAMED.org> wrote:

Hi Linda,
Kansas and I are going to meet with Anne Marshall today.
I asked Kansas to sit in on my meeting with Anne so that she does not feel threatened nor attacked.

- 1st, This morning around ~ 0700, Anne pretty much flipped me away when I informed her that I would like to meet with her sometime today so that we can get to know one another.
- 2nd, I informed Anne that I was going to bed huddle with her at 0830 and she left without informing that she was heading that way.
- 3rd, There are only 4 people scheduled for this Sunday, and 8 on Tuesday. When Sharon approached Anne about it, Anne informed Sharon to take it to Sandra. I would have expected Anne (the team leader) to facilitate calling staff to manager the direct operations of the unit.
- 4th, I was discussing the schedule with Anne and Crystal. Anne became argumentative when I informed me that we do not staff for all beds. That we staff based on ADC and that is the national hospital standard for all hospitals. Anne insisted that the last place that she worked staffed accounting to the number of beds which we know is impossible.

4

Therefore, I want to have a crucial but caring conversation with her today at 2:30pm and have Kansas there as a witness to the conversation.

Thoughts??

Sandra

R14

Goal Setting

Individualized Performance Improvement Plan

Employee's Name: Scott Marsland Date: February 15, 2006

Manager: Sue, Dana

Service Standard/Issue	Individual Goals for Improvement	Target Date
People/Community -Lost temper -Foul language -Ineffective feedback (angry, "hateful")	MUST maintain professional and respectful demeanor at all times. Courteous interactions with all members of the healthcare team is expected at all times.	Immediate & Sustained

****Another episode of this severity will result in employment termination**

Signature of Employee: Scott Marsland

Date: 2/15/06

Educational Verbal Warning Written Warning

Dana Pepper, Director 2/15/2006

Date July 15, 2009

Name: [redacted] RN

Dear [redacted],

This letter will confirm our decision to suspend you for 3 days. This decision was based on the violation of the employee conduct policy which we discussed. By suspending you for your actions, it is important that you recognize that this (behavior/performance) is not acceptable, and that it will be necessary for you to make the necessary corrections that we have discussed immediately. If there are any further violations of the employee conduct policy it will result in immediate termination.

If you have any questions, please don't hesitate to contact me.

Respectfully, Linda C. Crumb RN interim Director 4th Floor

Linda C. Crumb RN

Cc: Personnel file

I have seen this letter and understand the dire situation that Linda and Terri are confronting bringing to my attention the statements made to them by my co workers. Thank you for sharing this opportunity for insight + growth, personally + professionally. [redacted]

Cayuga
Medical Center
at Ithaca

EMPLOYEE COUNSELING FORM

EMPLOYEE NAME: __[redacted]_ DATE: __5/18/12_____

DEPARTMENT: ___**Emergency Department** _

_____**VERBAL WRITTEN WARNING**

_____**2 ND WRITTEN WARNING**

_____ **SUSPENSION**

__X___**FINAL WRITTEN WARNING (Optional)**

_____**TERMINATION**

Policy, as stated in the Policy & Procedure Manual: _____

Reason for Counseling: Response (Add additional documentation as necessary):

[redacted] has demonstrated repeated unprofessional conduct to include explosive and aggressive behavior, hollering profanity, and slamming of patient charts in the patient care area. This behavior was witnessed by patients and their families in the Emergency Department in addition to the entire ED team.

[redacted] behavior was unable to be redirected by team members. [redacted] has been counseled numerous times in the past following the disciplinary process for this exact behavior. [redacted] did demonstrate a significant period of improvement but has been unable to consistently maintain that improvement. The explosive behavior and rage that [redacted] demonstrates makes the entire interdisciplinary team in the Emergency Department and support services feel threatened and unsafe.

After consultation with Susan Nohelty and Alan Pedersen we have decided, as a team, that due to [redacted] significant past period of improvement that he would be moved to the D/E shift where his behavior can be monitored in lieu of immediate termination from the medical center.

Expectations for Improvement (list the acts of improvement, monitoring tools and dates for follow-up): _The expectation is your unprofessional behavior and conduct will cease and desist immediately. There will be no swearing, slamming, or other demonstration of unprofessional conduct or you will be terminated immediately. Your shift will be changed to a day evening rotation along with your new weekend rotation effective June 24, 2012.

_____

_____

[redacted]
Employee's Signature/Date

Laura Matthews 5/16/12
Director/Reviewer's Signature/Date

COPY

Cayuga
MEDICAL CENTER
A Member of Cayuga Health System

EMPLOYEE COUNSELING FORM

EMPLOYEE NAME: [redacted] DATE: October 16, 2015

DEPARTMENT:

_____VERBAL WARNING ____WRITTEN WARNING

___x__ SUSPENSION _____FINAL WARNING

_____TERMINATION

Reason for Counseling:

A) After counseling, coaching, written warning, and improvement plan with goals; [redacted] has been unable to abide to Nursing Code of Conduct. She:

a. Exhibits threatening behavior towards other peers
b. Criticizes coworkers and uses rudeness

Expectations:

[redacted] will be suspended for two days and then will come to days for a minimum of 6 weeks to reevaluate role and behavior

Time Frame:

Immediately

[redacted]
Employee's Signature/Date

10/16/15
Director/Reviewer's Signature/Date

Cayuga
Medical Center
at Ithaca

EMPLOYEE COUNSELING FORM

EMPLOYEE NAME: [redacted]

DATE: 04/01/2016

DEPARTMENT: Pharmacy

__X__VERBAL WARNING

_____WRITTEN WARNING

_____ SUSPENSION

_____FINAL WARNING (Optional)

_____TERMINATION

Additional warning:

Reason for Counseling:

[redacted] and [redacted] got into a loud heated argument concerning an infusion delivery. [redacted] had asked someone to deliver an infusion medication. [redacted] was taking a stocked out medication (heparin drip) to MED, [redacted] was in the IV room and [redacted] was working on paperwork today. [redacted] had asked if she could do anything to help before I went to deliver the 4th floor cart, and I asked her to deliver the ICU cart for [redacted]. According to coworkers, as I was not in the pharmacy for the exchange, [redacted] repeatedly verbally abused [redacted]. I arrived to hear [redacted] call [redacted] an "ass hole." Coworkers said that [redacted] used curse words loudly enough to be heard from the hall. The entire exchange was extremely unprofessional.

Expectations:

I expect [redacted] to treat [redacted] with respect, and to cease verbal abuse of coworkers.

Plan:

If things do not improve, we will have to take further action, but for now we will monitor the situation.

_____
Employee's Signature/Date

Sarah Taber 4/1/16
Director/Reviewer's Signature/Date

[redacted]

CMC VERBAL WARNING 10 5 15

03-CA-156375

Cayuga Medical Center

AUDIO RECORDING

Transcribed for the

National Labor Relations Board

Transcript 1 of 1

2016 FEB 21 AM 10:32
BUFFALO, NY
R.E. BUFFALO
NLRB

By: Mary E. Dring

Burke Court Reporting, LLC

GC Exhibit 34b

Any Matthew

TRANSCRIPTION OF AUDIO PROVIDED

MANAGEMENT REP: So my issue with that whole thing is about talking ~~--~~ about somebody (~~indiscernible~~). outright in front of an open group of people

SCOTT: I agree.

MANAGEMENT REP: That's what my -- that's the only portion of what we had in staff meeting that was unacceptable.

SCOTT: I agree.

MANAGEMENT REP: And with that being -- like, when I asked you to stop, we can't do that here, and we just continue, you know, to stop. It's inappropriate. Like, I wouldn't ~~want~~ let anybody ~~to~~ talk about you that way in an open staff meeting, either. I would be like, you need to stop.

SCOTT: I appreciate that.

MANAGEMENT REP: So, you know, regardless, whether our views meet on some things or don't --

SCOTT: Yeah.

MANAGEMENT REP: -- on others, that's okay. We're two separate people.

SCOTT: Right.

MANAGEMENT REP: I'm okay with that. But like the aftermath of staff, like, saying -- all right, it's done. Like, and getting all worked up and upset about it, too, you know. And then to have to calm down the staff

1 member who's talked about is a whole other thing. I'm
2 just like this is out of control.
3 SCOTT: Yeah, I'm sorry for that.
4 MANAGEMENT REP: Out of control. So that's my
5 thing. And that's a -- that's our code of conduct. And
6 I'm going to give you just a verbal for the code of
7 conduct.
8 SCOTT: Okay.
9 MANAGEMENT REP: I'm going to give you a copy of
10 the code of conduct.
11 SCOTT: Okay.
12 MANAGEMENT REP: Because we went from there
13 right to Gail. And Gail is --
14 SCOTT: Gail?
15 MANAGEMENT REP: This Gail Peckis (ph), she's --
16 SCOTT: Oh, I see.
17 MANAGEMENT REP: -- cross training for -- from
18 short stay. She shouldn't -- she is a new nurse. She
19 absolutely is new to us. Absolutely is new to us, so
20 she's not going to know how to do things. The girl's
21 probably never mixed a banana bag. She's probably never
22 had to.
23 SCOTT: Uh-huh.
24 MANAGEMENT REP: She's a surgical nurse.
25 SCOTT: Right.

MANAGEMENT REP: You know --

SCOTT: Oh, you don't think I should have been talking about Gail?

MANAGEMENT REP: I don't think that she should have come up in the open forum, either. I think if there's a concern, absolutely. Do I think that she should be left in an area by herself? No. I don't think she should be left in an area --

SCOTT: Right.

MANAGEMENT REP: -- by herself. I don't. But I think that in a way that she is new to us and just newly -- like, I know what her mission is here. She's learning and she'll cross-train. She needs to be hip-to-hip with somebody.

SCOTT: Um-hum.

MANAGEMENT REP: You know. And you know, you still need to be hip-to-hip in Fast Track, because we all know we bring people in and --

SCOTT: Um-hum.

MANAGEMENT REP: But there's also --

SCOTT: So, I mean, just -- just for what it's worth, I mean, if we're going to start throwing around verbal warnings and written warnings, and we all know the context of this, it's going to be --

MANAGEMENT REP: Context of what?

1 SCOTT: Of the union attempt. You know, it's
2 just like I --
3 MANAGEMENT REP: It has nothing to do with
4 union.
5 SCOTT: You know, I have trouble believing that
6 because you and I have worked together as long as we have,
7 and there have been plenty of things that have come up
8 with me, and this is the first time you're giving me a
9 verbal warning.
10 MANAGEMENT REP: It has nothing to do with the
11 union.
12 SCOTT: If you -- you can say that. But it's
13 hard for me --
14 MANAGEMENT REP: And we have --
15 SCOTT: -- to believe that.
16 MANAGEMENT REP: We have talked about this kind
17 of stuff and pulling aside and not out in the open forum.
18 And we've even talked about --
19 SCOTT: You and I have.
20 MANAGEMENT REP: -- stepping back.
21 SCOTT: You and I have.
22 MANAGEMENT REP: Stepping back.
23 SCOTT: Yeah.
24 MANAGEMENT REP: So I will let you read.
25 SCOTT: I'm not going to sign anything. I'll

1 read it but I'm not going to sign it.
2 MANAGEMENT REP: Okay.
3 SCOTT: I'll take it -- I'll take a copy of it.
4 MANAGEMENT REP: It's about being asked -- it's
5 about being asked to stop being told that's inappropriate.
6 SCOTT: Yeah.
7 MANAGEMENT REP: You can openly --
8 SCOTT: Well --
9 MANAGEMENT REP: -- condemn somebody out in
10 front --
11 SCOTT: No --
12 MANAGEMENT REP: -- of a group of people.
13 SCOTT: I -- I understand. And I agree with
14 you. And I acknowledge my mistake. And I made a good
15 faith effort to communicate with her about it. But you know,
16 it's -- in terms of the degree to which I have done that
17 in the past, I mean, you've, in annual reviews of me
18 before, you've complimented me for not gossiping about
19 people.
20 You know, you've got Kathy Fox out there who is
21 such a poisonous, destructive ailment to the morale of
22 this group because of how much she badmouths everybody.
23 It just depends on who she's talking to. And if you want
24 to talk about code of conduct, you talk about Deb Scott
25 and Rosy and Kathy standing outside of patient rooms in

1 Fast Track, "F-this, f-that, f-union, f-this, ain't f-ing
2 coming in," you know, I'm just going to whip out my -- my
3 iPhone and start recording. And then let's talk about
4 code of conduct. Because we're talking about 10 different
5 points on your code of conduct.
6 MANAGEMENT REP: This is the first time that I'm
7 hearing about that occurring outside of Fast Track.
8 SCOTT: Okay. And you know --
9 MANAGEMENT REP: So if I'm --
10 SCOTT: -- and the whole --
11 MANAGEMENT REP: -- hearing that or it's coming
12 back, then I need to go back to --
13 SCOTT: Okay. And let's see the write-up.
14 MANAGEMENT REP: -- I'll see Deb and Kathy --
15 SCOTT: Kathy and Rosy.
16 MANAGEMENT REP: -- and ask them about that.
17 This was blatant, Scott. No -- about it.
18 SCOTT: I -- I understand, but this is
19 contextual. You know, it's just like the -- the Medical
20 Center came up with this code of conduct and it's -- it's
21 not applied to management. You know, the reason they
22 finally got rid of that -- that bastard who was in the
23 ICU, who was -- who violated every single line on that
24 code of conduct. You know, who -- who engaged in sexual
25 harassment, who engaged in intimidation --

1 MANAGEMENT REP: See, I wouldn't know --
2 SCOTT: -- he was a rat --
3 MANAGEMENT REP: -- about that with --
4 SCOTT: But you -- I Have trouble believing that
5 you don't know about it. You're a director. You go to
6 director's meetings. They talked about that in director's
7 meetings.
8 MANAGEMENT REP: They talked that he was gone.
9 And they talked about allegations. But I didn't
10 physically -- I don't know --
11 SCOTT: You've got ears.
12 MANAGEMENT REP: -- what the mix-up --
13 SCOTT: I mean, they -- and they used that code
14 of conduct as a baton to try to beat up --
15 MANAGEMENT REP: This isn't about Joel (ph).
16 SCOTT: Yeah, I -- you know, I -- what did we --
17 we started off with me saying I -- I agree. I agree with
18 what you're saying about not talking about people in front
19 of the meeting. Honestly, I thought what I said about
20 Gail was benign. So I -- what I think the message you're
21 telling me, I'm not supposed to use anybody's name in a
22 staff meeting. Pro or con. You just don't want people
23 talking about --
24 MANAGEMENT REP: Not when -- not when you're
25 talking openly about people in a derogatory sense --

1 SCOTT: Okay.
2 MANAGEMENT REP: -- in front of other people.
3 If you have a concern, you have a concern about Gail, you
4 have a concern -- if you have a concern about her seeming
5 new or whatever, then maybe you don't know that she's down
6 here as a cross-trainer.
7 SCOTT: No, I know she --
8 MANAGEMENT REP: That she is --
9 SCOTT: No, I know who she is and what she's
10 doing. And -- and she's recently out of retirement or not
11 working in nursing, and it's kind of like working with a
12 nursing student.
13 You know, we need -- we need to be able to talk
14 to each other, not just me talk to you. Like -- I mean,
15 that's part of why we want a union. Like, nurses need to
16 be able to talk to each other, exactly. That's what I'm
17 saying about Deb.
18 You know, Deb -- Deb wanted to mix another
19 medication with Diltiazem on a critical patient in 14.
20 It's not like she hasn't been in the ED for long enough to
21 know, you don't mix -- you don't -- she didn't check the
22 compatibility. Like, I -- I don't want her touching my
23 critical patients. She's not -- she -- and it's not that
24 she's not able. It's not that maybe someday she won't
25 know it, which is part of what I talked about in my email

to her. But she is not there. And it's not apples for apples to have her relieve somebody in that corner. She doesn't belong in that corner. And it's not that she's a bad nurse. She's got a lot of -- she can do a lot of things I can't do.

MANAGEMENT REP: All right.

SCOTT: Including start IVs on really young kids. And you know, I'm grateful that she does the same work. And I'm grateful she does the education work. But it's not apples for apples.

And the other thing I brought up in my email to her, so while we're talking about these things, is she violates HIPAA on a regular basis. And you know, and I -- I -- I'm not coming to you with that. You know, I mean, this is contextual. I'm not saying that to get her in trouble. But she knows everybody and their brother and their cousin and their sister and their neighbor, and she will regularly step out of her own group --

I mean, and the example I gave to her in the email I wrote her, was that I was in a room with a patient who came by ambulance who was unstable, I'm still triaging him, trying to get a line. Christiane (ph) is there at the bedside as soon as he came in, and she walks in and said, the family member didn't come and get her. She saw someone she knew, she walked in, it was a purely social thing.

1 Hey, how are you? What are you doing here? Literally
2 talking like that while we're triaging the person.
3 MANAGEMENT REP: I would have excused her.
4 SCOTT: Who ended up dying 24 hours later.
5 MANAGEMENT REP: I would have excused her
6 immediately.
7 SCOTT: And then she came back to me and said,
8 oh that patient you took care of yesterday, he ended up
9 dying. Who the fuck are you?
10 MANAGEMENT REP: I mean, I would have -- that's
11 inappropriate. If that's the way it happened --
12 SCOTT: It's more than inappropriate.
13 MANAGEMENT REP: -- then I would have been like,
14 you know what, excuse me, but --
15 SCOTT: It's --
16 MANAGEMENT REP: -- you need to leave.
17 SCOTT: I'll go -- okay, I'll go make a copy of
18 this. I'm not going to sign it.
19 MANAGEMENT REP: You can take one right here.
20 SCOTT: Okay. Just make a copy of it. It's
21 contextual. I don't need that piece of propaganda. I
22 mean, you --
23 MANAGEMENT REP: (Indiscernible).
24 SCOTT: Management invented that so they can --
25 MANAGEMENT REP: Nurse Practice invented that.

SCOTT: Yeah, well --

MANAGEMENT REP: That's Nurse Practice. That's not management.

SCOTT: You say -- if you say so. I have yet to see that applied to a single nurse manager in this hospital. The day I see that, I'm going to fall out of my chair.

Thanks for that. We're done?

MANAGEMENT REP: (No response.)

SCOTT: We're done?

MANAGEMENT REP: (No response.)

SCOTT: Okay.

(Whereupon, the above audio was concluded.)

CERTIFICATION

I, Mary E. Dring, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings on CMC Verbal Warning 10 5 15, Track 01, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded.

NJ AOC AD/T 582

4/20/2016

Signature/Date

Burke Court Reporting, LLC

OGUNDELE

Cayuga Medical Center
Case 03-CA-156375

GC EX-36

Confidential Witness Affidavit

I, Florence O. Ogundele, being first duly sworn upon my oath, state as follows:

I have been given assurances by an agent of the National Labor Relations Board (NLRB) that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the NLRB and will not be disclosed unless it becomes necessary to produce this Confidential Witness Affidavit in connection with a formal proceeding.

I reside at 156 Beartown Road, Painted Post, NY 14870.

My home telephone number (including area code) is 607-937-4448.

My cell phone number (including area code) is 607-329-1874.

My e-mail address is fogundele@cayugamed.org.

I am employed by Cayuga Medical Center,

located at 101 Dates Drive, Ithaca, NY 14850.

Background

1. I have been working at Cayuga Medical Center since about April 19, 2010. I am the house supervisor. It is my business to know what is going on in the whole organization. I help place patients in beds and determine where patients should be placed. I also help the charge nurses with staffing. I have no one who directly reports to me. I am a supervisor. I tell staff what to do, I send staff home for low census, and I could also send staff home for misbehavior though I've never done that.
2. In the ICU there are supposed to be six nurses. There are supposed to be two patients per nurse for ICU critical care. If the ICU has taken non-critical patients on an overflow basis then the ratio can be three to one. If there are more than three or four overflows we get

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Initials FO

nurses from another floor to take care of the overflow patients. Only an ICU nurse can take care of a critical care patient. Sometimes we have people that have ICU experience to cover and we try to have people train in ICU. If we cannot get enough nurses that are qualified then we ship them to a different facility like Strong Memorial Hospital (Rochester), a hospital in Pennsylvania, or Upstate Medical (Syracuse).

3. Team leaders are responsible for ensuring that there are enough nurses in the department. When patient needs require more staff than scheduled, the team leader is supposed to make calls to see if there are nurses who are willing to come in. Most of the time the team leaders are not assigned their own patients, they need to be available to respond to paged critical calls. If they are responsible for patients, they have fewer patients than a non-team leader nurse. The team leaders have a list of every staff member's phone number. The team leader calls and determines who can come in to help. This happens about once a week because a lot of times the ratio of nurse to patient needs to be one to one. Last year was a very busy year and we were frequently full. There are times that the team leader has exhausted the list and cannot get enough nurses. The team leader then calls me and I call internal people to try to float into the department. We will also talk to the hospitalist to see if a patient can be downgraded out of the ICU to a lower level of care. If not, then the director will come and be part of the staff, but that rarely happens. If the patient cannot be downgraded and we do not have enough nurses to provide care, then patients are transferred to a different facility. This happens once or twice a month.

Background

prior calls

4. On about June 2015 after the 2pm bed meeting Anne Marshall called me and told me that we would not able take more patients into the ICU because there were not enough nurses. The ICU was short staffed because someone had called in sick. The bed meeting is when

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we determine how many patients are in the house, who is on call, and who can come in. After I received Anne's call I went to talk to Joel Brown (former interim director of the ICU) about what we should do. Joel, Anne, and I went to the board to see what we can do. The board lists all the nurses that are going to be working for the 24 hours. Joel asked Anne if she had called anybody. Anne said yes, I've called everybody and nobody is coming in. He asked whether she had called this person or that person and she said yes. He went into his office and called one person. That first person he called was willing to come in. Joel then came back out of his office and asks her who she called so he would not call them twice. Anne then said that she didn't call anybody. She did not give any reason why she did not call anyone. Joel went back to his office and started calling people. Then I left. Joel got enough staff to cover the shift.

5. Linda Crumb called me and asked me to meet her in the ICU conference room. This was about ten minutes after the conversation with Joel, Anne, and I at the board about the understaffed shift. At this meeting was me, Linda Crumb, Joel Brown, and Anne Marshall. Linda told Anne that she was not doing her job as a team leader and would be suspended for the weekend. Anne argued that it was not her job to make sure that they have staff. Linda said that was her job as the team leader. Linda asked why she had lied about making calls. Anne defended herself by saying that was not her job to make the calls. She did not ask who said that she had lied. If she had asked I would have said that I was the one who told them that she had lied. In this meeting Anne acknowledged that she never made the calls. The meeting ended after Linda said Anne was suspended.

6. Typically team leaders do not get in trouble for failing to find enough nurses to cover the shift because it is not their fault. All we ask is that they try to find nurses to come in.

process calls

Initials: FO

They are asked to exhaust the entire list before I am called. When the team leader is busy the director of the ICU makes calls to try to bring in nurses. Sometimes the nurses will come in if they receive a call from the director rather than the team leader. In this case, however, Anne admitted to not having made the calls at all after saying that she had, which is why she got in trouble.

7. I did not attend Anne's meeting after her suspension.
8. Employees post flyers for personal things on the bulletin board on the ground floor near the cafeteria. I have never seen flyers in break rooms or on other bulletin boards. Even though I am salaried I still have to clock in. I have not seen personal flyers posted by the time clocks; only hospital flyers.
9. I have nothing further to add at this time.

I am being provided a copy of this Confidential Witness Affidavit for my review. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this Confidential Witness Affidavit consisting of 4 pages, including this page, I fully understand it, and I state under penalty of perjury that it is true and correct. However, if after reviewing this affidavit again, I remember anything else that is important or I wish to make any changes, I will immediately notify the Board agent.

Date: September 8, 2015 **Signature:** Florence Ogundele
Florence Ogundele

Signed and sworn to before me on 9/8/15 **at**

Ithaca, NY

JESSICA L. NOTO
Board Agent
National Labor Relations Board

 Initials: FO

NATIONAL LABOR RELATIONS BOARD

CAYUGA MEDICAL CENTER AT ITHACA, INC., Respondent	Case Nos.	03-CA-156375 03-CA-159354 03-CA-162848 03-CA-165167 03-CA-167194
- and -		
1199 SEIU, UNITED HEALTHCARE WORKERS EAST, Charging Party		

RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION WITH SUPPORTING ARGUMENT

Respectfully submitted,

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I. PRELIMINARY STATEMENT

The Respondent Cayuga Medical Center at Ithaca, Inc. ("CMC" or "Hospital"), respectfully submits the following Exceptions with Supporting Argument to the Decision and Recommended Order of Administrative Law Judge David I. Goldman dated October 28, 2016, in the above-captioned case.[1]

The consolidated Amended Complaint (referred to hereafter as "Complaint") alleged that CMC committed a laundry list of alleged garden-variety violations of Section 8(a)(1) in connection with a year-long campaign by the Charging Party, 1199 SEIU United Healthcare Workers East ("Union"), to organize CMC nurses. Contrary to the ALJ's findings and conclusions, the evidence in the record establishes that the General Counsel either failed to carry its burden of proof or that the actual facts do not support the finding of any violations. Instead, although ignored by the ALJ, the overwhelming evidence reveals that pro-union employees were freely permitted to solicit their co-workers throughout CMC's facility over the course of many months; that no one was ever counseled or disciplined for pro-union solicitation/distribution; and that CMC consistently recognized and explicitly acknowledged in multiple written communications to the nurses that the choice belonged to them and that this was their right under federal law.

The Complaint also alleged that CMC violated Section 8(a)(3) in connection with certain disciplinary actions taken against two known union supporters. However, the contemporaneous documentation and overwhelming credible evidence establishes that

[1] Judge Goldman will be referred to hereafter as "ALJ", and his October 28, 2016 decision as "ALJ's Decision". References to the record evidence with refer to the hearing transcript as "Tr." followed by the applicable page number(s); and to the General Counsel's exhibits as "GC-Ex." and the Respondent's exhibits as "R-Ex." followed by the applicable exhibit number and page number(s) of said exhibits where indicated.

each such action represented an entirely legitimate response to employee misconduct; that CMC's actions were supported by consistent past practice pre-dating any union activity; and that the record is devoid of any evidence of a discriminatory or retaliatory motive, nor of any anti-union animus from which such a motive could reasonably be inferred. Rather, the record evidence establishes that in each instance the discipline was triggered by one or more clear acts of misconduct, and that if anything CMC bent over backwards and exercised restraint to avoid the implication or appearance that union support had any bearing on the matter.

The ALJ's Decision to the contrary is not supported by substantial evidence, and flies in the face of both the clear evidence and established principles of law. The ALJ has rendered a decision in this case that is patently biased and uses result-oriented reasoning to support it. Particularly with respect to the Section 8(a)(3) issues involving nurse Anne Marshall, the ALJ ignored the burden of proof; ignored the overwhelming contemporaneous documentary evidence; ignored the credible and consistent testimonial evidence of multiple witnesses; and for reasons that are not explained and are not supported by a fair and impartial view of the record, instead credited the self-serving testimony of Ms. Marshall, while ignoring key factors normally used to assess credibility that clearly undermined the credibility of her testimony.

Therefore, for the reasons discussed in more detail below, we respectfully request that the ALJ's Decision be reversed and that the Complaint be dismissed in its entirety.

II. BACKGROUND INFORMATION

CMC has been serving the people of Ithaca, New York, Tompkins County, and the surrounding communities for over 125 years. (Tr. 786). It has grown to become a large complex organization with over 1350 employees who are dedicated to providing quality care. Notwithstanding the unfounded assertions of Counsel for the General Counsel in her opening statement that CMC has inadequate staffing and burned out nurses resulting in unsafe conditions, the truth is that CMC is the only hospital in the entire Central New York Region stretching from the Pennsylvania to Canadian borders, west to Geneva and Corning, and east to Albany and Cooperstown, that received a Hospital Safety Score of "A" by a reputable national survey, while most of the other regional hospitals received "Cs" and "Ds". (See R-Ex. 5; Tr 786-88). As in every 24/7 healthcare facility across New York State and across the nation, however, staffing is a constant challenge because patient census and patient acuity are always fluctuating. Like all healthcare facilities, CMC staffs to a median and flexes up or down based on patient needs at any given point. (Tr. 790-91).

The Union's campaign to organize approximately 350 registered nurses began in early 2015 and continued through the time of the May 2016 hearing in this case; however, at no point has the Union filed a petition for an election. The alleged unfair labor practices purportedly occurred between January and November 2015.[2] The ALJ's biased view of the evidence ignored CMC's proven efforts throughout the relevant time period to respect the Section 7 rights of all employees, including those who favor unionization and those who do not (Tr. 792-94), and similarly ignored the fact that a

[2] All dates referred to herein were in 2015 unless otherwise noted.

constant theme in CMC's written communications to the nurses about the union campaign was that, "[a]s employees of CMC, [nurses] have the right to advocate in favor of a union; [nurses] also have the right to advocate against union representation (within the guidelines of [CMC's] existing solicitation policy requiring that solicitations only occur between employees during non-work time), [and that CMC] respects these rights regardless of [each nurse's] viewpoint on this subject." (See GC-Ex. 2c and GC-Ex. 2j).

III. EXCEPTIONS WITH SUPPORTING ARGUMENT

A. Respondent Takes Exception to the Legal Conclusion That Selected Portions of Its Nursing Code of Conduct violated Section 8(a)(1).[3]

CMC maintains a Nursing Code of Conduct ("Code") that prohibits disrespectful or intimidating behavior toward others, as well as criticism of co-workers or other staff in the presence of others in the workplace and/or patients. (GC-Ex. 3). It is undisputed that the Code was established several years before any union organizing activity and in fact was written by an internal committee of staff nurses. (Tr. 774-75).

After properly rejecting the General Counsel's arguments that certain other portions of the Nursing Code of Conduct ("Code") violated Section 8(a)(1), the ALJ erroneously concluded that certain other statements in the Code were unlawful.

CMC submits that this type of professional code of conduct does not violate Section 8(a)(1) merely because it is written in broad terms. The notion that nurses should generally engage in professional, courteous and respectful interactions with others in the performance of their duties reflects longstanding and nationally recognized

[3] See ALJ's Decision, Section B, pages 3-10; more specifically, see pages 8-10.

standards for the nursing profession, not to mention common sense and societal norms of civility. (Tr. 775-76; ee also GC-Ex. 3, p.1 under "Supporting Data") There is nothing in the Code of Conduct that prevents nurses from complaining about their terms and conditions of employment or otherwise engaging in protected concerted activity.

Furthermore, the Code of Conduct as written does not reference supervisors or managers at all. The entire thrust of the policy involves proper behavior of nurses in the performance of their duties and their treatment of fellow co-workers, customers/patients and others such as family/visitors. Such requirements regarding courteous, profess-sional and respectful behavior toward fellow employees and guests does not violate the NLRA. *See Copper River of Boiling Springs*, 360 NLRB No. 60, *64-68 (2014) (distinguishing employment practices directed at behavior toward management as opposed to those directed at behavior toward co-workers and customers).

In finding a violation, the ALJ focused on two particular statements in the Code of Conduct as written several years earlier by staff nurses:

> **People**
>
> Utilizes proper channels to express dissatisfaction with policies and administrative or supervisory actions and without fear of retaliation.
>
> **Community**
>
> Inappropriate and disruptive communications/behaviors include but are not limited to:
>
> > Displays behavior that would be considered by others to be intimidating, disrespectful or dismissive.
> >
> > Criticizes coworkers or other staff in the presence of others in the workplace or in the presence of patients.

With respect to the first above-quoted statement, the ALJ erroneously concluded that the "utilizes proper channels to express dissatisfaction" language would reasonably be interpreted by employees as prohibiting them from complaining in other ways and thus chills their Section 7 rights. This is nonsense. Language written in very general terms indicating that established channels do exist for expressing disagreement with policy and/or with management action does not precluded employees from expressing such views in other ways, nor is there evidence that anyone was retaliated against for doing so, nor placed in fear of retaliation, nor otherwise felt constrained in exercising Section 7 rights based on the policy's broad reference to "proper channels"; nor would a reasonable employee infer such meaning from a statement that essentially welcomes such criticism complete with an explicit assurance that employees who voice such criticism will not suffer and need not worry about any retaliation. The ALJ's tortured analysis ignores the entire thrust of the policy statement – i.e. that employees have a protected right to complain; and instead twists the meaning 180 degrees by inferring an intention to shut down and punish employees who express dissatisfaction outside established channels. There is no foundation in fact for ascribing such meaning to the language, nor would a reasonable employee do so, since reasonable minded employees do not parse words to find hidden meaning in a sentence that clearly communicates a right to disagree/complain about policy/supervisory actions. See *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 647 (2004), citing *Lafayette Park Hotel*, 326 NLRB 824, 827 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999) ("in determining whether a challenged rule is unlawful, the Board must…give the rule a reasonable reading. It must refrain from reading particular phrases in isolation, and it must not presume improper interference with employee rights.").

With respect to the second above-quoted statement in the Code of Conduct, the ALJ adopts a radical view of the law that in a professional patient-centered acute care setting Section 7 creates an affirmative right to engage in personal attacks and hyperbole directed against other staff members in the presence of patients or other staff, including the right to use language that is insulting, disrespectful, dismissive or demeaning. This line of reasoning stretches sound legal principles to an absurd extreme. It is one thing to afford individuals with latitude to account for passionately-held views and/or emotionally-charged circumstances such as in the context of a union steward arguing his/her case in support of a grievance or persons engaging in a formal protest such as marching on a picket line; but it is quite something else to construe a generalized policy statement written by employees that endorses a basic degree of decency and civility in their desired workplace interactions into a sinister attempt to deny or infringe upon the general right to complain about workplace issues.[4] A bureaucratic and/or legalistic mindset should not be allowed to dispense with common sense and with basic societal standards of decency. Finally, we disagree with the ALJ's poorly-reasoned attempt to distinguish the Board's decision in *Palms Hotel & Casino*, 344 NLRB 1363 (2005) (holding as lawful a rule prohibiting employees from engaging in "conduct which is or has the effect of being injurious, offensive, threatening, intimidating, coercing, or interfering with" other employees or patrons) in footnote 9 on page 9 of the ALJ's Decision.

For these reasons, we respectfully request that the ALJ's conclusion that CMC's Nursing Code of Conduct violated Section 8(a)(1) of the Act be reversed and that this portion of the Complaint be dismissed.

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[4] See *Roomstore*, 357 NLRB 1690, 1690 fn. 3 (2011) ("as in 8(a)(1) cases generally, [the Board's] task is to determine how a reasonable employee would interpret the action or statement of her employer, **and such a determination appropriately takes account of the surrounding circumstances**") (emphasis added) (citation omitted).

B. Respondent Takes Exception to the Legal Conclusion that Certain Statements in Written Communications on May 7 and August 26 Violated Section 8(a)(1).[5]

The ALJ erroneously concluded that two emails from CMC's Vice President of Human Resources Alan Pedersen to CMC nurses violated Section 8(a)(1) because they contained the statements below.

> May 7 email:
>
> "If you feel you are being harassed or intimidated feel free to contact your supervisor, director or security."
>
> (GC-Ex. 2(a)).
>
> August 26 email:
>
> "If you feel that you continue to be harassed you have every right to file a complaint in our incident reporting system, and notify your Director so that we can address the behavior with the individual involved."
>
> (GC-Ex. 2(f)).

Mr. Pedersen provided uncontroverted testimony that a number of CMC employees complained about being pressured to sign a union authorization card. (Tr. 798-99). The Board has held that employer communications relating to legitimate threats and harassment have been found not to violate the Act. *See e.g., Ithaca Industries,* 275 NLRB 1121, 1126 (1985) (it was lawful for an employer to tell employees that they should report coworkers who "intimidate" them while soliciting cards); *First Student, Inc.*, 341 NLRB 136 (2004) (employer's request to report incidents where employees were confronted and forced or intimidated into supporting the union was lawful).

[5] See ALJ's Decision, Section C.1, pages 10-13.

Furthermore, unlike the communications in *Ithaca Industries* and *First Student*, the above statements contained in Mr. Pedersen's emails are not specifically directed at harassment or intimidation by pro-union employees, but rather were broadly written to cover any harassment/intimidation by persons favoring the Union and/or by persons opposing the Union. Furthermore, the statements should be considered in context. In his June 25 email to nurses, Mr. Pedersen stated that, "[a]s employees of CMC, you have the right to advocate in favor of a union; you also have the right to advocate against union representation .... We respect these rights regardless of your viewpoint on this subject." (GC-Ex. 2(c)). This exact same message was repeated in Mr. Pedersen's July 15 email to nurses. (GC-Ex. 2(j)). Similarly, in his August 23 email to nurses, Mr. Pedersen stated that, "[a]s employees of CMC, you have the right to advocate in favor of a union; you also have the right to advocate against union representation...." (GC-Ex. 2(e)). Likewise, in his November 13 email to nurses, Mr. Pedersen stated that, "[w]hile those who are in favor of organizing have a right to communicate, those who are opposed to unionization have the same right." (GC-Ex. 2(i)). What is clear from the May 7 and August 26 emails is that the right to communicate/advocate does not include the right to harass or intimidate, without regard to the viewpoint being communicated or advocated.

The ALJ's reliance on several Board cases finding a violation is misplaced. Ironically, despite noting "the careful assessment of wording that the Board engages in when considering such claims," and observing that "[t]he distinctions drawn by the Board in this area can seem fine" (ALJ's Decision p. 12), the ALJ disregards the neutral wording used in Mr. Pedersen's emails, as well as the context wherein he repeatedly communicated that employees have the equal right to adopt and support a pro-union or

anti-union viewpoint, the ALJ cites in support of his legal conclusion against CMC a number of cases where, unlike here, the employer explicitly referenced pro-union activity. See, e.g. *Bloomington-Normal Seating Co.,* 339 NLRB 191, 191 fn. 2 (2003) (management unlawfully told employers to report if they were "threatened or harassed about signing a union card"); *Niblock Ecavating, Inc.,* 337 NLRB 53, 61 (2001) (employer statements directed at "union card solicitors"); *Greenfield Die & Mfg. Corp.,* 327 NLRB 237, 238 (1998) ("The Board has held that employers violate Section 8(a)(1) of the Act when they invite their employees to report instances of fellow employees' bothering, pressuring, abusing or harassing them with union solicitations")

For these reasons, we respectfully request that the ALJ's conclusion that Mr. Pedersen's May 7 and August 26 emails violated Section 8(a)(1) of the Act be reversed and that this portion of the Complaint be dismissed.

C. Respondent Takes Exception to the Legal Conclusion that It Violated Section 8(a)(1) by Initially Stating to Employees on or about July 8 that Tabling on Behalf of the Union in the Cafeteria Was Not Permitted.[6]

The ALJ erroneously concluded that on or about July 8 CMC unlawfully interfered with tabling on behalf of the Union in the facility's cafeteria. This conclusion is predicated on two instances when Mr. Pedersen first observed this activity and stated to one employee on the first occasion and another employee on the second occasion that he did not believe their display was appropriate, which prompted the first employee to leave a few minutes before the end of her meal period, and to which the second

[6] See ALJ's Decision, Section C.2, pages 13-15.

employee responded that he was within his rights and therefore would not shut down.[7] In neither instance was there any confiscation of materials or threat of discipline. Most importantly, upon further review of the issue, management adopted a hands-off approach and freely allowed the same employees and other pro-union employees to engage in tabling in the cafeteria on a frequent basis and multiple occasions over the ensuing days, weeks and months without any disciplinary or other adverse consequences

More specifically, Mr. Pedersen testified that upon first encountering employee Anne Marshall sitting at the entrance to the cafeteria with all of her union materials, he told her that she "really shouldn't be doing that here," after which she picked up her materials and left. (Tr. 60-61). A day or two later upon encountering employees Scott Marsland and Erin Bell inside the cafeteria with two tables pulled together and union literature spread across the two tables, Mr. Pedersen again told them that they shouldn't be doing that here. (Tr. 61) The cell phone video of the encounter and resulting transcript reveal that Mr. Pedersen actually said, "You're not allowed to set up a fixed presence in the cafeteria. You can, if you want to talk and solicit and have conversations with people, you can do that. You are not allowed to do this." Mr. Marsland responded that the union had informed him he had a right to do this, to which Mr. Pedersen disagreed, and said, "So I'll have security come and take this away then." Mr. Pedersen reiterated that maintaining a fixed presence was inappropriate, to which Mr. Marsland responded that that was not his understanding of the law, and that maybe

[7] Mr. Pedersen testified that in his 28 years the only tabling that occurred in the cafeteria was by the Hospital's own Auxilliary and by its health insurance carrier, and in those instances the table was off to one side and halfway down the length of the cafeteria; whereas when he first encountered tabling on behalf of the organizing campaign the employees had positioned themselves right in the front entrance to the cafeteria such that everyone using the cafeteria had to go around or pass directly by their table which he viewed as inappropriate. (Tr. 799-802).

some clarification was needed. Mr. Pedersen simply responded, "Okay", and that was the end of the interaction. (See GC-33a and 33b). Mr. Marsland and Ms. Bell did not leave or remove their materials (Tr. 519-521), nor did Mr. Pedersen call security or otherwise attempt to confiscate or remove any materials (Tr. 63), nor did Mr. Pedersen threaten any discipline or other adverse action (Tr. 64) (contrary to Counsel for the General Counsel's characterization that Mr. Pedersen threatened Mr. Marsland (see Tr. 61). Mr. Marsland testified that he and Ms. Bell stayed and continued tabling for about an hour after their brief interaction with Mr. Pedersen. (Tr. 519).

Thereafter, Mr. Pedersen consulted with labor counsel and determined that CMC would take a hands-off approach to tabling in the cafeteria by Union proponents. (Tr. 63). It is undisputed that tabling continued on multiple occasions thereafter over a period of several months on a very frequent basis. (Tr. 63-64).

The ALJ starts his analysis on page 14 of his Decision by citing cases standing for the proposition that an prohibitions against employee solicitation during nonworking time in nonworking areas is presumptively unlawful; yet the record evidence and the ALJ's own findings make clear no such prohibition existed in this case, but rather as the ALJ also strated on page 14 "[t]he tabing continued sporadically, but repeatedly over the course of the next few months" without challenge from management. Furthermore, as noted above, Mr. Pedersen's initial concern was based on the unprecedented and disruptive placement of the pro-union tabling at the very entrance to the cafeteria, as opposed to seeking to impose an outright ban on any such activity.[8]

The ALJ's finding and conclusion that CMC failed to expressly repudiate it's initial stance by specifically telling the employees first spoken to that continued tabling would

[8] At the very outset of his Decision, the ALJ noted that CMC "permit[ed] a significant amount of union activity . . . ." (ALJ's Decision, p. 1).

be permitted, and that such failure results in a violation of Section 8(a)(1), disregards relevant uncontroverted evidence resulting in a flawed legal conclusion. While it is undisputed that Mr. Pedersen did not personally speak with Marshall, Marsland or Bell following the determination to allow the tabling, by his email to all registered nurses dated July 15 Mr. Pedersen did in fact address the issue and make clear that such activity would be allowed, first referring to "an increase in visibility by those in favor of creating a union for nurses," and then stating while CMC disagrees with their viewpoint, "we have respected their right to make their opinion known" (i.e. by not questioning continued tabling in the ensuing days after the initial encounters). (GC-Ex. 2(j)).

It is crystal clear from the video and transcript that Mr. Marsland was not intimidated or discouraged from continuing to engage in tabling following his initial encounter with Mr. Pedersen, and although Ms. Marshall left after her encounter with Mr. Pedersen this occurred at or about the end of her meal period when she had to return to work anyway. Marsland and Marshall both testified that they were not discouraged from further tabling and that they both did this, along with other employees, on multiple occasions thereafter. (Tr. 519-521; 276-278, 280-285).

The Board has made clear that there must be more than one episode of discriminatory enforcement of a no solicitation/distribution rule in order for there to be a finding of disparate treatment and objectionable conduct. *See, e.g., Avondale Industries*, 329 NLRB 1064, 1231 (1999) ("single instance . . . does not prove disparate treatment"); *Albertsons, Inc.*, 289 NLRB 177, 178 fn. 5 (1988) (disparate application of rule not shown by isolated instances); *Kendall Co.*, 267 NLRB 963, 965 (1983) (disparate enforcement of policy not shown by isolated deviations). *Uniflite, Inc.,* 233 NLRB 1108, 1111 (1977).

Finally, because there was no discipline issued for the conduct of employees tabling on behalf of the organizing campaign, and such conduct was allowed to continue indefinitely throughout the campaign, to the extent CMC's initial response represents a violation, such violation was fully remedied and *de minimis* and does not require any corrective action. *Dieckbrader Express, Inc.*, 168 NLRB 867 (1967) (inconsequential violation insufficient to warrant violation of the Act).

For these reasons, we respectfully request that the ALJ's conclusion that Mr. Pedersen's initial response to the cafeteria tabling on or about July 8 constitutes a violation of Section 8(a)(1) of the Act be reversed and that this portion of the Complaint be dismissed.

D. Respondent Takes Exception to the ALJ's Finding and Conclusion that It Unlawfully Informed Employees that It Was Inappropriate to Discuss Their Salaries and/or Wages.[9]

The ALJ's found that at some unspecified time during the Section 10(b) period, Mr. Pedersen stated to a group of approximately five employee nurses that it was inappropriate to discuss their wages with one another and to refrain from doing so, and concluded that this purported directive violated the Act. The ALJ's finding and conclusion with respect to this issue is disturbing on many levels.

For one thing, the ALJ's Decision is devoid of any mention that he considered the burden of proof, which of course, rested squarely with the General Counsel to establish a violation. In her opening statement, Counsel for the General Counsel contended that CMC effectively maintained an unlawful rule requiring employees to keep information

[9] See ALJ's Decision, Section C.3, pages 15-16.

about their wages confidential. However, the General Counsel failed to produce evidence supporting either the specific allegation set forth in the Amended Complaint or the existence of such a policy or rule. Under examination by Counsel for the General Counsel pursuant to Rule 611(c) of the Federal Rules of Evidence, Mr. Pedersen testified that he had not told any employees to keep salary information confidential. (Tr. 47-48). In attempting to prove the existence of a policy or rule prohibiting the sharing of wage information, the General Counsel relied upon a 5-year old letter requesting nursing staff to refrain from discussing a particular salary adjustment with other non-nursing staff since the special salary adjustment on that occasion was limited to nursing staff only. (GC-Ex. 5 and 6). Aside from being 5 years old, this letter clearly did not request or prevent nurses from speaking to one another about their pay; nor did it state that sharing this information with non-nursing personnel was prohibited; nor did it suggest in any way that employees could be disciplined for sharing the information. Rather, it simply requested that nurses exercise discretion in talking about the special pay increase with other non-nursing employees to whom the special pay increase did not apply. (Tr. 49). Upon further examination as part of the Respondent's case, Mr. Pedersen testified that there is no policy or rule prohibiting employees from discussing their wages. (Tr. 803-04).

Thus, the General Counsel failed to carry its burden of proof with respect to this charge, and accordingly the ALJ should have dismissed the charge. Instead of doing so, without even mentioning any of the foregoing information, the ALJ relied upon the uncorroborated testimony of a single employee witness, Anne Marshall, who claimed that at some unspecified time, when Mr. Pedersen was walking by her unit in the course of his normal rounds, he supposedly overheard a group of nurses talking about their pay

and told them to stop doing so. In addition to his testimony noted above and completely ignored by the ALJ that CMC has no policy or rule prohibiting such discussions, when asked about Ms. Marshall's claim, Mr. Pedersen testified that he had no recollection of any such conversation. Despite stating that he found Mr. Pedersen to be a credible witness, based on the simple fact that Mr. Pedersen acknowledged that he does rounds, the ALJ concluded that although Mr. Pedersen doesn't recall, the conversation described by Ms. Marshall likely did happen.

It is undisputed that Ms. Marshall played a leading role in the Union's organizing campaign from the outset, and many of the issues discussed in detail below with respect to Respondent's other Exceptions to the ALJ's Decision directly involve Ms. Marshall. Clearly, Ms. Marshall had a huge stake in the outcome of this case and had a strong motive to embellish and/or fabricate evidence against the Respondent through her testimony. Her general lack of veracity is discussed in detail below with respect to the additional Respondent Exceptions, but as to this allegation she could not produce any specifics about when the purported statement by Mr. Pedersen occurred; nor did the General Counsel produce any contemporaneous notes or other documentary evidence; nor did the General Counsel call any of the other nurses who purportedly heard this to corroborate Ms. Marshall's testimony. Remarkably, in footnote 16 on page 16 of his Decision, the ALJ states that he considered the fact that none of the other nurses who were purportedly present were called to testify about this alleged event, but he asserts that this factor "cuts both ways [since] either party could have attempted to find corroborating witnesses for their position." The ALJ's statement is remarkable because it ignores the fact that Mr. Pedersen recalls no such conversation ever happening; whereas Ms. Marshall never claimed another supervisor or manager was

present, and Ms. Marshall could not identify any of the other nurses who were supposedly present.

Given the lack of detail from Ms. Marshall; the absence of any corroborating evidence to support this claim; the credible countervailing testimonial evidence presented by Mr. Pedersen; and the General Counsel's attempt to use a 5-year old letter that also upon close examination provided no support for her opening contention; a fair and impartial decision maker should have concluded with respect to this issue that the General Counsel failed to meet its burden of proof. The ALJ's failure to even mention the burden of proof, along with the lack of substantial credible evidence to support his finding, should result in a reversal of his Decision on this issue.

For these reasons, we respectfully request that the ALJ's conclusion that Mr. Pedersen's issued an unlawful directive to refrain from discussing wages during the Section 10(b) period be reversed and that this portion of the Complaint be dismissed.

E. Respondent Takes Exception to the ALJ's Finding and Conclusion that During a One-on-One Meeting on May 8 an Employee Was Unlawfully Interrogated and Threatened with Unspecified Reprisals.[10]

The primary evidence introduced by the General Counsel in support of Paragraphs 8(a) & (b) of the Complaint was testimony from one witness, Anne Marshall, about a single instance of alleged interrogation and threats. Her testimony was directly contradicted by testimony from her supervisor at the time, the then Interim Director of the Intensive Care Unit ("ICU"), Joel Brown. The ALJ's Decision to credit Ms. Marshall's testimony over Mr. Brown's is stunning in light of the relevant evidence in the record and in light of the ALJ's own reasoning as set forth in his Decision. Contrary to the ALJ's

[10] See ALJ's Decision, Section D.1, pages 16-20.

Decision, we respectfully submit that a fair and impartial factfinder could only conclude that Ms. Marshall's testimony lacked credibility; whereas Mr. Brown gave credible testimony that is corroborated by other evidence in the record. The significance of the ALJ's error in this regard is pivotal to the central Section 8(a)(3) allegations discussed below, as his unsubstantiated finding of employer animus toward Ms. Marshall's union activity provides the linchpin for his remaining adverse findings and conclusions against the Respondent, none of which are supported by substantial evidence in the record.

It is undisputed that in April in his capacity as Interim Director of the ICU, Mr. Brown conducted one-on-one meetings with all nurses in the ICU to present them with information regarding the Union's organizing campaign. On direct examination by Counsel for the General Counsel, Ms. Marshall testified that, "I sat down in [Brown's] office and he basically told me that he knew I was the ring leader and I was the one promoting all this union stuff, and if it didn't stop he was going to get HR involved." (Tr. 193).

Mr. Brown credibly testified that Ms. Marshall's accusations were simply not true. (Tr. 1002). Mr. Brown stated that he was given a list of talking points provided by Human Resources ("HR") and Senior Leadership, and he handed out these talking points and asked if employees had any questions in each of these one-on-one meetings. (Tr. 1003-05). The talking points are set forth at GC Exs. 39-40, and GC-Ex. 39 is the document that was handed to employees. These talking points guided Mr. Brown's conversation with each nurse in the ICU during his one-on-one meetings. (Tr. 1003-05, GC Exs. 39-40).

Mr. Brown specifically recalled going through the fact sheet with Ms. Marshall, and he testified that Ms. Marshall asked him if he had ever worked at a union facility,

and that he answered that yes he had. (Tr. 1005). Mr. Brown testified that he never used the word ringleader and he never said anything about going to HR. (Tr. 1006). In fact, Mr. Brown stated that he never took a position himself on the union issue at CMC since his assignment at CMC was temporary in nature, and he had no particular stake in whether or not the nurses at CMC decided to unionize. (Tr. 1006). Mr. Brown's testimony that he never interrogated or threatened employees and instead followed the talking points as dictated by HR and Senior Leadership was forthright and had all the hallmarks of a credible and genuine recounting of what actually occurred. (Tr. 1003-07).

It is important to note that Mr. Brown has for many years worked as a traveling interim nursing leadership consultant who is placed by multiple consulting companies and assigned to facilities that have an immediate need to fill a vacancy in a key management position on a temporary basis; that he resides in Oregon and has worked in hospitals all over the United States; that he has worked in both union and non-union settings; and that he never intended to take a permanent position with CMC and thus permanently reside in the Ithaca, New York area. (Tr. 990-94, 1006).

Furthermore, Mr. Brown's testimony was corroborated by the other evidence in the record. Mr. Pedersen testified that he has no knowledge that any supervisor or manager ever interrogated or threatened any employees in connection with the Union's organizing campaign. (Tr. 799, 816). He also testified that CMC used outside labor counsel to educate its supervisors and managers throughout the facility about the lawful rules of conduct for them during an organizing campaign, and has conducted similar internal educational forums multiple times in the course of a year, as well as in prior years. (Tr. 799). He also testified that CMC provided members of management with

talking points as to what to say about the organizing campaign to insure that the information being provided was consistent. (Tr. 813; see, e.g. GC-Exs. 39 and 40).

Given this context, Ms. Marshall's uncorroborated assertion that the Director of the ICU ignored the training, ignored the talking points, and blatantly interrogated and/or threatened her concerning her union activity and support lacks credibility. Her testimony particularly lacked the ring of truth insofar as she contended that Mr. Brown threatened her with "get[ting] HR involved" unless she stopped acting as a "ringleader", given that HR was the source of all the leadership training about appropriate conduct for supervisors and managers during an organizing campaign, and that HR was the source of the talking points, as well as being the source of the email communications discussed above that explicitly acknowledged the rights of employees to support and to advocate for unionization.

Ms. Marshall obviously has a large stake in the outcome of this case; whereas Mr. Brown left CMC back in mid 2015 and has no continuing ties to the organization. (Tr. 1006). It is also relevant on the issue of credibility that Ms. Marshall made unfounded accusations of sexual harassment against Mr. Brown as determined by the New York State Division ("NYSDR") after investigating her claims in that proceeding, and therefore has a history of distorting and/or falsifying information involving Mr. Brown to support her own personal agenda; whereas no such evidence exists against Mr. Brown. Mr. Marshall admitted that her two sexual harassment complaints were dismissed by the NYSDR based on a finding of no probable cause to believe that any such harassment actually took place. (Tr. 299-300).

Finally, and perhaps most telling, the General Counsel only produced one other witness out of 350 registered nurses at CMC and 22 in the ICU, who claimed that she

was asked some inappropriate questions about the Union. Ms. Terrie Ellis was a co-worker of Ms. Marshall's who was also a nurse in the ICU. Ms. Ellis testified that in her individual meeting with Mr. Brown, he asked her if she "knew about the union campaign," if she had been "approached about it at work," and if she had "felt pressured or bullied about the Union in any way." (Tr. 428). Conspicuously absent from Ms. Ellis' account was any allegation that Mr. Brown threatened to report her or any other known Union supporters to HR nor with any other unspecified reprisals; nor did she provide any contemporaneous notes, nor any evidence that she reported what happened in the meeting to anyone else at the time. (Tr. 432).

On cross examination, Ms. Ellis admitted that she could not recall the exact wording Mr. Brown used in his statements and purported questions. (Tr. 433-34). This is a critical admission since Mr. Brown denied interrogating or threatening any employees and his meetings were guided by detailed talking points that were vetted by HR and by legal counsel and did not contain any such questions, and which would directly contradict their guidance given to all supervisors and managers including Mr. Brown in training sessions about compliance with the Act. It is also undisputed that the content of the meeting was to provide nurses with relevant information about the organizing process and the Union's campaign, so a statement by Mr. Brown to the effect that, "[in case Ms. Ellis was not aware of the campaign he had several points of information to present to her]," would be entirely lawful and consistent with all of the other evidence in the record. Thus, Ms. Ellis' inability to remember his particular wording could make all the difference in the legal significance of what Ms. Brown said. At best her testimony should have been taken as inconclusive; and when viewed in the context of all the other relevant evidence in the record, including the written talking

points, a fair and impartial factfinder would conclude that such unreliable evidence from Ms. Ellis was insufficient to meet the General Counsel's burden of proof. Instead, the ALJ adopted the undoubtedly rehearsed version she initially testified to on direct examination; while giving short shrift to her equivocation under cross examination (see footnote 20 on page 18 of the ALJ's Decision); and while disregarding the other relevant evidence including Mr. Brown's unequivocal testimony; and all this without ever even broaching the topic of burden of proof.[11]

Other than Ms. Marshall's self-serving testimony and Ms. Ellis' unreliable testimony, the General Counsel failed to produce any other shred of evidence, that either Mr. Brown or any other manager or supervisor ever asked employees about their union sympathies/activities or threatened them with any type of reprisal for supporting unionization at CMC; even though it is undisputed that on the day that Ms. Marshall alleges Mr. Brown threatened her in their one-on-one meeting, Mr. Brown also conducted one-on-one meetings with every other nurse on the ICU, and none of the others ever claimed that he said or did anything inappropriate.

The ALJ's decision to credit Ms. Marshall's testimony over Ms. Brown's is particularly egregious, given that later in his decision when addressing the fact that a key accusation by Ms. Marshall against another manager was discredited by an audio recording of the meeting that Ms. Marshall secretly recorded and thus she was caught in a lie by her own evidence, the ALJ states that therefore he would not credit her testimony on that point; yet he credits her testimony on all other points. (See footnote

[11] The fact that the General Counsel never alleged that Mr. Brown's purported questions of Ms. Ellis violated Section 8(a)(1), as noted in footnote 23 on page 20 of the ALJ's Decision, is also telling and can only be interpreted as a lack of confidence on the part of the General Counsel in the reliability of her testimony, especially when weighed against the countervailing evidence in the record. Yet the ALJ inexplicably failed to address or apparently consider this point in his rush to condemn the Respondent.

54 on page 59 of the ALJ's Decision). In contrast, there is no evidence in the record that Mr. Brown was similarly caught in a lie, or that his testimony was inconsistent in any respect. In commenting on Mr. Brown's testimony, the ALJ stated that he "was not impressed" with Mr. Brown's statements that he had no stake in the outcome of the unionization effort at CMC because other evidence showed that he had taken down union postings in the facility. (ALJ Decision p. 18-19). In a lengthy footnote (See ALJ's Decision footnote 22 on page 19), the ALJ lashes out at the Respondent for arguing that the adverse finding by the New York State Human Rights Division regarding Ms. Marshall's sexual harassment claims against Mr. Brown is relevant to an evaluation of her veracity, on the basis that her claim rested on the showing of a military medical rescue video accompanied by a Marilyn Manson song with some harsh lyrics. Yet the ALJ ignores his own prior acknowledgement in footnote 19 on page 17 of his Decision that, as he put it, "[t]here is the suggestion in the record that the sexual harassment claim ultimately concerned not only the showing of the video but more personal accusations by Marshall against Brown on or about May 8, in a meeting between the two . . . . [which the Human Rights Division] determined to be unfounded".

For these reasons, we respectfully submit that the ALJ's findings are not supported by substantial evidence, and his conclusion that CMC unlawfully interrogated and threatened employees should be reversed, and this portion of the Complaint be dismissed.

F. Respondent Takes Exception to the ALJ's Finding and Conclusion that It Prohibited Employees from Distributing & Posting Union Literature.[12]

The undisputed evidence establishes that CMC afforded pro-union employees every opportunity on a daily and constant basis over a year-long period to solicit one another during non-work time, to obtain signed union authorization cards from one another, to distribute and post pro-union literature throughout CMC's facility, and to engage in extensive tabling in the employer's cafeteria. (Tr. 798, 519-521; 276-278, 280-285; see also GC-Exs. 2(c), (e), (i) and (j)). Aside from the *de minimus* tabling issue discussed above, there is no allegation or evidence that any employees were ever prevented from posting or leaving such material in CMC's facility; nor were any employees told they could not engage in this activity; nor was anyone counseled or threatened with discipline, nor given any discipline, for such engaging in such activity. (Tr. 803-04).

CMC does not dispute that one or more supervisors occasionally took down some pro-union postings, particularly after receiving complaints from other employees about the postings. (Tr. 1007). The occasional removal of such material does not constitute an unlawful interference with Section 7 rights, particularly where, as here, the employer has an established practice of regularly removing non-business related material that is posted or left in its facility. (Tr. 818).

For these reasons, we respectfully submit that the ALJ's Decision on this issue should be reversed and this portion of the Complaint be dismissed.

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[12] [12] See ALJ's Decision, Section D.2, pages 20-22.

G. Respondent Takes Exception to the ALJ's Finding and Conclusion that Certain Postings on Facebook Violated the Act.[13]

The ALJ also found Section 8(a)(1) violations stemming from some postings on social media by one supervisor who angrily expressed her feelings because she felt she was being personally attacked and falsely accused of sacrificing her integrity by allegedly lying in a proceeding before the New York State Division of Human Rights ("NYSDHR"). The evidence indicates that employee Scott Marsland posted a comment on Facebook under the alias "Charlie Green", in which he attacked House Supervisor Florence ("Flo") Ogundele's integrity by stating that Anne Marshall was "standing up for what is right" in connection with a claim of sexual harassment she filed against her supervisor, Joel Brown, by "facing down Flo Ogundele" along with other named management representatives and their counsel at an upcoming appearance before the NYSDHR. (GC-Ex. 7). Mr. Marsland acknowledged that he posted more about Ms. Ogundele on Facebook than appears in GC-Ex. 7, and Ms. Ogundele testified that there were more personal attacks in Marsland's postings than shown in the record, including a statement to the effect that she had sold her soul to the devil, which Ms. Ogundele who is a religious person found deeply offensive. (Tr. 727-28, 730-31).

Ms. Ogundele responded in anger by posting a message on Facebook stating that she does not compromise her integrity to lie for anyone; that she cannot be bullied or intimidated; and advising Marsland not to mess with her, and to tell his disciples the same. (GC-Ex. 8). In a subsequent related posting on Facebook, Ms. Ogundele stated that she took her first posting down after being instructed to do so by her boss (i.e. CMC Assistant Vice President for Patient Services Linda Crumb), then proceeded to express

[13] [13] See ALJ's Decision, Section E, pages 22-26.

her distaste for all the "bullshit" going on at work. (GC-Ex. 9).[14]

Ms. Ogundele believed that her comments were personal in nature and not conveyed in her capacity as a management representative of CMC, but in any event when the Medical Center learned about this, she was instructed to immediately take down the offending comments and she received a disciplinary warning for her unsanctioned and inappropriate statements on social media. (Tr. 728-29, 734-35; R-Ex. 4).

To support the contention that the Facebook postings by Ms. Ogundele violated Section 8(a)(1), it must be inferred that: (1) Ms. Ogundele's anger was directed at Mr. Marsland's Union support, even though her postings never mention the Union and she was clearly addressing his defamatory statements toward her; (2) that her vague comments were directed at all Union supporters, even though her comments again do not mention the Union; (3) that her admonitions about messing with her and picking the wrong girl suggested that she would invoke her authority in the workplace to respond, even though her words and tone were personal in nature and said nothing about acting in her capacity as a CMC Supervisor to impose potential discipline or other adverse employment actions; and (4) that any CMC employees who may have read her postings would have reasonably interpreted them as conveying threats of employment-related reprisals due to their Union support, even though the postings say nothing about this. We respectfully submit that such leaps cannot reasonably be inferred from Ms. Ogundele's words. Instead, the true nature of Ms. Ogundele's remarks seems quite

[14] Ironically, although Mr. Marsland (a/k/a Green) had claimed that Marshall was doing the right thing and Ms. Ogundele was doing the wrong thing in connection with the NYSDHR case, after its investigation the NYSDHR determined that Marshall's accusations of sexual harassment against her supervisor were unfounded and dismissed both of her complaints. (Tr. 299-300).

obvious – she took great personal offense from what she perceived as an attack on her personal integrity, and she lashed back in response.

We therefore submit that a reasonable construction of this interaction on social media does not amount to a violation of Section 8(a)(1). Furthermore, while Ms. Ogundele's comments toward Mr. Marsland may reflect a sense of personal animus toward him as a result of his personal attack against her, this cannot be equated with evidence of anti-union animus on the part of CMC.[15] Finally, at most Ms. Ogundele's postings on social media represented an isolated incident, and CMC took prompt and appropriate action upon learning of the postings by instructing her to take the postings down and issuing her a disciplinary warning. (Tr. 728-36; R-Ex. 4).

For these reasons, we respectfully submit that the ALJ's Decision on this issue should be reversed and this portion of the Complaint be dismissed.

H. Respondent Takes Exception to the ALJ's Finding and Conclusion that the October 5 Verbal Warning Issued to Employee Scott Marsland Violated the Act.[16]

The ALJ erroneously concluded that a verbal warning issued on October 5 to Scott Marsland, a nurse in CMC's Emergency Department ("ED") and a known Union supporter, violated Sections 8(a)(1) and 8(a)(3) of the Act.

Specifically, the ALJ found that the conduct at issue constituted protected activity because Mr. Marsland was complaining about not being able to take breaks. However, the undisputed evidence establishes that the verbal warning was based on Mr.

[15] We also note that Ms. Ogundele had no involvement in the verbal warning issued to Mr. Marsland by Amy Matthews more than a month prior to the Facebook postings, and she was not a decision-maker with respect to any of the matters involving Ms. Marshall, all of which also pre-dated the Facebook postings in issue.

[16] See ALJ's Decision, Section F, pages 27-38.

Marsland's decision to demean the competence of two of his two co-workers in a group meeting and his refusal to stop despite repeated instructions from his supervisor to do so. Mr. Marsland did this at a time when the two targets of his disparaging remarks were not present to defend themselves. (Tr. 506-08; GC Ex 34b; GC Ex. 32).[17] These comments were made at a staff meeting on September 24, and there is no evidence in the record to suggest that any other employee joined in these individual concerns or supported the views that Mr. Marsland expressed in this meeting regarding the competency of his fellow nurses. (Tr. 558).

Eleven staff members were present at the September 24 staff meeting led by Director of the ED Amy Matthews. Mr. Marsland's inappropriate conduct began when he asserted that another nurse who he named was not "competent to care for [his] patients." (Tr. 565). Ms. Matthews instructed Mr. Marsland that this was not the proper forum for alleging that another staff member was incompetent (and this was the first she had heard of the issue), and that Mr. Marsland should come to see her. Mr. Marsland persisted and was asked to stop at least three times; however, he persisted to disparage his colleague and damage her reputation by insisting that she was not competent. (Tr. 565-66). He then proceeded to attack the skills of another nurse who he also named in this same meeting. (Tr. 567).

Ms. Matthews decided to issue a verbal warning to Ms. Marsland for disparaging the professional competence of a co-worker in the presence of others and for persisting despite her instructions to stop. (GC -Ex. 34b, p. 5). Upon receipt of the verbal warning, Mr. Marsland acknowledged that his behavior was inappropriate. (GC-Ex.

[17] One of the nurses called Ms. Matthews in tears after hearing about his comments from others. (Tr. 568-69).

34b, p. 6).

Contrary to the ALJ's findings, the evidence clearly establishes that Mr. Marsland was not given a verbal warning for any protected concerted activity; instead, he was disciplined for making demeaning and derogatory comments about his co-workers publicly in front of a number of other staff members.

Ms. Matthews gave credible uncontroverted testimony: (1) that she maintains an open door policy, meaning that any staff member can talk to her if they have a concern about anything; (2) that staff members have come and talked to her about a variety of issues, including issues relating to staffing and scheduling, patient care scenarios, the Electronic Medical Record, the length of time it takes to get physician orders or to get a patient to the floor or mental health holds; (3) that she has never disciplined or counseled an employee for complaining to her about any such issues; (4) that such complaints have never changed her relationship with the complaining employee; (5) that she has never disciplined an employee for complaining about the inability to take breaks; (6) that she never made any attempt to find out who filed a complaint with the New York State Department of Labor about employee breaks; (7) that instead she brought the issue to a staff meeting and said okay we have a problem and let's discuss ideas about how to solve the problem; (8) that her staff meeting in September 2015 was not the first time that a nurse had complained about an issue like scheduling, breaks or conditions on the unit; (9) that employees express complaints/concerns at every staff meeting; and (10) that she has never disciplined anybody for voicing a legitimate concern; but (11) that prior to Mr. Marsland "nobody has voiced a concern that has torn down another person in front of a group of people" and her verbal warning was based on his inappropriate conduct in publicly portraying a co-worker "in a very bad light." (Tr.

582-587).

Despite acknowledging that Mr. Marsland's conduct was "out of line", he nevertheless concludes that it was protected and not sufficiently opprobrious to warrant discipline. CMC respectfully disagrees with the ALJ's conclusion, and we therefore submit that his decision as to the verbal warning should be reversed and this portion of the Complaint should be dismissed.

I. Respondent Takes Exception to the ALJ's Finding and Conclusion that the June 26 Suspension of Ms. Marshall Violated the Act.[18]

At all relevant times Anne Marshall was a registered nurse in CMC's ICU. It is undisputed that at all relevant times Ms. Marshall was openly supportive of unionization, and that CMC was aware of her pro-union viewpoint and her organizing activities.

The ALJ found that CMC discriminated against Ms. Marshall due to her Union support and acted with a retaliatory motive when it suspended her on June 26 due to an incident of misconduct; when it issued a documented verbal warning to her on July 10 due to another incident of misconduct; when it demoted her from her Charge Nurse position to a regular Staff Nurse position on August 31 due to further acts of misconduct and a failure to carry out her Charge Nurse responsibilities; and when it issued an unfavorable performance evaluation to her on October 30.

However, the clear and convincing evidence in the record establishes that each one of these actions was based on legitimate reasons; and that the actions were not motivated by a sense of retaliation; but rather were genuinely viewed as an appropriate and necessary response to her misconduct in the performance (or non-performance) of her duties as a Charge Nurse. At all times CMC was fully aware that any adverse

[18] See ALJ's Decision, Section G.1.b., pages 39-51.

actions against Ms. Marshall could be perceived as retaliatory due to her active role in the Union's organizing campaign, and therefore proceeded very cautiously, took a measured approach, and was very reluctant in taking corrective action. The overwhelming credible evidence establishes that the actions in issue were NOT taken against Ms. Marshall because of her protected activity, but rather were taken IN SPITE OF her protected activity because her behavior was so poor that it could not reasonably be overlooked.

The evidence in support of the legitimate reasons for the actions involving Ms. Marshall consists of extensive detailed and highly specific contemporaneous documentation from multiple witnesses; consistent and credible testimony from multiple witnesses all corroborating one another, including one key witness who no longer works for CMC; and various grudging acknowledgements and admissions from Ms. Marshall, and in a couple of instances from other witnesses called by the General Counsel.

That evidence stands in contrast with self-serving testimony by Ms. Marshall whose demeanor as a witness demonstrated a general lack of credibility, particularly when challenged on cross examination; whose testimony was inconsistent and contradictory in several respects; who has a demonstrated history of making unfounded accusations against one of her former CMC managers in the context of an unmeritorious legal proceeding against him for alleged sexual harassment; as well as the general absence of any corroborating testimony from any other witnesses; and the absence of any contemporaneous documentation supporting her version of events.

For all of these reasons, CMC respectfully submits that contrary to the ALJ's findings and conclusions, the overwhelming weight of the evidence supports the legitimate reasons for each decision concerning Ms. Marshall's employment, and that

the Section 8(a)(3) allegations involving her must therefore be dismissed.

Ms. Marshall has acknowledged and admitted that one of the responsibilities of Team Leaders and Charge Nurses at CMC is to make calls to off-duty nurses to ask if they are willing to come in to help meet patient needs by filling holes in the schedule and/or because of changes in patient census or patient acuity. (Tr. 309).[19] However, her testimony relating this point was very revealing. When first asked on direct examination by Counsel for the General Counsel who is responsible for filling holes in the schedule, Ms. Marshall provided a seemingly rehearsed response incorporating deliberate vagueness, that "Ultimately it's the director, but we all try to help." (Tr. 154-55). Later when asked how often she personally has tried to fill holes in the schedule when in her role as Charge Nurse, she responded multiple times a week.[20] She went on to testify that normally "we" look at the next shift coming on and try to fill those holes first, and that "we would text people and call people". When Your Honor interjected by asking Ms. Marshall who the "we" was that she was referring to, she responded by acknowledging that it just meant the Charge Nurse or Team Leader for that shift. (Tr. 155-56).

The reason all of this is significant is that a consistent theme of Anne Marshall's – both in her testimony in response to questioning by Counsel for the General Counsel, and at the time of the underlying events when she was confronted by her managers about her behavior in her role as Charge Nurse – was that the lack of a written job description for Charge Nurses left her unclear as to what her responsibilities consisted of; that she was unclear and confused about what her supervisor's expectations were

[19] Every nursing unit has either a Charge Nurse or a Team Leader on every shift. Charge Nurses are permanently designated as having charge responsibilities. Team Leaders are regular staff nurses who temporarily assume charge responsibilities in the absence of a Charge Nurse.

[20] Ms. Marshall's regular work schedule consisted of three 12-hour shifts per week. (Tr. 155).

regarding the role of Charge Nurses, particularly when it came to making calls to try to secure more staffing; that the expectations seemed to change over the course of 2015 when a series of relatively short-term Interim Directors managed the ICU; and that securing additional staff was really not her problem, but instead was her supervisor's problem. In reality, however, a key responsibility and consistent expectation for the role of Charge Nurses at all times has been to call off-duty nurses to try to secure more staffing on an as-needed basis and as directed by the Director / Interim Director of the ICU, and that this occurred on almost a daily basis.[21]

The detailed events leading up to the June 26 suspension are fully described in the contemporaneous documentation consisting of R-Exs. 1(a) thorough (m), R-Ex. 2, and R-Exs. 6 through 12, as well as ALJ Ex. 1. These events and the evidence gathered and relied upon in the resulting investigation were also described in the testimony primarily by Respondent witnesses Norman Joel Brown, Florence Ogundele, and Linda Crumb. In summary, after some problems with Ms. Marshall's behavior beginning on June 25, on June 26th, the ICU where Ms. Marshall was working as Charge Nurse was experiencing a staffing crisis. The situation was emergent because a very critical patient needed to go from surgery to the ICU, and the patient was at risk for being transferred out to a different hospital unless additional ICU nurses could come in. Interim ICU Director Joel Brown conferred with the House Supervisor Flo Ogundele about the situation and both of them discussed the situation with Ms. Marshall in her capacity as Charge Nurse. Mr. Brown asked Ms. Marshall to start making calls to see if

[21] We also note that another witness for the General Counsel, Christine Monacelli, is an ICU Staff Nurse who acknowledged on cross examination that it was the role of a Charge Nurse and/or Team Leader to make calls to get nurses to come in to fill holes in the schedule or because of a change in census or patient acuity. (Tr. 456-57). Ms. Monacelli also confirmed that Anne Marshall had called her at home for that purpose while serving in the capacity of Charge Nurse on multiple occasions. (Tr. 448).

any nurses would come in. Ms. Marshall responded by stating that had already made the calls and no one was willing to come in. Mr. Brown then went to his office to start making calls, and the first nurse he called agreed to come in immediately. Mr. Brown then went to Ms. Marshall and asked her for a list of the nurses she had called so he would not be duplicating her efforts by calling anyone twice. Ms. Marshall then stated to both Mr. Brown and Ms. Ogundele that there was no list because she really hadn't made any calls. Thus, Ms. Marshall lied the first time when she said she had already made calls and no one would come in, and she exhibited a lack of cooperation by effectively refusing to assist with an emergent situation that could have placed a patient in jeopardy. As a result, Ms. Marshall was suspended for the remainder of that shift and the next shift. This had everything to do with her misconduct and nothing to do with her Union activity.

The ALJ's conclusion to the contrary relies on the discredited testimony of Ms. Marshall, and is not supported by the substantial credible evidence in the record. For these reasons, we respectfully submit that the ALJ's Decision with respect to the June 26 suspension should be reversed and this portion of the Complaint should be dismissed.

J. Respondent Takes Exception to the ALJ's Finding and Conclusion that the July 10 Verbal Warning Issued to Ms. Marshall Violated the Act.[22]

On July 3rd, Ms. Marshall engaged in an aggressive and confrontational dialog with her immediate supervisor, Mr. Brown, about getting Ward Clerk help. Ms. Marshall proceeded to angrily follow Mr. Brown around violating his personal space and blocking his movements, and within a few minutes thereafter she confronted him by again and

[22] See ALJ's Decision, Section G.2., pages 51-57.

remained standing in the doorway to his office demanding his attention despite repeatedly being asked by Mr. Brown to leave until finally he had to threaten to call security. Ms. Marshall received the July 10 documented verbal warning for this unacceptable behavior. Once again, the verbal warning had everything to do with her misconduct and nothing to do with her union support.

Once again based on the credible evidence in the record and for all of the reasons discussed above, we respectfully submit that the ALJ's Decision with respect to the July 10 verbal warning should be reversed and this portion of the Complaint should be dismissed.

K. Respondent Takes Exception to the ALJ's Finding and Conclusion that the August 31 Removal of Ms. Marshall from Her Team Leader Role Violated the Act.[23]

In yet another series of incidents on August 28th, Ms. Marshall exhibited extremely rude and disrespectful behavior upon first meeting her new immediate supervisor, the brand new Interim Director of the ICU, Sandra Beasley, by flipping her middle finger at her. That same morning, Ms. Beasely made a point of telling Ms. Marshall that she wanted to go with her to the morning bed meeting so Ms. Beasley could become more familiar CMC operations. When the time came for the bed meeting, Ms. Marshall left the unit and went to the meeting on her own without finding Ms. Beasely so they could go together. When Ms. Beasely expressed to Ms. Marshall that she was upset by her lack of consideration, Ms. Marshall responded by saying "you're not a baby, and I don't have to take you by the hand and lead you around." Later that same day, Ms. Beasely asked Ms. Marshall who was Team Leader to make calls to

[23] [23] See ALJ's Decision, Section G.3, pages 58-64.

secure additional staffing for the weekend. Ms. Marshall responded by saying no one is going to come in because we're all tired and overworked. Ms. Beasely told her that she still needed to make the calls. Ms. Marshall proceeded to argue about it stating that she didn't know the expectation because she did not have a job description, and ultimately Ms. Marshall told another employee to bring the schedule with holes in it to Ms. Beasely instead of trying to work on filling the holes herself. All of this occurred on the very first day that Ms. Marshall met the new Interim Director of the ICU. As a result of her unacceptable behavior, Ms. Marshall was demoted from the Team Leader and Charge Nurse role and returned to a regular staff nurse role. Once again this decision had everything to do with her misconduct and nothing to do with her union support.

The nature and extent of Ms. Marshall's behavior resulting in her suspension, verbal warning and eventual demotion were somewhat unprecedented, but CMC was able to find at least five other similarly-situated employees who were similarly disciplined for engaging in roughly comparable violations for failing to uphold professional standards/Code of Conduct. (R. Ex. 14). This evidence includes a written warning for a lost temper and foul language; a 3-day suspension for violating the employee conduct policy; a final written warning for explosive and aggressive profanity and a suspension for exhibiting threatening behavior toward peers and criticizing co-workers; and a verbal warning for a heated argument. (R. Ex. 14). These examples demonstrate that certain standards of performance and behavior have been expected and shortfalls have been addressed through formal disciplinary action over a period of many years and long before the current Union organizing campaign.

For all of the above reasons, we respectfully submit that the ALJ's Decision with respect to the August 31 removal of Ms. Marshall from her Team Leader role should be reversed and this portion of the Complaint should be dismissed.

L. Respondent Takes Exception to the ALJ's Conclusion that a Certain Rating Contained in an October 30 Performance Evaluation of Ms. Marshall Violated the Act.[24]

With respect to Ms. Marshall's 2015 performance evaluation, normally Department Directors perform the annual performance evaluations for the staff nurses, but in 2015 Assistant Vice President of Patient Services Linda Crumb performed the performance evaluations for the ICU staff nurses because the longstanding former director had left and the interim directors who followed lacked sufficient time upon which to base an evaluation. Thus, Crumb advised the ICU nurses in a staff meeting that for 2015 they would start with the same rating as they had in 2014, then she would review the personal accountability section of the evaluation and set goals for next year. (Tr. 98-100, 932).

The personal accountability section includes licensure, mandatory attendance and work behaviors, among others. (Tr. 933, GC Ex. 29(h) and (g)). For the personal accountability section in 2015, Ms. Marshall lost 1.0 points for demonstrating unacceptable behavior. This loss was based on her dishonesty regarding call-ins on two separate occasions and her dishonesty during the evaluation period. (Tr. 938). This loss of 1.0 point had absolutely nothing to do with her Union support and everything to do with her failure to provide truthful information regarding staffing

[24] [24] See ALJ's Decision, Section G.4, pages 65-69.

primarily during the events leading up to her suspension. (Tr. 938). This resulted in her lower evaluation for 2015. (Tr. 938-39). Contrary to Counsel for the General Counsel's assertion that Ms. Marshall was the only ICU Nurse whose 2015 performance evaluation was not identical to her 2014 performance evaluation, Ms. Crumb's uncontroverted testimony was that several nurses had lost 1.0 point from their 2014 to their 2015 overall evaluation score for various reasons. (Tr. 938).

For all of the above reasons, we respectfully submit that the ALJ's Decision with respect to the October 30 performance evaluation of Ms. Marshall should be reversed and this portion of the Complaint should be dismissed.

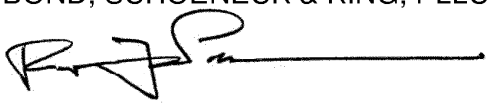
IV. CONCLUSION

For the reasons stated above, the Respondent Cayuga Medical Center respectfully requests that the ALJ's Decision be reversed and that the Amended Complaint be dismissed in its entirety.

Dated: November 25, 2016

Respectfully submitted,

BOND, SCHOENECK & KING, PLLC



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Cayuga Medical Center at Ithaca, Inc., *and* 1199 SEIU United Healthcare Workers East. Cases 03–CA–156375, 03–CA–159354, 03–CA–162848, 03–CA–165167, and 03–CA–167194

December 16, 2017

DECISION AND ORDER

BY CHAIRMAN MISCIMARRA AND MEMBERS PEARCE AND MCFERRAN

On October 28, 2016, Administrative Law Judge David I. Goldman issued the attached decision. The Respondent filed exceptions with supporting argument, and the General Counsel filed an answering brief. The General Counsel filed cross-exceptions with supporting argument.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] except as set forth below, to amend the remedy, and to adopt the recommended Order as modified and set forth in full below.[3]

The complaint alleges that the Respondent is violating Section 8(a)(1) of the Act by maintaining several provisions in its Nursing Code of Conduct that employees would reasonably construe to prohibit Section 7 activity. See *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 647 (2004). We find that it will effectuate the policies of the Act to sever these allegations and retain them for further consideration by the Board.[4]

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[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's finding that the General Counsel made an initial showing that the Respondent suspended Anne Marshall in retaliation for union activity, we rely on *Dish Network, LLC*, 363 NLRB No. 141, slip op. at 1 fn. 1 (2016), instead of *Adams & Associates, Inc.*, 363 NLRB No. 193, slip op. at 6 (2016). In adopting the judge's finding that the Respondent fabricated the allegation that Marshall "flipped off" Beasley, we do not rely on the judge's speculative remarks about the Respondent's reasons for the fabrication. We also do not pass on the judge's finding that the Respondent disciplined Scott Marsland pursuant to an unlawful work rule when it issued him a verbal written warning on October 5, 2015.

Chairman Miscimarra agrees with his colleagues that the record evidence supports an inference that animus against union activity was a motivating factor in the Respondent's decisions to impose discipline on employee Anne Marshall. In this regard, Chairman Miscimarra finds that the evidence satisfies the General Counsel's burden to prove the existence of a link or nexus between Marshall's union activities and the Respondent's decisions to discipline her, and the Respondent did not show that it would have disciplined Marshall in the absence of her union activities. See, e.g., *Grand Canyon University*, 362 NLRB No. 13, slip op. at 3 (2015) (Member Miscimarra, concurring in part and dissenting in part). Contrary to the Chairman, it is settled Board law that "proving that an employee's protected activity was a motivating factor in the employer's action does *not* require the General Counsel . . . to further demonstrate some additional, undefined 'nexus' between the employee's protected activity and the adverse action." See *Libertyville Toyota*, 360 NLRB 1298, 1301 fn. 10 (2014) (collecting cases), enfd. sub nom. *AutoNation, Inc. v. NLRB*, 801 F.3d 767 (7th Cir. 2015); *Rainbow Medical Transportation, LLC*, 365 NLRB No. 80 fn.1 (2017).

Chairman Miscimarra disagrees with the judge and his colleagues that the Respondent violated the Act when it sent employees emails on May 7 and August 26, 2015, stating that if they felt they were being harassed or intimidated, they should feel free to contact management. Chairman Miscimarra recognizes that employees have the right to engage in vigorous advocacy of their views—pro and con—regarding union representation. However, harassment does not necessarily involve Sec. 7 activity; it may be based in part on sex, race, color, national origin, or other protected characteristics in violation of Title VII of the Civil Rights Act of 1964 and/or state laws and local ordinances; and employers are required to encourage reports of unlawful harassment and to promptly investigate such reports. See, e.g., *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998). Because compelling justifications support inviting employees to notify their employer if they feel they are being harassed, Chairman Miscimarra would dismiss the allegation that the Respondent's emails violated the Act. See *Southern Bakeries, LLC*, 364 NLRB No. 64, slip op. at 17–18 (2016) (Member Miscimarra, concurring in part and dissenting in part).

We agree with our colleague that harassment need not *necessarily* involve Sec. 7 activity, but the statements here, which were made during an initial union organizing campaign, plainly do. The Respondent requested employees to report whether they *felt* harassed by employees seeking to discuss unionization so that the Respondent "can address the behavior with the individual involved." The Board has long held that such requests chill lawful solicitation because the overtly subjective basis for reporting is overbroad and "such statements…indicate that the employer intends to take unspecified action against subjectively offensive activity without regard for whether that activity was protected by the Act." *Tawas Industries, Inc.*, 336 NLRB 318, 322 (2001). See also *Arkema, Inc.*, 357 NLRB 1248, 1250 (2011).

[2] There were no exceptions to the judge's dismissal of the allegation that the Respondent violated Sec. 8(a)(1) by directing employees to keep a disciplinary meeting confidential.

[3] We shall amend the judge's remedy to require the Respondent to read the remedial notice to its employees. We shall modify the judge's recommended Order to conform to our findings and to the Board's standard remedial language. We shall also substitute a new notice to conform to the Order as modified.

[4] The provisions are as follows:

Clinical Excellence

- Respects confidentiality and privacy at all times, including coworkers, adhering to the Social Networking Policy.

People

- Utilizes proper channels to express dissatisfaction with policies and administrative or supervisory actions and without fear of retaliation.

The General Counsel also contends that the two Customer Service rules in the Nursing Code of Conduct—requiring employees to "interact[] with others in a considerate, patient, and courteous manner" and to be "honest, truthful, and respectful at all times"—are unlawful on the basis that the Respondent applied them to restrict the exercise of Section 7 rights. Id. We agree. The Respondent applied its Customer Service rules in a manner that restricted Marshall's protected activities by citing those rules as the basis for the verbal warning issued to Marshall on or about July 10, 2015. The Respondent applied these rules to Marshall again when it demoted her from team leader and charge nurse to staff nurse on or about August 31, 2015, because the Respondent indicated that Marshall was required to follow those rules in interactions with other staff, not just customers.[5] Specifically, in the demotion meeting, the Respondent's interim ICU director Sandra Beasley referenced Marshall's insufficiently "customer service friendly" greeting to Beasley as part of the reason for demoting Marshall, and Beasley also listed "[r]espond to internal and external customer needs promptly and professionally" among Marshall's duties as a staff nurse. This reference by the Respondent to customer service requirements demonstrates that the Respondent relied on the Customer Service provisions in its Nursing Code of Conduct to demote Marshall, even though it did not explicitly cite them. See *Hitachi Capital America Corp.*, 361 NLRB 123, 125 (2014) (although discipline did not expressly cite the challenged rule, respondent's characterization of the employee's conduct made clear that the discipline was grounded in the rule).[6]

AMENDED REMEDY

We adopt the judge's recommended remedies,[7] and in accordance with our finding that the Respondent applied certain Customer Service provisions in its Nursing Code of Conduct to restrict the exercise of Section 7 rights, we shall order the Respondent to rescind or revise these provisions, notify employees of the rescissions, and republish its Nursing Code of Conduct without the unlawful rules.[8] In addition, we find merit in the General Counsel's exception to the judge's failure to recommend that the notice be read aloud to employees by a responsible management official. Specifically, we observe that the Respondent's managers repeatedly targeted the staunchest union supporter and most visible organizer for discipline in retaliation for her protected activities. In these circumstances, we find that a public reading of our remedial notice is appropriate "to dissipate as much as possible any lingering effects of the Respondent's unfair labor practices," and to allow the employees to "fully perceive that the Respondent and its managers are bound by the requirements of the Act." *Homer D. Bronson Co.*, 349 NLRB 512, 515 (2007) (and cited cases), enfd. mem. 273 Fed. Appx. 32 (2d Cir. 2008). Therefore, we will require the Respondent to convene a meeting or meetings at

Community

- Inappropriate and disruptive communications/behaviors include but are not limited to:

  Displays behavior that would be considered by others to be intimidating, disrespectful or dismissive.

  Criticizes coworkers or other staff in the presence of others in the workplace or in the presence of patients.

Customer Service

- Interacts with others in a considerate, patient, and courteous manner.

- Is honest, truthful, and respectful at all times.

[5] The Respondent cited its Customer Service rules when it issued Marshall a verbal warning on July 10 in response to Marshall's protected union activity. Therefore, Chairman Miscimarra agrees that the Respondent violated Sec. 8(a)(1) by applying its Customer Service rules "to restrict the exercise of Section 7 rights." *Lutheran Heritage*, 343 NLRB at 647. Chairman Miscimarra finds it unnecessary to reach or pass on whether the Respondent applied its Customer Service rules a second time when it demoted Marshall on August 31 because finding a second instance of the same violation has no effect on the remedy.

[6] Member Pearce would further find that all the disciplinary actions the Respondent took against Marshall, including the suspension, written warning, demotion, and negative evaluation, were in retaliation for engaging in protected concerted activity. He specifically finds that the activity for which Marshall was suspended arose out of her protected concerted activity of advocating for increased staffing and was, therefore, protected by the Act. Although the judge found it unnecessary to pass on this independent violation of Sec. 8(a)(1), he provided a thorough analysis of the issue at the conclusion of Sec. G1 of his decision with which Member Pearce agrees.

[7] Because we have severed the allegations that the Respondent violated Sec. 8(a)(1) by maintaining certain provisions in its Nursing Code of Conduct on the basis that employees would reasonably construe those provisions to prohibit Sec. 7 activity, the remedy requiring the Respondent to revise or rescind unlawful rules applies only to its Customer Service provisions, the maintenance of which we have found unlawful on the basis that the Respondent applied those rules to restrict the exercise of Sec. 7 rights.

[8] Chairman Miscimarra would not require the Respondent to rescind its Customer Service rules. The Board has severed and retained for further consideration the allegation that employees would reasonably construe certain rules, including the Customer Service rules, to prohibit Sec. 7 activity, and the Board has found only that the Respondent violated Sec. 8(a)(1) by applying its Customer Service rules to restrict the exercise of Sec. 7 rights. In other words, the Board has not found that these rules are unlawful on their face, but only as applied. Accordingly, Chairman Miscimarra would not order the Respondent to rescind its Customer Service rules, but to cease and desist from applying those rules to restrict the exercise of Sec. 7 rights. See, e.g., *Piedmont Gardens*, 360 NLRB 813, 813 fn. 4 (2014).

which the remedial notice shall be read aloud to the Respondent's employees by a responsible management official in the presence of a Board agent (if the Region so desires) or, at the Respondent's option, by a Board agent in the presence of a responsible management official.[9]

ORDER

The Respondent, Cayuga Medical Center at Ithaca, Inc., Ithaca, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Applying rules, including the following rules in its Nursing Code of Conduct, to restrict employees' Section 7 activity:

Customer Service

Interacts with others in a considerate, patient, and courteous manner.

Is honest, truthful, and respectful at all times.

(b) Soliciting employees to report coworkers or file a complaint against them if they feel they are being harassed or intimidated or if they feel they continue to be harassed.

(c) Directing employees to cease distributing union literature.

(d) Informing employees that it is inappropriate for them to discuss their salaries and/or wages.

(e) Interrogating employees about union activities.

(f) Threatening employees with reprisals if they do not cease union activities.

(g) Discriminatorily prohibiting employees from distributing and posting union literature, or from distributing union literature in non-patient care areas on non-working time, including by removing and/or confiscating posted or distributed union literature.

(h) Threatening employees with unspecified reprisals and job loss in retaliation for employees' protected concerted activities.

(i) Disciplining employees for engaging in protected concerted activities.

(j) Discriminatorily disciplining or demoting or issuing an adverse performance evaluation to any employees in retaliation for union or other protected concerted activities.

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

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

(a) Rescind or revise the following provisions of the Nursing Code of Conduct, notify employees that the provisions have been rescinded, and republish the Code of Conduct without the following rules:

Customer Service

Interacts with others in a considerate, patient, and courteous manner.

Is honest, truthful, and respectful at all times.

(b) Rescind the unlawful disciplinary warnings issued to Scott Marsland and Anne Marshall.

(c) Within 14 days from the date of this Order, correct the adverse performance evaluation issued to Anne Marshall for 2015 by removing the negative assessment for the criterion "Demonstrates a sense of right and wrong by exhibiting honest, ethical behavior," and by removing the one-point reduction for 2015 and reissuing the evaluation with a point score of 4.73. Within 3 days thereafter, notify Anne Marshall that this was done by providing her a copy of the corrected performance evaluation.

(d) Within 14 days from the date of this Order, offer Anne Marshall full reinstatement to her job as charge nurse and team leader or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(e) Make Anne Marshall whole for any loss of earnings and other benefits suffered as a result of her unlawful suspension and/or her unlawful demotion in the manner set forth in the remedy section of the judge's decision.

(f) Compensate Anne Marshall for the adverse tax consequences, if any, of receiving a lump sum backpay award, and file with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form,

[9] Chairman Miscimarra disagrees with his colleagues that a notice-reading remedy is warranted in this case. The Board has recognized that this remedy is warranted "where the violations are so numerous and serious that the reading aloud of a notice is considered necessary to enable employees to exercise their Section 7 rights in an atmosphere free of coercion, or where the violations in a case are egregious." *Postal Service*, 339 NLRB 1162, 1163 (2003). Here, Chairman Miscimarra agrees with the judge's finding that the Respondent's unfair labor practices, although serious, are not so egregious as to warrant the extraordinary remedy of notice reading.

necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days from the date of this Order, remove from its files any reference to the unlawful warnings given to Anne Marshall and Scott Marsland, and to the unlawful suspension, demotion, and adverse 2015 evaluation given to Anne Marshall, and within 3 days thereafter, notify them in writing that this has been done and that the warnings, suspension, demotion, and adverse evaluation will not be used against them in any way.

(i) Within 14 days after service by the Region, post at its facility in Ithaca, New York, copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices in each language deemed appropriate shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice in each appropriate language to all current employees and former employees employed by the Respondent at any time since May 7, 2015.

(j) Within 14 days after service by the Region, hold a meeting or meetings during working hours, which shall be scheduled to ensure the widest possible attendance, at which the attached notice marked "Appendix" is to be read to employees by a responsible management official in the presence of a Board agent and an agent of the Union if the Region or the Union so desires, or, at the Respondent's option, by a Board agent in the presence of a responsible management official and, if the Union so desires, of an agent of the Union.

(k) Within 21 days after service by the Region, file with the Regional Director for Region 3 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. December 16, 2017

Philip A. Miscimarra, Chairman

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT apply our rules, including the rules in the Nursing Code of Conduct, to restrict you from exercising the rights set forth above.

WE WILL NOT solicit you to report or file a complaint against coworkers if you feel you are being harassed or intimidated or if you feel that you continue to be harassed.

WE WILL NOT direct you to cease distributing union literature.

WE WILL NOT inform you that it is inappropriate to discuss your salaries and/or wages.

WE WILL NOT interrogate you about your union activities.

WE WILL NOT threaten you with reprisals if you do not cease your union activities.

WE WILL NOT discriminatorily prohibit you from distributing and posting union literature, or from distributing union literature in non-patient care areas on non-working time, and WE WILL NOT remove or confiscate posted or distributed union literature.

WE WILL NOT threaten you with unspecified reprisals and job loss in retaliation for your participation in protected concerted activities.

WE WILL NOT discipline you for engaging in protected concerted activities.

WE WILL NOT discipline or demote or issue you an adverse performance evaluation in retaliation for your union or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind or revise the following rules in the Nursing Code of Conduct and republish the Code of Conduct without the following rules:

Customer Service

Interacts with others in a considerate, patient, and courteous manner.

Is honest, truthful, and respectful at all times.

WE WILL rescind the unlawful disciplinary warnings issued to Scott Marsland and Anne Marshall.

WE WILL, within 14 days from the date of the Board's Order, correct the adverse performance evaluation issued to Anne Marshall for 2015, and WE WILL, within 3 days thereafter, notify her this was done by providing her with a copy of the corrected performance evaluation.

WE WILL, within 14 days from the date of the Board's Order, offer Anne Marshall full reinstatement to her jobs as Charge Nurse and Team Leader or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Anne Marshall whole for any for any loss of earnings and other benefits suffered as a result of her unlawful suspension and/or her unlawful demotion.

WE WILL compensate Anne Marshall for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful warnings given to Anne Marshall and Scott Marsland, and to the unlawful suspension, demotion, and adverse 2015 evaluation given to Anne Marshall, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the warnings, suspension, demotion, and adverse evaluation will not be used against them in any way.

CAYUGA MEDICAL CENTER AT ITHACA

The Board's decision can be found at www.nlrb.gov/case/03-CA-156375 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Jessica L. Noto, Esq. (NLRB Region 3), of Buffalo, New York, for the General Counsel.

Raymond J. Pascucci, Esq. (Bond, Schoeneck & King, PLLC), of Syracuse, New York, for the Respondent.

DECISION

INTRODUCTION

DAVID I. GOLDMAN, ADMINISTRATIVE LAW JUDGE. These cases involve unfair labor practices allegedly committed by managers and administrators of a community hospital in Ithaca, New York, during a union organizing campaign by the nursing staff. The government alleges an assortment of unlawful threats, directives, and prohibitions on union activities. In addition, the government alleges that one employee received an unlawful disciplinary warning, and another was targeted over the course of several months for her union activity and received an unlawful suspension, disciplinary warning, demotion, and an adverse performance evaluation.

As discussed herein, for the most part, I agree with the government that the employer violated the Act, as alleged, although, as discussed below, I dismiss a few of the allegations, and do not need to reach theories of violation advanced by the government that would not materially affect the remedy. In particular, it is clear to me that the hospital, while permitting a significant amount of union activity—which the law requires it to do—took issue with the activism of certain of its nurses. In

particular, the hospital's conflicts with the protected and concerted and union activities of Nurse Anne Marshall led to a very real and generalized decline in the relationship between Marshall and the Hospital. Not all of the managerial conflict with Marshall was motivated by antiunion animus. However, the net result of her union activity and her protected and concerted efforts to challenge the hospital on staffing issues was an employer that engaged in unlawfully motivated and discriminatory targeting of her, which led directly to the adverse actions taken against her by the hospital. Finally, I note that although the unfair labor practices engaged in by the hospital were serious, I reject the government's contention that extraordinary remedies are warranted, and find that the Board's traditional remedies will just as effectively redress the breaches of law found herein.

Statement of the Case

On July 21 2015, 1199 SEIU United Healthcare Workers East (Union) filed an unfair labor practice charge alleging violations of the National Labor Relations Act (Act) by Cayuga Medical Center at Ithaca Inc. (the Hospital or CMC) docketed by Region 3 of the National Labor Relations Board (Board) as Case 09–CA–156375. On September 3, 2015, the Union filed another unfair labor practice charge docketed by the Region as Case 03–CA–159354, amended on November 30, 2015. Additional charges were filed October 28, 2015, docketed as Case 03–CA–162848, on December 1, 2015, docketed as Case 03–CA–165167, and on January 7, 2016, docketed as Case 03–CA–167194.

Based on an investigation into these charges, on February 26, 2016, the Board's General Counsel, by the Regional Director for Region 3 of the Board, issued an order consolidating these cases, and a consolidated complaint and notice of hearing alleging that the Hospital had violated the Act. On March 11, 2016, the Hospital filed an answer denying all alleged violations of the Act.

A trial in these cases was conducted on May 2–6, and 24, 2016, in Ithaca, New York. At trial, counsel for the General Counsel moved to amend the complaint, and this motion was granted. See, Tr. 9–16.[1]

Counsel for the General Counsel and the Respondent filed post-trial briefs in support of their positions by July 12, 2016.

On the entire record, I make the following findings, conclusions of law, and recommendations.

Jurisdiction

CMC is and at all material times has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and is and has been a health care institution within the meaning of Section (2)(14) of the Act. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act. Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

Unfair Labor Practices

A. Introduction

CMC is a community hospital located in Ithaca, New York. It has been in operation since the late 1800s. The hospital employs approximately 1350 employees, including approximately 350 nurses. The Hospital's CEO is John Rudd. Susan Nohelty was the vice president of patient care services until she retired in September 2015. (Throughout this decision, all dates are 2015 unless otherwise stated.) Linda Crumb is the assistant vice president for patient services. She reported to Nohelty. Crumb supervised many of the nursing department heads. Alan Pedersen is the vice president for human resources. He reports to Rudd.

B. Complaint paragraph VI (the challenged nursing code of conduct rules)

Since approximately 2010 or 2011, the Hospital has maintained a three-page nursing code of conduct (COC). The COC was developed by a group of staff nurses chosen for an internal "Nurses Practice Council." By its terms, the COC sets forth "[e]xpected and acceptable communications/ behaviors" for nursing staff. The COC states that its purpose is "[a]wareness and non-acceptance of disruptive behaviors among healthcare workers help to promote safety and wellbeing of both patients and staff." Its various "rules" (approximately 25) are set forth under headings: "Clinical Excellence," "Customer Service," "People," Financial Integrity," and "Community." The full COC is found at General Counsel's Exhibit 3. It is posted in the Hospital, available to employees on the Hospital intranet, and relied upon for disciplinary matters.

The General Counsel challenges the maintenance of the following portions of the COC (under each bolded heading):

> Clinical Excellence
>
> Respects confidentiality and privacy at all times, including coworkers, adhering to the Social Networking Policy.
>
> Customer Service
>
> Interacts with others in a considerate, patient and courteous manner.

[1] These amendments were the subject, on April 27 and 29, 2016, of two separate notices of intention to amend the complaint at trial served by counsel for the General Counsel. Only the April 27 notice was included in the formal papers (GC Exh. 1(r)). The later April 29 notice is hereby received into the record as ALJ Exh. 2. Both notices were the basis for the motion to amend the complaint that was granted at trial. The notices provide for a clearer record of the amendments than the oral modification read into the record at trial. Throughout this decision, references to the complaint are to the extant and most recent consolidated complaint, as amended.

I note that the transcript in this matter is rife with misspellings, unusual capitalizations, and other errors. In some cases where I quote from the transcript I make corrections without notation. This is done for the convenience of the reader who does not need to know, for instance, that a simple noun was erroneously capitalized in the transcript for no reason related to the witness' testimony. In some instances I use bracketing to correct simple grammatical errors that may have been made by the witness, but in many cases I am sure were not.

Is honest, truthful, and respectful at all times.

People

Utilizes proper channels to express dissatisfaction with policies and administrative or supervisory actions and without fear of retaliation.

Community

Inappropriate and disruptive communications/behaviors include but are not limited to:

Displays behavior that would be considered by others to be intimidating, disrespectful or dismissive.

Criticizes coworkers or other staff in the presence of others in the workplace or in the presence of patients.

Analysis

The General Counsel alleges that the maintenance of the foregoing policies or rules, since April 28, 2015, violate Section 8(a)(1) of the Act.[2]

"In determining whether a work rule violates *Section 8(a)(1)*, the appropriate inquiry is whether the rule would reasonably tend to chill employees in the exercise of their Section 7 rights." *Hyundai America Shipping Agency,* 357 NLRB 860, 861 (2011), enfd. in relevant part, 805 F.3d 309 (D.C. Cir. 2015); *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999). "Where the rules are likely to have a chilling effect on Section 7 rights, the Board may conclude that their maintenance is an unfair labor practice, even absent evidence of enforcement." Lafayette Park Hotel, supra; see generally Note, The *First Amendment* Overbreadth Doctrine, 83 Harv. L. Rev. 844, 853 (1970) ("By definition, an overbroad statute covers privileged activity, and to the extent that the statutory burden operates as a disincentive to action the result is an in terrorem effect on conduct within the protection of the *first amendment*").

The General Counsel concedes that the COC rules at issue do not explicitly restrict Section 7 rights. Thus, a "violation is dependent upon a showing of one of the following: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights." *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 647 (2004).

Essentially, the General Counsel confines his argument (GC Br. at 27–30) to the first of these scenarios—the contention that the challenged COC rules are unlawful because "employees would reasonably construe the language to prohibit Section 7 activity."[3]

In considering whether "employees would reasonably construe the [rule's] language to prohibit Section 7 activity," the Board follows certain guidelines that are pertinent here. "An employer rule is unlawfully overbroad when employees would reasonably interpret it to encompass protected activities." *Triple Play Sports Bar*, 361 NLRB No. 31, slip op. at 7 (2014), affd., 629 Fed. Appx. 33 (2d Cir. 2015). The Board has explained that "as in 8(a)(1) cases generally, our task is to determine how a reasonable employee would interpret the action or statement of her employer, and such a determination appropriately takes account of the surrounding circumstances." *Roomstore*, 357 NLRB 1690, 1690 fn. 3 (2011) (citation omitted). "[I]n determining whether a challenged rule is unlawful, the Board must . . . give the rule a reasonable reading. It must refrain from reading particular phrases in isolation, and it must not presume improper interference with employee rights." *Lutheran Heritage*, supra at 646, citing *Lafayette Park Hotel,* 326 NLRB at 827.

Notably, Board precedent is clear that the test is whether a rule reasonably would be construed as abridging Section 7 activity. Not whether it "can" or "could" be so construed. *Conagra Foods*, 361 NLRB No. 113, slip op. at 3–4 fn. 11 (2014), enfd. in relevant part, 813 F.3d 1079 (8th Cir. 2016); *Lutheran Heritage*, 343 NLRB at 647 ("Where, as here, the rule does not refer to Section 7 activity, we will not conclude that a reasonable employee would read the rule to apply to such activity simply because the rule could be interpreted that way") (Board's emphasis); but see, *Cintas Corp. v. NLRB*, 482 F.3d 463, 467 fn. 1 (D.C. Cir. 2007). ("Although in some settings a critical difference might exist between 'could' and 'would,' there is no such difference here between the phrases 'could reasonably' and 'would reasonably.' Both preclude possible, but unreasonable, interpretations of company rules" . . . . We find slippage between 'would' and 'could' inconsequential here given the Board's use of the modifier 'reasonably'") (court's emphasis).

Finally, I note that I agree with the General Counsel that the COC must be considered to be terms and conditions of employment, setting forth rules on a variety of situations that arise in the work context. Contrary to the suggestion of the Respondent, it is far more than a general recitation of ethical or professional standards. Notwithstanding that some of the COC standards are stated in aspirational terms, CMC managers at the hearing confirmed that the COC sets forth mandatory rules and that nurses can be disciplined for noncompliance. Indeed, here the COC played a role in the sanctioning of employee conduct that is alleged to constitute a violation of the Act, as discussed below. These undisputed facts undercut the suggestion that the

[2] April 28, 2015, is the date six months before the filing of the unfair labor practice charge over the maintenance of unlawful rules in Case No. 03–CA–162848. Thus, maintenance of any unlawful provisions of the COC as of April 28, 2015, constitutes a continuing violation of the Act, regardless of when the rules were first promulgated. *Adriana's Insurance Services, Inc.*, 364 NLRB No. 17, slip op. at 2 fn. 3 (2016).

[3] In a one-sentence reference, the General Counsel argues that the unlawfulness of the rule against "displays" of "intimidating, disrespectful or dismissive" behavior is "highlighted when applied to discipline an employee for discussing a protected issue with management." (GC Br. at 30.) However, given my finding that the rule is unlawful on its face, it is unnecessary to consider its application in assessing the unlawfulness of this rule.

rules are without force. To the contrary, "[c]ritically, the [COC] informs employees of rules and policies that govern the day-to-day handling of their work duties and may subject them to disciplinary action for noncompliance." *Fresh & Easy Neighborhood Market*, 361 NLRB No. 8, slip op at 2 (2014).[4]

Turning to the specific portions of the COC challenged by the General Counsel, the General Counsel contends that the following rule is unlawfully overbroad:

> Clinical Excellence
>
> Respects confidentiality and privacy at all times, including coworkers, adhering to the Social Networking Policy.

The General Counsel argues that this demand that employees respect "confidentiality and privacy at all times, including coworkers" is unlawfully overbroad "because it fails to provide any context for what confidentiality employees need to be maintain." (GC Br. at 27–28.) I disagree.

There is not, to be sure, a list explaining and clarifying the subjects to which this relates—but the rule is one (of only three) that is part of and relates to "clinical excellence"—the heading under which the rule appears. Moreover, other rules in the section unobjectionably require knowing and following "applicable policies and procedures," "continued personal and professional growth," and "respect[ing] patient's rights and dignity with compassion." While I agree that employees could, as the General Counsel argues, read the requirement to respect the privacy and confidentiality of coworkers in the clinical setting as including certain wages and working conditions, I do not believe that to be a reasonably likely scenario. In the context of clinical excellence, compassionate respect for patients' rights and dignity, and professional and personal growth, more reasonably at issue are the private, intimate, at times life-and-death, legally[5] and by common sense, confidential undertakings that are the focus of the clinical process. Obviously, the inclusion of "coworkers" in the rule animates the General Counsel's concern, but I think its context as part of a concern for "clinical excellence" serves to distinguish this rule from Flamingo-Hilton Laughlin, 330 NLRB 287, 288 fn. 3 (1999), cited by the General Counsel.[6] Also close, but distinguishable I believe, is the Board's decision in *Cintas Corp*, 344 NLRB 943, 943 (2005), where the Board found unlawful a rule's "unqualified prohibition of the release of 'any information' regarding" its employees), enfd. 482 F.3d 463 (2007).

Here, the prohibition, not only the context of "clinical excellence," but also the wording, is steps removed from a direct proscription on the release of "any information" or even any "confidential information" as in *Flamingo-Hilton Laughlin*, supra or *Cintas*, supra. Rather, the requirement is the less pointed admonition that the "confidentiality" and "privacy" of coworkers be respected. In my view, the wording of the rule is significantly less likely to be construed by employees as prohibiting concerted activity, focusing as it does on the personal privacy and confidentiality of others, in a setting where such concerns, entirely unrelated to Section 7, are real. I will dismiss this allegation of the complaint.

The next challenged set of rules is composed of the two underlined portions of the following customer service rules (underlining added for emphasis):

> Customer Service
>
> <u>Interacts with others in a considerate, patient and courteous manner.</u> Demonstrates a caring and positive attitude: smiles, greets and acknowledges others, make eye-contact, says please and thank you. Gives recognition and praise.
>
> Actively listens to the perspective of others and seek to resolve conflicts promptly, Apologizes when mistakes are made or misunderstandings have occurred.
>
> <u>Is honest, truthful, and respectful at all times.</u>
>
> Holds self and others accountable to the Cayuga Medical Center (CMC) mission, vision and values, meeting their own expectations.

In the section of the COC devoted to "Customer Service," set forth above, the General Counsel contends that the underlined portions of the COC are unlawful. Were they reasonably likely to be read as directed to employees interactions with management or with other employees, or even to nonemployees, unrelated to servicing patients, I would agree. But these rules sit squarely within a section of the COC devoted to "customer service." In particular, the first allegedly unlawful sentence is part of an otherwise unchallenged paragraph that makes clear—at least reasonably so—that the paragraph seeks courtesy, consideration, and patience in nurses' dealings with patients and their families. ("Demonstrates a caring and positive attitude: smiles, greets and acknowledges others, make eye-contact, says please and thank you. Gives recognition and praise.")

The fact that "[t]hat a rule is intended to promote patient care does not mean that it is not overbroad, or that it cannot be applied—perhaps in the name of patient care—to punish employ-

[4] I note that even rules that are phrased as nonmandatory may have a reasonable tendency to chill protected and concerted activity. See *Radisson Plaza Minneapolis*, 307 NLRB 94 (1992), enfd. 987 F.2d 1376 (8th Cir. 1993) (Board rejects judge's conclusion that provision in handbook was lawful because the rule "was not mandatory," finding that rule must be assessed based "on the reasonable tendency of such a prohibition to coerce employees in the exercise of fundamental rights protected by the Act"). See also, *Heck's, Inc.*, 293 NLRB 1111, 1119 (1989) (rule "requesting" that employees not discuss wages was unlawful).

[5] See, the privacy provisions of the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d–6 and its implementing regulations at 45 C.F.R. Part 160 and Subparts A and E of Part 164.

[6] In *Flamingo-Hilton Laughlin*, 330 NLRB 287, 288 fn. 3, 291–292 (1999), the Board found unlawful a rule that stated that "Employees will not reveal confidential information regarding our customers, fellow employees, or Hotel business." That rule, it is to be noted was part of a rule against disclosure that stated that the Hotel "considers all information not previously disclosed to outside parties by official Hotel channels to be proprietary," and reasonably, not to be disclosed.

ees' protected activity." *William Beaumont Hospital*, 363 NLRB No. 162, slip op. at 2, fn. 8 (2016). Further, employees have a presumptive section 7 right to appeal to nonemployees, including patients, in nonpatient care areas.[7]

However, the provisions at issue here would reasonably be understood by employees as being directed to dealings with patients in the furnishing of "customer" i.e., patient "service", not Section 7 activity. Moreover, while the Act has long condemned rules that penalize employees for making merely "false" statements (as opposed to maliciously untrue statements) (*Casino San Pablo*, 361 NLRB No. 148, slip op. at 4 (2014); *Heartland Catfish Co.*, 358 NLRB 1117, 1117 fn. 3 (2012); *Lafayette Park Hotel,* 326 NLRB at 828), on grounds that such rules will be reasonably likely to chill free discussion about protected and concerted activities, there is no protected right to engage in "customer service" in a less than truthful, respectful, or honest manner. In any event, the issue here is whether a rule directed to "customer service" that requires truthfulness, respect, and honesty would reasonably be read as restricting communications with patients that are protected by the Act. I believe that, at most, the Respondent's rule "could" be read that way, but, reasonably, it would not be. The rules here would reasonably be understood as relating to the furnishing of "customer service" i.e., patient care.[8]

> People
>
> Utilizes proper channels to express dissatisfaction with policies and administrative or supervisory actions and without fear of retaliation.

The General Counsel alleges that the above-stated rule violates the Act. I agree. The rule concerns "people"—which in CMC nomenclature mean employees and managers (Tr. 471). The directive is to use "proper channels to express dissatisfaction." However, it is axiomatic that Section 7 protects employee efforts to "improve terms and conditions of employment or otherwise improve their lot as employees through channels outside the immediate employee-employer relationship." *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565 (1978); *Trinity Protection Services*, 357 NLRB 1382, 1383 (2011) ("the Board has held that employees' concerted communications regarding matters affecting their employment with their employer's customers or with other third parties, such as governmental agencies, are protected by Section 7 and, with some exceptions not applicable here, cannot lawfully be banned").

A rule limiting employees to "proper channels" is unlawful, as it would reasonably be construed to prohibit many informal channels of communication, which employees are entitled to avail themselves of—the existence of such a rule suggests that employees availing themselves of these outside channels of communication would be frowned upon. These include communication with the press, customers, patients, or the government. I find that this rule is unlawfully overbroad in violation of the Act.

> Community
>
> Inappropriate and disruptive communications/behaviors include but are not limited to:
>
> Displays behavior that would be considered by others to be intimidating, disrespectful or dismissive.
>
> Criticizes coworkers or other staff in the presence of others in the workplace or in the presence of patients.

These rules violated the Act, as alleged by the General Counsel. The barring of displays of behavior that would be considered intimidating, disrespectful or dismissive would reasonably be read as requiring that Section 7 activity be conducted in a manner considered—"by others"—as respectful, nondismissive, and nonintimidating. However, the protections of the Act are more robust than that. As the Board explained in *Casino San Pablo*, 361 NLRB No. 148, slip op. at 3 (2014), considering a rule barring "insubordination or other disrespectful conduct,"

> In the typical workplace, where traditional managerial prerogatives and supervisory hierarchies are maintained, employees would reasonably understand this phrase as encompassing any form of Section 7 activity that might be deemed insufficiently deferential to a person in authority—in other words, as referring to something less than actual insubordination. For example, the act of concertedly objecting to working conditions imposed by a supervisor, collectively complaining about a supervisor's arbitrary conduct, or jointly challenging an unlawful pay scheme—all core Section 7 activities—would reasonably be viewed by employees as "disrespectful" in and of themselves, regardless of their manner and means, and thus as violating the rule. See *First Transit, Inc.*, 360 NLRB No. 72, slip op. at 2–3 (2014); *2 Sisters Food Group*, 357 NLRB No. 168, slip op at 2 (2011); *Claremont Resort & Spa*, [344 NLRB 832,] 832 and fn. 4 (finding unlawful a rule prohibiting "negative conversations about associates and/or managers"). There is no shortage of Board cases where protected

[7] "Employees have a statutorily protected right to solicit sympathy, if not support, from the general public, customers," and others. *NCR Corp.*, 313 NLRB 574, 576 (1993). This includes patients (in nonpatient care areas and absent a showing that a ban is necessary to avoid disruption of patient care). *The Carney Hospital*, 350 NLRB 627, 643–644 (2007).

[8] I recognize that a version of the two cited rules ("*Interacts with others in a considerate, patient and courteous manner*" and "*Is honest, truthful, and respectful at all times*) were cited in a verbal warning issued to Marshall, and discussed below. The application of rules to penalize protected and concerted activity is a factor militating in favor of finding the rules unlawfully overbroad. However, I do not find that in this case the reference to these rules in Marshall's warning letter serves to render the maintenance of these rules unlawful. For the reasons stated, the rules, in context, are lawful. As discussed below, the verbal warning was unlawful quite apart from the rules, and had nothing to do with "customer service." In my view, the rules were deployed pretextually in this instance, as part of a campaign against Marshall. I decline to find that citing to them in that one instance renders their maintenance as part of an employee's "customer service" obligations unlawful.

> concerted activity was perceived by managers, supervisors, and security personnel as an affront to their authority and dealt with accordingly. See, e.g., *Hawaii Tribune-Herald,* 356 NLRB No. 63, slip op. at 20 (2011); *Noble Metal Processing, Inc.*, 346 NLRB 795, 800 (2006).

Thus, the first rule under Community challenged by the General Counsel is unlawful.[9]

For much the same reasons, the second rule, prohibiting criticism of coworkers or other staff in the presence of others in the workplace or in the presence of patients is also unlawfully overbroad.

The Supreme Court has long recognized that "the right of employees to self-organize and bargain collectively established by *§ 7* of the [Act] necessarily encompasses the right effectively to communicate with one another regarding self-organization at the jobsite." *Beth Israel Hospital v. NLRB*, 437 U.S. 483, 491 (1978). This is because the workplace "'is the one place where [employees] clearly share common interests and where they traditionally seek to persuade fellow workers in matters affecting their union organizational life and other matters related to their status as employees.'" *Eastex v. NLRB*, 437 U.S. 556, 574 (1978) (court's parenthetical), quoting *Gale Products*, 142 NLRB 1246, 1249 (1963). The Board too recognizes "the centrality of employees' right to communicate with their fellow employees at their workplace on their own time and the 'particularly appropriate' nature of the workplace for exercising that right." *St. John's Health Center*, 357 NLRB 2078, 2081 (2011).

Thus, rules restraining robust discussions between employees, including—and essentially so—negative or critical discussions with one another at work, are not permitted. *William Beaumont Hospital*, 363 NLRB No. 162, slip op. at 2 (2016) (rule unlawful insofar as it prohibits "negative or disparaging comments about the . . . professional capabilities of an employee or physician to employees, physicians, patients, or visitors"). See, *The Dalton School*, 364 NLRB No. 18, slip op. at 1 (2016) ("We reject the notion that professional colleagues, discussing collective action among themselves, can be disciplined or discharged merely for criticizing management in sharp and unequivocal terms"); *Claremont Resort & Spa*, 344 NLRB 832, 832 (2005) ("We find that the rule's prohibition of 'negative conversations' about managers would reasonably be construed by employees to bar them from discussing with their coworkers complaints about their managers that affect working conditions, thereby causing employees to refrain from engaging in protected activities. Accordingly, the rule is unlawful under the principles set forth in Lutheran Heritage Village-Livonia"); *2 Sisters Food Group*, 357 NLRB 1816, 1817 (2011) (finding requirement that employees "work harmoniously" "sufficiently imprecise" that it could reasonably prohibit "any disagreement or conflict among employees," including protected discussions); *Hill & Dales General Hospital*, 360 NLRB No. 70, slip op. at 1 (2014) (rule prohibiting "negative comments about our fellow team members" is unlawfully overbroad); *Beverly Health & Rehabilitation Services*, 332 NLRB 347, 348 (2000) (rule prohibiting "negative conversations about associates and/or managers" found unlawful), enfd. 297 F.3d 468 (6th Cir. 2002).

A flat ban on criticizing employees or management in the presence of others would reasonably—indeed, one could say, unavoidably—be read as striking at the essence of the Act and its protections. "The Act designs a system where . . . it is necessary that discussion among employees and attempts to persuade be robust and vigorous." *Blue Chip Casino*, 341 NLRB 548, 555 (2004). Ill feelings, strong responses, criticism and dialogue are baked into the Act—the right to criticize is elemental, even when it engenders ill feelings and passionate responses. *Consumer Power Co.*, 282 NLRB 130, 132 (1986) ("The protections Section 7 afford would be meaningless were we not to take into account the realities of industrial life and the fact that disputes over wages, hours, and working conditions are among the disputes most likely to engender ill feelings and strong responses").

The Respondent's ban on criticism "in front of others" is clearly unlawful.[10]

C. Complaint Paragraph VII

1. VII(a), and (c) (solicitation of employee complaints)

In March 2015, the hospital's management learned of union literature distributions at the facility. By May, the Hospital was actively responding to the union campaign. Beginning May 7, through November 6, 2015, in response to the commencement of the union campaign, Alan Pedersen, VP of Human Resources for the Hospital, issued a series of email/letters to all 350 members of the nursing staff, directed to their work email accounts. (However, the evidence suggests that the first correspondence, dated May 7, was distributed to nurses on May 8, in person in one-on-one meetings that managers conducted with nursing staff.) There are nine such email/letters included in the record. They are fairly characterized as devoted to providing

[9] Had the prohibition been limited to "intimidating" and similar conduct, the result would likely be different. *Palms Hotel & Casino*, 344 NLRB 1363 (2005) (rule lawful that prohibits employees from engaging in "conduct which is or has the effect of being injurious, offensive, threatening, intimidating, coercing, or interfering with" other employees or patrons). But even then, the subjective phrasing—prohibiting conduct that *others* subjectively found offensive—might still leave the prohibition unlawfully likely to chill Section 7 activity, as "[t]he Board has long held that legitimate managerial concerns to prevent harassment do not justify policies that discourage the free exercise of Section 7 rights by subjecting employees to investigation and possible discipline on the basis of the subjective reactions of others to their protected activity." *Consolidated Diesel Co.*, 332 NLRB 1019, 1020 (2000), enfd. 263 F.3d 345, 354 (4th Cir. 2001) ("There would be nothing left of § 7 rights if every time employees exercised them in a way that was somehow offensive to someone, they were subject to coercive proceedings. . . Such a wholly subjective notion of harassment is unknown to the Act.").

[10] As discussed below, this rule was also applied to discipline protected and concerted activity. This is also a factor for finding the maintenance of a rule unlawful. *Lutheran Heritage*, 343 NLRB 646, 647 (2004). However, I need not rely on that grounds as maintenance of this rule is unlawful on its face, without regard to its application.

information and argument to employees against unionization.

In his May 7 letter Pedersen included a bullet point that stated:

> If you feel you are being harassed or intimidated feel free to contact your supervisor, director or security.

His August 26 email included the following:

> If you feel that you continue to be harassed you have every right to file a complaint in our incident reporting system, and notify your Director so that we can address the behavior with the individual involved.

Analysis

Because of the potential for chilling lawful union activity, the Board finds it unlawful for an employer to invite employees to inform it of protected, albeit unwanted, authorization card solicitation by other employees. When an invitation to report unwelcome union solicitation is phrased over broadly, it will be found unlawful on this rationale. As referenced above, Section 7 activity may be robust—but still protected. The problem the Board is policing is the chilling effect when employers solicit employees to report coworkers for conduct in terms so vague as to invite reports concerning vigorous, insistent, nevertheless legally-protected union solicitations.

For instance, in *Bloomington-Normal Seating Co.,* 339 NLRB 191, 191 fn. 2 (2003), the Board found unlawfully overbroad a production manager's speech to employees that included prompting to tell the employer if they were "threatened or harassed about signing a union card."

In *Niblock Excavating, Inc.*, 337 NLRB 53, 61 (2001), the Board found a violation where the employer's letter asked employees to tell their foreman "if you feel threatened or harassed." The Board pointed out that such letters are held unlawful because they "encourage[e] employees to report to Respondent the identify of union card solicitors who in any way approach them in a manner subjectively offensive to the solicited employees, and of correspondently discouraging card solicitors in their protected organizational activities." Id. See, *Greenfield Die & Mfg. Corp.,* 327 NLRB 237, 238 (1998) ("The Board has held that employers violate Section 8(a)(1) of the Act when they invite their employees to report instances of fellow employees' bothering, pressuring, abusing, or harassing them with union solicitations and imply that such conduct will be punished. It has reasoned that such announcements from the employer are calculated to chill even legitimate union solicitations, which do not lose their protection simply because a solicited employee rejects them and feels "bothered" or "harassed" or "abused" when fellow workers seek to persuade him or her about the benefits of unionization") (footnote omitted).

The May 7 and August 26 appeals to employees fall squarely within the types of entreaties prohibited by this precedent, a conclusion only compounded by the overtly subjective basis for reporting a card solicitor ("If you feel you are being harassed or intimidated"; "If you feel that you continue to be harassed"). *Tawas Industries, Inc.,* 336 NLRB 318, 322 (2001) ("such statements also indicate that the employer intends to take unspecified action against subjectively offensive activity without regard for whether that activity was protected by the Act"); *Arkema, Inc.*, 357 NLRB 1248, 1250 (2011) (the letter also invokes the subjective reactions of employees by inviting them to report conduct simply if they "feel" they have been harassed").

I note further that the May 7 solicitation was prefaced with the warning (three bullet points previously) that "You will at some point be asked or more likely pressured to sign a union authorization card. . . . . You have the right to ask them to leave you alone and not bother you." The allegedly offending statement immediately followed the latter sentence. The August 26 solicitation is a response to a "question" that Pedersen's letter posited was asked: "I feel like I am being harassed and pressured to sign a card, what can I do?" The answer included the assertion that "You have the absolute right to tell the person you are not interested and you wish to be left alone." The suggestion that employees should equate a feeling of "harassment and intimidation" with being "bother[ed] or "pressured" to sign a card, and the assertion that you have the right "to be left alone" increases the likelihood that employees will understand the employer to be requesting employees to report others for card solicitation activity that is protected by the Act. *J.P. Stevens & Co.,* 244 NLRB 407, 425 (1979) (invitation to report union solicitation unlawful as it sought reports not just of threats but of "pressure"); enfd. 668 F.2d 767 (4th Cir. 1982). Accord, *Lutheran Hospital of Milwaukee,* 224 NLRB 176 (1976), enfd. in relevant part 564 F.2d 208 (7th Cir. 1977); *Poloron Products of Mississippi, Inc.*, 217 NLRB 704 (1975) (employer unlawfully sought to have employees report union solicitation if union solicitors "won't leave you alone").[11]

The distinctions drawn by the Board in this area can seem fine, but the cases relied upon by the Respondent are easily distinguishable. The Respondent cites *Ithaca Industries*, 275 NLRB 1121, 1126 (1985), where it was found lawful for an employer to tell employees that they should report coworkers who "threaten or intimidate" them while soliciting cards. However, in Ithaca Industries, unlike here, the solicitation to report did not extend to those who merely, subjectively "felt" intimidated. Moreover, the solicitation to report employees in Ithaca Industries extended also to those who were "threatened"—a formulation found lawful by the Board (see, *Liberty House Nursing Homes*, 245 NLRB 1194 (1979)), while here the solicitations also extended to those who felt "harassed," a formula-

[11] It is notable that Pedersen testified—and the Respondent specifically but erroneously relies on it as justification for telling employees they can report card solicitors—that "a number of people felt as though they were being pressed to sign a card" (R. Br. at 5). It is clearly unlawful for employers to tell employees they can report people for making them feel "pressed." See, *J.P. Stevens*, supra. Pedersen also testified that he had been told that some employees had complained to their department directors that "they had been subject to bullying or intimidation." However, this wording does not appear in Pedersen's solicitation to report union activity and is not at issue. I note that there is no documentary, email, or any other contemporaneous evidence of such complaints.

tion that has been categorically rejected as overbroad by Board precedent.

The Respondent also cites *First Student, Inc.*, 341 NLRB 136 (2004). There, the Board found lawful the employer's invitation to report solicitation that involved "confrontation," and "force," or "intimidation," reasoning that the "request to report conduct that consists of both confrontation and compulsion or confrontation and intimidation is no more than a request to report threatening conduct, which . . . the Board has found lawful." 341 NLRB at 137. As discussed above, in the instant case, the sole use of the word "intimidate" is linked to "harass"—a word regularly found overbroad in this context—and that is further broadened by the subjectivity of the entreaty ("if you feel you are being harassed or intimidated"). Moreover, the entire instruction is a response to claims that employees are "likely [to be] pressured to sign a union authorization card" although having "the right to ask them to leave you alone." As discussed above, in the careful assessment of wording that the Board engages in when considering such claims, each of these distinguishing factors separates the instant case from the situation in First Student, supra.

Finally, the Respondent argues (R. Br. at 6) that the solicitations to report employees were neutral—covering solicitations "by persons favoring the Union and/or by persons opposing the Union." In fact, this is not the case—both the May 7 and the August 26 solicitations to report other employees is about how employees can avoid someone who is seeking to have them sign a union card—but, in any event, the Board has rejected this argument, finding it "immaterial." *Tawas Industries, Inc.,* 336 NLRB 318, 322–323 2001).[12]

For all of the above reasons, I find that the May 7 and August 26 solicitations to report coworkers to the employer unlawful under controlling Board precedent.

2. Complaint paragraph VII(b)

(directive to cease distributing union literature in the cafeteria)

On or about July 8, ICU charge nurse and team leader Ann Marshall sat at a table just inside the hospital cafeteria entrance and set out union materials to solicit and distribute to employees. Marshall had been active and open in her support for the union prior to this, but this was the first time she had attempted to "table" in the cafeteria. Marshall had been there for about 20 minutes when Vice President for Human Resources Pedersen, who had been in the cafeteria eating, walked by and approached Marshall. Pedersen had been eating with and was accompanied by Hospital CEO John Rudd and another member of hospital's management.[13] Pedersen saw Marshall sitting there with all her union materials. The three approached Marshall and Pedersen told Marshall she should not be sitting in the cafeteria with her materials. He said, "Gee, Anne, you shouldn't really be doing that here." Marshall testified credibly that she was told she was not allowed to be "in there with my information and that I had to leave." Marshall responded by picking up her materials and leaving. Pedersen testified that this was the first time he had seen any employees "tabling" for the Union in the cafeteria.

The next day or the day after (July 9 or 10), Pedersen saw emergency room nurses Scott Marsland and Aaron Bell in the cafeteria with two tables pulled together and union material spread out on the tables. Pedersen was upset and told Marsland, "Scott you can't do this. You can't set up a table here in the cafeteria. You can't set up a fixed base. You're going to have to leave." According to Marsland, he and Pedersen went back and forth, with Marsland arguing that "it's within our federal rights to do this." After a few minutes, Pedersen left, but returned in approximately five minutes and spoke to Bell and Marsland. Pedersen told them: "so the situation is you're not allowed to set up a fixed presence in the cafeteria. You can, if you want to talk and solicit and have conversations with people, you can do that. You are not allowed to do this." Marsland told Pedersen that "we checked with our union representatives. Our understanding is this is . . . a federally protected activity." At one point, Pedersen said, "So I'll have security come and take this away then." Bell protested: "They certainly can't take our possessions." Marsland said, "that [it] sounds like a clarification of law that maybe we need." Pedersen reiterated his position that "You don't have the authority to set up a fixed solicitation within the cafeteria or fixed distribution." Pedersen left. Marsland remained for about an hour and continued to table. No one attempted to stop him. Pedersen testified that he did not call security, and by all evidence, he did not.

After these two incidents, and after talking to counsel, neither Pedersen nor anyone else in the hospital ever challenged employees' "tabling," i.e., distributing union literature from a table in the cafeteria. However, neither Pedersen nor anyone else from management made an announcement to employees or otherwise affirmatively told employees that they were permitted to "table" in the cafeteria. The tabling continued sporadically, but repeatedly over the course of the next few months into December 2015.

Analysis

In the context of a hospital, the Board presumes that prohibitions against employee solicitation and distribution during nonworking time in nonworking areas such as a hospital cafeteria are unlawful infringements on protected employee rights, where the "facility has not justified the prohibitions as necessary to avoid disruption of health-care operations or disturbance of patients." *NLRB v. Baptist Hospital, Inc.,* 442 U.S. 773, 779–791 (1979), citing *Beth Israel Hospital v. NLRB*, 437 U.S. 483 (1978); *The Carney Hospital*, 350 NLRB 627, 643–644 (2007). The burden is on the employer to show that the banning

[12] The Respondent also stresses that some of its correspondence contained statements recognizing employees' right to advocate in favor of the union (as well as against it). The presence of lawful statements does not mitigate the impact of an unlawful solicitation requesting that employees report the protected activities of other employees to management. See, e.g., *Liberty House Nursing Homes,* 245 NLRB at 1197 (finding both lawful and unlawful invitations to report coworkers' activities).

[13] Marshall said it was Tony Votaw, Vice President of Information. Pedersen testified that it was Vice President of Public Relations John Turner. Neither Votaw nor Turner testified. It is an immaterial conflict.

of activity is necessary to avoid disruption of health care operations or disturbance of patients.

Here, the Respondent has not shown, indeed, does not contend, that a prohibition on the tabling engaged in by Marshall, Marsland, and Bell, would be justified in this case. Clearly, by all evidence, the Respondent's employees had a protected right to solicit and distribute in the cafeteria during nonworking time. Pedersen's directive to Marshall on July 8, and to Bell and Marsland on July 9 or 10, are violative of Section 8(a)(1) of the Act.

The Respondent's defenses are without merit. The fact that Marsland (and assumedly Bell), did not leave the cafeteria as directed to by Pedersen is no defense. Neither is the fact that Marsland, Marshall, and other employees, subsequently tabled in the cafeteria without incident many times after the events of July 8 and July 9 or 10. It is also of no consequence that, as suggested by the testimony, Pedersen had a good faith but mistaken belief that he was entitled to prohibit the tabling in the cafeteria at the time he confronted Marshall and then Marsland and Bell. It is well-settled that in evaluating the remarks, the Board does not consider either the motivation behind the remarks or their actual effect. *Miller Electric Pump & Plumbing*, 334 NLRB 824, 825 (2001); *Joy Recovery Technology Corp.*, 320 NLRB 356, 365 (1995), enfd. 134 F.3d 1307 (7th Cir. 1998). Rather, "the basic test for evaluating whether there has been a violation of Section 8(a)(1) is an objective test, i.e., whether the conduct in question would reasonably have a tendency to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights, and not a subjective test having to do with whether the employee in question was actually intimidated." *Multi-Ad Services*, 331 NLRB 1226, 1227–1228 (2000) (Board's emphasis), enfd. 255 F.3d 363 (7th Cir. 2001).

Here, a top management official—in one case, in the company of the CEO of the employer—confronted employees and directed them that they were not permitted to engage in union solicitation and distribution from a fixed place in the cafeteria. In one instance he even threatened to have security remove the materials. That the reasonable tendency of such directives is to coerce employees is beyond legitimate cavil.

Moreover, contrary to the Respondent's contention, these violations are not remedied in any way by the Respondent's failure to interfere with future exercise of rights in the cafeteria by these and other employees. The mere future abiding of employee rights is wholly inadequate to relieve oneself of liability for unlawful conduct. That would requires affirmative repudiation of the unlawful conduct in the manner prescribed in *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). Here, there has been no affirmative repudiation of these unfair labor practices, much less in a manner consistent with or even approximating that prescribed in Passavant, supra. Finally, I reject the contention that these violations are de minimis. The principles at stake are significant. These employees had a right protected by federal law to solicit for the union and distribute literature. These rights were abridged on July 8 and on July 9 or 10, in straightforward fashion. It is far from inconsequential that thereafter employees participated in cafeteria solicitation and distribution in the shadow of the unremedied and unlawful directives from July 8–10. These directives violate Section 8(a)(1) of the Act.[14]

3. Complaint paragraph VII(d)

(informing employees that it is inappropriate to discuss their salaries and/or wages)

The General Counsel alleges that the Respondent, by Pedersen, informed employees that it was inappropriate to discuss their salaries and/or wages and to refrain from doing so.

Nurse Marshall testified credibly that sometime between the Fall of 2015 and early Winter 2016, Pedersen walked by a group of approximately five nurses (including Marshall) who were standing at the nurses' station in the ICU talking about employees' wage rates and told them what they were talking about was "inappropriate." Pedersen testified that while there is not a policy prohibiting employees from discussing their pay rates and salaries with one another, "[w]e encourage individuals not to do that." As to the specific incident testified to by Marshall, Pedersen testified that he does "not recall that conversation," and added that he "round[s] through the hospital on a weekly basis and interact[s] with staff on a weekly basis."

Pedersen testified extensively for the Respondent. As a general matter, I found him to be a credible witness, willing to admit what he remembered, as he remembered it, willing to correct counsel's paraphrase or characterization if he thought it not accurate. In this instance he testified that he did not recall this (or any similar) conversation. Both in terms of the literal meaning and in terms of the impression that his demeanor made on me, I believe that he was saying that he could not recall it, but was unwilling to state that it did not happen.[15] This is not surprising. He talks to staff weekly and this informal and brief encounter would have held no significance or importance for him. However, it would have been more significant for the nurses involved to have been told by a top management official that the subject of their conversation was "inappropriate." Moreover, Pedersen admitted "It's a generally accepted practice" that employees are not to discuss their salary information because it is confidential, and the Hospital "encourage[s] individuals not to" have the very type of conversation alleged, thus increasingly the likelihood that, although he doesn't recall offering this encouragement, it happened. Based on this, and the credible and consistent demeanor with which Marshall testified to this event, I credit her testimony.[16]

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[14] Having found that the employees had an unrebutted presumptive right to solicit and distribute union materials in the cafeteria during nonworking time, I do not reach the suggestion of the General Counsel—or the arguments of the Respondent—regarding the issue of whether Pedersen's directives constituted a discriminatory application of a ban on cafeteria solicitation or distribution. See, *St. Margaret Mercy Healthcare Centers*, 350 NLRB 203, 203 (2007), enfd. 519 F.3d 373 (7th Cir. 2008).

[15] Asked "Would you ever have a conversation like that," Pedersen maintained his answer, responding "Not that I can recall I've ever done that." I accept that Pedersen does not remember this incident.

[16] I have considered the fact that no other nurse—for instance one of the others involved in the conversation—was called to testify about this event. However, I do not find that of significance here, and indeed, it cuts both ways: either party could have attempted to find corroborating witnesses for their position. Marshall's testified credibly and satisfactorily as to the incident.

Analysis

The directive is violative of the Act. See *Triana Industries*, 245 NLRB 1258, 1258 (1979) (unlawful to tell employees "[n]ot to go around asking the other employees how much they were making, because some of them were making more than others."); see, *Parexel Int'l, LLC*, 356 NLRB 516, 518 (2011) ("our precedents provide that restrictions on wage discussions are violations of Section 8(a)(1)"); *Coosa Valley Convalescent Center*, 224 NLRB 1288, 1289 (1976). Further, it does not matter whether the directive is embodied in a "rule the breach of which would imply sanctions." Triana, supra (overruling ALJ who found directive not to discuss other employees' pay lawful because it did not rise to the level of a "rule"). See also, *W.R. Grace Co.*, 240 NLRB 813, 816 fn. 6 (1979) ("as a supervisor's 'request' or expression of 'preference' that an employee comply with a policy of confidentiality nevertheless implies that employees run the risk of supervisory displeasure and possible adverse consequences for noncompliance to a degree sufficient to constitute interference, restraint, and coercion under the Act").

Accordingly, I find that Pedersen's statement to the nurses that their discussion, which was about their wages, was "inappropriate," was a violation of the Act.[17]

D. Complaint paragraph VIII

1. Complaint paragraph VIII(a) and (b) (interrogation and threat in the one-on-one meeting)

Norman Joel Brown was the interim director of the hospital's ICU department from approximately the second week of April 2015, through mid-July 2015. Brown replaced the longtime ICU director, Sean Newvine, who left in April 2015.

Brown's tenure at the Hospital was rocky. In particular, he blamed Nurse Anne Marshall for the Hospital's failure to renew his three-month contract as interim director. Brown described an excellent relationship with Marshall in his first weeks at the Hospital. He testified that Marshall was "very welcoming," "[v]ery collaborative, very collegial," and she "had been there for quite a while and knew everybody, knew the lay of the land, per se, and I was able to glean some of that information from her." However, this changed, "drastically" according to Brown. "It became adversarial . . . . it just wasn't a good relationship any longer."

Brown dated the change to the time in early June when a sexual harassment charge was filed against him with the New York State Human Rights Division. The charge stemmed initially from a "team leading" video that Brown showed the ICU staff during a staff meeting on or about April 23, just after his arrival as interim director.

The video was created by a friend of Brown's that Brown met when they were in the military together. Brown identified the creator of the video by "code name" Sargent Grouchy. Brown testified that "I can't divulge his true name because he's still in the service."

The video consisted of a variety of military combat and other rescue missions by different branches of the Armed Forces. The soundtrack was a song written and performed by Marilyn Manson, the controversial singer and songwriter. The song was the Marilyn Manson song "This is the New Shit." Brown agreed that the song has "colorful" language:

Yes, sir, the word 'bitch' is used throughout it. The word 'sex' is used throughout it. And the word 'shit' is used throughout it.[18]

The video presentation was not well-received by many of the nurses. Within a couple of weeks, Marshall approached Brown and told him that "certain individuals were offended by the video and I should apologize." Marshall told Brown that "there were individuals in the audience that were offended, including a combat veteran and several members of the female staff." Nurse Marsland sent an email to the hospital's "leadership team," alerting management about the video that Brown had shown the staff. (Brown claims that Marsland sent the leadership team the lyrics from the wrong Marilyn Manson song.)

Soon thereafter, Brown was notified that as a result of his showing of the video, a sexual harassment complaint had been lodged against him both internally within the hospital's grievance system and then externally with the NY State Human Rights Division. Brown understood (although it is unclear from the record when he knew this) that Marshall had filed the NY State Human Rights complaint.[19]

Brown felt that after Marshall complained that staff members took offense to his video presentation, the situation with him and Marshall, and on the floor in general, began to change. After the sexual harassment complaint was filed employees distanced themselves from him. According to Brown, "I had basically been made an ineffective leader."

In any event, along with this background, the union drive at the facility began in earnest shortly after and coincidental to Brown's arrival at the Hospital. He was aware of the union drive about two weeks after he arrived, around the same time that he showed the video in the staff meeting. As discussed

[17] The General Counsel also argues on brief that the Hospital unlawfully maintained (and enforced) an unlawful rule or policy that prohibited employees from discussing pay with each other. Evidence was offered in support of this claim, and there is testimony denying it as well. The matter is unalleged in the complaint, and no amendment to allege this was offered. No argument is offered as to it being closely connected to the pled allegations and fully litigated, and the matter is arguable, but far from certain, in my view. Consequently, I decline to consider this unpled contention. However, much of the evidence relied upon for this unpled claim may be—and is here—relevant to the alleged unfair labor practice concerning complaint paragraph 7(d).

[18] "This is the New Shit" is a single from Marilyn Manson's 2003 album "The Golden Age of Grotesque." The song includes lyrics such as "sex, sex, sex, and don't forget the violence" and "Are you motherfuckers ready for the new shit?" The full lyrics of the song are available on line. See, e.g., http://www.metrolyrics.com/this-is-the-new-shit-lyrics-marilyn-manson.html

[19] There is the suggestion in the record that the sexual harassment claim ultimately concerned not only the showing of the video but more personal accusations by Marshall against Brown on or about May 8, in a meeting between the two that is also the subject of an unfair labor practice allegation described below. Brown denied any wrongdoing. Both Brown and Marshall agreed that the State claims were determined to be unfounded by the Human Rights Division.

above, on May 7, Hospital HR VP Pedersen initiated the communication campaign to nurses. In addition to the May 7 letter, managers who were part of the "leadership team" at the Hospital were provided "talking points" about unions and the unionization process to discuss with the nursing staff. The managers were instructed to provide each nurse a copy of the May 7 letter and to meet with each nurse individually.

On or about May 8, Brown met with each ICU nurse in a one-on-one meeting to discuss the talking points and the union drive. Marshall testified that Brown asked her to go into his office. Suspecting that the meeting was about the union, Marshall and another nurse asked Brown if they could meet together, but Brown said he was going to meet with the nurses, one at a time. The first member of the ICU staff that Brown met with was Marshall.

According to Brown, his meeting with Marshall was uneventful. He gave her the May 7 letter, she read over it. He asked if there were any questions. She asked if he had ever been through a unionization or had worked at a union facility, to which Brown answered yes. According to Brown it was during this meeting that Marshall told Brown that he might want to apologize for the video that he had shown in his initial staff meeting.

Marshall gives a different account of the meeting. Marshall testified that Brown "told me that he knew I was the ring leader and I was the one promoting all this union stuff, and if it didn't stop he was going to get HR involved." Marshall testified that "I said this is something that I can't discuss with you, and I got up and walked out." Brown denied saying anything like this.

In addition to Marshall's testimony, ICU nurse Terrie Ellis testified that in her individual meeting with Brown he asked her if she "knew about the union campaign." Brown asked her if "she had been approached about it at work." Brown asked Ellis if she "had felt pressured or bullied about the Union in any way." He told Ellis, "The Union is not what you think that it is. It's a business. They're here to make money, just like every other business." According to Ellis, Brown

said, "if we actively try to bring the Union in that it would tie the hospital's hands and they would not be able to fix problems, hire additional staff, etc." and "words to the effect that the Hospital had to be very careful about looking like they were trying to keep the Union out." Ellis testified that at the end of the meeting Brown asked her not to discuss the meeting with the other employees as he wanted "to talk to them when they were unbiased."[20]

I credit Ellis' account. Brown testified that he did not recall asking Ellis any questions about the Union in the meeting but did not otherwise contradict her testimony. He suggested that in all of the one-on-one meetings, he handed the employee the May 7 Pedersen letter and asked employees if they had questions—he did not testify to asking any specific questions about union activities of the nurses. I credit Ellis, who testified in a highly credible manner.

Moreover, I also credit Marshall's account of her one-on-one meeting with Brown. Marshall also testified with credible demeanor, but I am cognizant that the record is clear that neither is a fan of the other, and each might be thought to have reasons to testify adversely to the other. But in assessing their credibility, in addition to demeanor, I note that I was not impressed with Brown's insistence that he was indifferent to unionization at CMC, did not take a position on the matter, and that he had no stake in the outcome. This testimony, an effort to buttress his credibility, failed in that purpose as it is highly misleading. It is inconsistent with the aggressive, repeated, and what can only be called enthusiastic manner in which he admitted, and which the record shows, that he removed posted union literature. He described removing union flyers as many as four times a day from posted places and from the break room and bringing them to the HR department. He also admitted in his sworn pretrial affidavit that "I had my Department Team take the flyers down that were posted in the department and give them to me."[21]

Brown's email correspondence with other management personnel, and other management emails in the record, demonstrate that in May and June, Brown set about, with enthusiasm, removing Marshall's postings and monitoring her activities. Indeed, by June 2, Pedersen was seeking "specifics" on Marshall, to which Brown responded with a note that included the complaint that "While on shift and in a leadership position she continues to post, call and have conversations about unionization." Contrary to Brown's testimony, the union activities of Marshall and the employees appeared to be of great interest and concern to Brown (and other managers). I discredit his testimony to the contrary, and it does influence my decision to credit Marshall's version of what happened in their one-on-one meeting, as does my crediting of Ellis, which only increases the likelihood that, contrary to his claims, Brown engaged in questioning about union activities with Marshall, as alleged.[22]

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[20] On cross-examination, Ellis agreed that she testified that she did not remember the exact wording that Brown used in his statements and questions at the meeting, but she reaffirmed on cross-examination the substance of her direct testimony.

[21] This is a nonhearsay admission pursuant to Federal Rule of Evidence 801(d)(2). Brown first denied on cross-examination that he asked his employees to take down the union flyers. However, I credit his sworn pretrial statement that "I had my Department Team take the flyers down that were posted in the department and give them to me." On redirect, the witness was led to deny that this means that he instructed his staff to take the posters down but, instead, meant that it was just "something that had taken place." I discredit that fantastic characterization of Brown's statement, which was the product of leading questioning. (Tr. 1054.)

[22] I specifically reject the Respondent's assertion that Marshall's account should be discredited because, as the Respondent puts it, Marshall "has a history of distorting and/or falsifying information involving Mr. Brown to support her own personal agenda." (R. Br. at 14.) The sole record basis for this characterization is the fact that, as testified to by Marshall and Brown, the New York Human Rights Division found the sexual harassment charges filed by Marshall "unfounded." The mere rejection of the charges by the State of New York hardly provides evidence of distortion or falsification of information, much less that the matter has been undertaken in pursuit of a personal agenda. It is a remarkable characterization to base on the mere fact that a charge was found "unfounded," particularly when the record demonstrates that the initial charge was prompted by Brown's (admitted) screening for ICU

Analysis

The General Counsel argues (GC Br. at 34) that Brown's statements to Marshall in the one-on-one meeting about being the union "ringleader," and threatening to bring in HR if she did not cease her union activities, constitute an unlawful interrogation and threat of reprisal.

While the assertion by Brown that "he knew" Marshall was "the ring leader" and "the one promoting all this union stuff" might also be understood as providing an unlawful impression of surveillance of union activity, the nature of the statement would reasonably be understood as an interrogation, an opportunity for Marshall to confirm or deny her role as a "promoter" of the union activity in the Hospital. Of course, not every interrogation is unlawful. Whether the questioning constitutes an unlawful coercive interrogation must be considered under all the circumstances and there are no particular factors "to be mechanically applied in each case." *Rossmore House*, 269 NLRB 1176, 1178 fn. 20 (1984), enfd. 760 F.2d 1006 (9th Cir. 1985); *Westwood Health Care Center*, 330 NLRB 935, 939 (2000). However, in general it is unlawful for an employer to inquire as to the union sentiments of employees. *President Riverboard Casinos of Missouri*, 329 NLRB 77 (1999).

In this case, considering all the circumstances, the unlawful nature of the statement is hard to deny. Marshall's interlocutor was the department head, the conversation took place outside the regular routines of work, it was a formal one-on-one meeting, in the department head's office, and the request to have another employee present was denied. Moreover, the incident also involved a second comment, almost in the same breath, in which Brown made an unvarnished threat of retaliation to "bring in HR" if Marshall did not cease her union activity." Thus, the "ring leader" comment was part and parcel of a threat of retaliation against Marshall if she did not cease her union activities. I find that both comments are unlawful as alleged in the complaint.[23]

2. Complaint paragraph VIII(c) (prohibiting the posting and distributing of union literature)

The General Counsel alleges that from May until mid-July, 2015, the Respondent unlawfully prohibited employees from distributing and posting union literature around the facility while permitting employees to distribute and post other literature.

Employees supportive of the Union regularly posted prounion literature on hospital bulletin boards and left literature in the break rooms. Pedersen agreed that employees have a right to post nonhospital related material on the bulletin boards, a matter which the Hospital does not dispute in these cases (Tr. 173, 179).

Notwithstanding, the evidence is clear that there was a concerted effort by the Respondent to remove union literature, known to and encouraged by upper management. As Crumb put it in two emails she sent on June 20: "They have the right to put up and we have the right to take down."

Brown agreed that he removed prounion postings many times "over the course of many days," sometimes four times a day. He also took union flyers from the break room. After removing prounion postings, Brown would turn them into the HR office, thus, providing upper management with incontrovertible evidence of his conduct. In any event, based on Crumb's emails, and Pedersen's testimony, upper hospital management was aware of the efforts to remove the union postings.[24] So were employees, who noticed that union literature was removed from bulletin boards but information unrelated to the union postings remained. Marshall witnessed a coworker, PICC nurse Cynthia Sullivan—a nurse who had reveled in re-

employees of the combat training video set to the music and lyrics of "This is the New Shit" by Marilyn Manson.

If this attack on Marshall came from Brown's mouth—it did not—it would at least, while still unsupportable, perhaps be understandable as a personal response to having one's conduct called into question. But as an employer's explanation for a dismissed charge of sexual harassment, it speaks volumes about the animus towards Marshall. It certainly would be reasonably likely to intimidate any future employee considering whether to file a sexual harassment charge against this employer. The Marilyn Manson-scripted video was directed to the entire ICU nursing staff, and Marshall had discussions with a number of nurses concerned about it. The filing of the sexual harassment charge over the showing of this video to nursing staff was clearly protected and concerted activity under the Act. See, *Fresh & Easy Neighborhood Market*, 361 NLRB No. 12, slip op. at 4–5 (2014). I do not reach the issue of whether the attack in the Respondent's brief on Marshall for filing the sexual harassment charge constitutes affirmative evidence of animus toward Marshall's protected and concerted activity.

[23] I note that the Respondent confines its defense on these allegations of the complaint to the claim, which I have rejected above, that the comments were not made by Brown. I further note that the General Counsel does not argue that Brown's comments to Ellis were unlawful and, hence, I do not consider the matter.

[24] GC Exh. 47 (June 1 email Brown to Pedersen, copied to "Leadership Team": "I came in Saturday to do staffing calls and removed a ton of Union material from the restroom again"); GC Exh. 45 (June 19 email from employee Cynthia Sullivan to Crumb and Brown, forwarded to Pedersen: "Must be I threw out enough of hers because now she's using hospital paper & green paper is in our copier right now"; Brown followed up with an email at the top of the exhibit that makes clear that Sullivan was referring to Marshall); GC 46 (June 19 email from employee Cynthia Sullivan to Brown, forwarded to Pedersen, on the subject of "union propaganda": "it's really annoying that Anne has to spend her time hanging up union postings instead of doing her job as the charge RN. . . . As fast as they are thrown away off the breakroom table she puts out new ones"); See, e.g., GC Exh. 24 (June 20 email from employee DiBartolo to Crumb telling her that she "walked through [emergency department] 3 times took down union info all 3 times in break room—with one of the notes saying 'It is illegal to remove union information from non-patient care areas" I am seeking your further guidance"; Crumb responded, copying Hospital CEO Rudd and Pedersen: "They have the right to put up and we have the right to take down"); GC Exh. 22 (June 20, email from Crumb to House Supervisors, copied to Pedersen, regarding the subject "Union material" and directing that "When you make your rounds please remove Union material at time clocks and break rooms or anywhere else you find them. Security has been instructed to do the same. They have the right to put up and we have the right to take down"); GC Exh. 23 (October 12, 2015 email from the Hospital's Chief Patient Safety Officer, forwarded to Pedersen: "You probably already know but just in case there are SEIU newsletters posted at timeclocks. Polly grabbed what she saw, I will check the other timeclocks").

porting to Crumb and Brown how much of Marshall's union literature she had thrown out (GC Exh. 45 and 46)—take down and throw out flyers from the break room. Moreover, Marshall's unrebutted testimony was that just days before the hearing in this matter, the Respondent's current ICU Director Patty Florentino and a patient relations advocate, Jackie Barr, continued to remove union literature and to tell Marshall that she could not post. (Tr. 265; 417).

Analysis

As discussed above, employees have the presumptive right under the Act to distribute union literature in employee breakrooms. *St. Margaret Mercy Healthcare Centers*, 350 NLRB at 203; *NLRB v. Baptist Hospital, Inc.*, 442 U.S. at 779–791. Moreover, it is unlawful discrimination, without regard to the employer's motive, to prohibit the posting of union literature—even in areas of the hospital where a ban on postings or distributions could lawfully be maintained—while permitting employees to post about nonunion activities. *Honeywell, Inc.*, 262 NLRB 1402 (1982), enfd. 722 F.2d 405 (8th Cir. 1983); *Container Corp. of America*, 244 NLRB 318, 318 fn. 2 (1979), enfd. 649 F.2d 1213 (6th Cir. 1981).

Here, the Hospital admits and does not contest that employees have a right to post nonhospital related material on the bulletin boards. "In these circumstances, an employer may not remove union notices." *Wal-Mart Stores*, 340 NLRB 703, 709 (2003); *Container Corp. of America*, 244 NLRB 318, 318 fn. 2 (1979), enfd. 649 F.2d 1213 (6th Cir. 1981).

The, Hospital is forbidden from discriminating against Section 7-related postings and distributions. And the evidence demonstrates that this was precisely what the employer did. The testimony and internal employer emails demonstrate that the Hospital engaged in a concerted effort to remove prounion postings. This included supervisor removing materials. *Jimmy John's*, 361 NLRB No. 27, slip op. at 24 (2014), 818 F.3d 397 (2016); *Eaton Technologies, Inc.,* 322 NLRB 848, 854 (1997). But also, in some instances, the encouragement of employees to do the same (see , e.g., GC Exh. 24). See, *Jimmy John's*, 361 NLRB No. 27, slip op. at 7–8 fn. 26.[25]

The Hospital's defense (R. Br. at 15) on this issue is meritless. It points out that employees were permitted to post and distribute union materials throughout the facility, as if, having allowed employees to post, the Respondent's campaign to remove the union material is not a denial of that right. In fact, this did seem to be the Hospital's view of the law, as articulated by Crumb ("They have the right to put up and we have the right to take down") but it is obviously not a tenable position. *Container Corp. of America*, 244 NLRB at 318 fn. 2.

The discriminatory removal of the posted union materials violates the right to post protected by the Act in these circumstances, and is a discriminatory refusal to permit posting of union literature.

[25] I point out that the internal emails and the testimony refute the suggestion of the Respondent that the union materials were only removed in nondiscriminatory fashion as part of a weekly removal of dated items from the bulletin boards.

E. Complaint Paragraph XI

(threats of reprisal and job loss on Facebook postings)

The General Counsel alleges that certain Facebook posts made by Hospital House Supervisor Florence Ogundele constitute unlawful threats of reprisal against employees in retaliation for protected and/or union activities.

As a house supervisor, Ogundele is in charge of placing patients who have been admitted or are being transferred between hospital departments. In this capacity she works with the various hospital department heads and charge nurses. She reports to Linda Crumb, the Assistant Vice President of Patient Services. It is admitted that Ogundele is an agent and supervisor of the Hospital within the meaning of the Act.

As discussed above, in June of 2015, a state sexual harassment charge was filed by Marshall regarding alleged actions by Brown. A hearing in that matter was conducted on November 10, in Binghamton, New York. The afternoon of the hearing, Nurse Marsland testified that he received a text from Nurse Marshall, who was in Binghamton to be a witness in the hearing. Marsland testified that in the text, Marshall told him that Ogundele had arrived at the hearing, in addition to Pedersen and Crumb. Marsland posted the following on his Facebook page on November 10:

> Please send Anne Marshall your words of encouragement and love. She is standing up for what is right, facing down Flo Ogundele, Linda Crumb,Alan Pedersen and a nasty POC lawyer representing CMC in a hearing with the NYS Human Rights Commission right now. FB PM and text her.[26]

Ogundele was quite upset and "responded back" with the following Facebook post:

> Just so you know Scott, I thought you have class am very surprised about your comments, well maybe am not. I am not your enemy or anyone enemy but I will not compromise my integrity to lie for anyone. To tell you the truth you don't want to make me your enemy I can go from nice to a bitch in 20 second flat. You cannot bully me or intimidate me, you want to fight let's do it face to face don't hide behind your wife name. Maybe it is time to start telling people the real truth. This is my advice for you, don't mess with me and tell your disciples the same. I am not afraid of any one of you

Thereafter, the following day, under the tagline "feeling fed up," Ogundele posted the following:

> So I was told to put my post down, that they understood my concern and anger, well I did that in respect for my boss. I have freedom of speech and not on company time I will say what I feel like saying.
> To my fellow CMC who is tired of all the bullshit going on at

[26] Marsland uses the name "Charlie Green" as his screen name for Facebook. The profile picture is of Marsland and there does not seem to be any question but that all the relevant people involved in this issue understood that Marsland "was" Charlie Green."

> work and the people supporting them this is what I want to say
> I want you to look at the people who are sending you e mail, sending letters to your home and calling you to join[ ] their cause after you told them to leave you alone. I want you to take a good look at them, you will see that if you follow any one of them it will lead you to unemployment, these people have nothing to lose. Now the only thing that make them relevant is bullying, intimidating and downright mean. They are not happy unless there's drama going on everywhere.
> They will not tell you the truth because that will be the right thing to do, and their followers are like monkey see monkey do. They don't have their own mind. So this people think they are liked not knowing what has been saying behind their back. I want you to take a look at their lives, I want you to think of how they are making coming to work unbearable because their voice is so loud like an empty barrel that is rolling down the street. I am not telling you not to give 2% of your earning to them but you need to think about what that 2% mean to your families. They've decided to attack[ ] me because I refused to compromise[ ] my dignity to lie for them. When you decided to attack me you just opened a can of worm that you [cannot] close. You pick the wrong qirl

Crumb testified that when she learned about the Ogundele's Facebook post—the first one—she immediately contacted Ogundele and told her that it "wasn't acceptable" and that "she needed to take the posting down." Ogundele was resistant, telling Crumb that "I was in my own home" and "I was being attacked, and I have the right to defend myself." Crumb insisted that the posting be removed and Ogundele told Crumb she would do so immediately because Crumb "asked her to."

When Ogundele returned to work, "a day or two later" she was called to Crumb's office and given a verbal warning by Crumb for "posting inappropriate comments" with the expectation that there would be "no further postings of this nature." The discipline was for the first Facebook post. Crumb was unaware of the second one. The disciplinary notice was dated November 13, 2015, and signed by Ogundele November 18, 2015.[27]

Analysis

The General Counsel alleges that the Ogundele's Facebook posts contained or constituted unlawful threats in violation of Section 8(a)(1) of the Act.

The test to determine if a statement violates Section 8(a)(1) is whether "under all the circumstances" the remark "reasonably tends to restrain, coerce, or interfere with the employee's rights guaranteed under the Act." *GM Electrics*, 323 NLRB 125, 127 (1997). It is well-settled that in evaluating the remarks, the Board does not consider either the motivation behind the remarks or their actual effect. *Miller Electric Pump & Plumbing*, 334 NLRB 824, 825 (2001); *Joy Recovery Technology Corp.*, 320 NLRB 356, 365 (1995), enfd. 134 F.3d 1307 (7th Cir. 1998); *GM Electrics*, supra (The test "does not depend on the motive or the successful effect of the coercion").

Moreover, when analyzing alleged unlawful statements the Board "view[s] employer statements from the standpoint of employees over whom the employer has a measure of economic power." *Mesker Door*, 357 NLRB 591, 595 (2011) (internal quotation and citation omitted); *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969) (in determining whether employer pronouncements violate Section 8(a)(1), the assessment "must be made in the context of its labor relations setting," and "must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear").

Here, to begin with, there can be no question but that Marsland's post seeking messages of support for Marshall was protected and concerted activity under the Act.[28]

Ogundele, for her part, was clearly upset to have been mentioned or identified in Marsland's post as being at the state hearing. And contrary to the Respondent's suggestion on brief, her remarks were explicitly directed to Marsland and his "disciples."[29]

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[27] I note that the record is not particularly clear as to when Ogundele's posts were removed, or even, precisely when they were made. However I conclude, as follows: Marsland testified credibly that his post was made the day of the hearing, which he believed to be November 10. This is corroborated by the date on the Facebook post (GC Exh. 8). Marshall testified credibly that Ogundele's first post was made the day of the hearing (i.e., November 10) and the second post the day after that hearing. This is consistent with Crumb's testimony that she saw the first Ogundele post, never saw the second, and called Ogundele and told her to take down the first post. The second post suggests that the first post has been or is being taken down, which, crediting Marshall, means that the first post stayed up only a day. I note that Ogundele's testimony suggests that the first post was not taken down until after she returned to work and met with Crumb, which could have been as much as a week later, on November 18. But given Crumb's testimony, I do not credit Ogundele on this, and in addition, Ogundele's testimony was very confused on this subject. Ogundele also testified, with more certainty, that the second post remained posted for only two to four hours before she took it down. I credit this, which is unrebutted, and in addition, is consistent with a timeline that has Crumb calling Ogundele on November 11, and having her take down the first post, which is consistent with Marshall's testimony. It is plausible that Ogundele, who was upset about the whole incident and only reluctantly took her first post down at Crumb's insistence, posted again, but then thought better of it after 2 to 4 hours.

[28] *Fresh & Easy Neighborhood Market*, 361 NLRB No. 12, slip op. at 7 (2014) (employee engaged in protected and concerted activity by seeking coworker support for sexual harassment charge). That Marsland was seeking to rally employee support for *another* employees' sexual harassment charge only intensifies—it does not detract from—the concerted and hence protected nature of his activity. Contrary to the characterization of Marsland's remarks by the Respondent in its brief, there is nothing in Marsland's comment that can reasonably be understood as attacking Ogundele's "integrity" (R. Br. at 17) or making "defamatory statements toward her." (R. Br. at 19.) And contrary to the contention in the Respondent's brief, Marsland testified credibly that this was his only post referencing Ogundele's participation in the state hearing (Tr. 516–518).

[29] Ogundele was clear in her testimony that she was responding to Marsland and his post (Tr. 76, 78, 79, 748–749). She also, at times, claimed that she was responding to comments beyond that shown in GC Exhibit 7, including issues at work. See, e.g., Tr. 727, 730–731. It

Indeed, Ogundele opened her remarks by addressing (Scott) Marsland and telling him that she was reacting to his post: "Just so you know Scott, I thought you have class am very surprised about your comments, well maybe am not." She then continued with what can only be reasonably understood as some kind of a warning to Marsland and those allied with him (his "disciples"):

> To tell you the truth you don't want to make me your enemy I can go from nice to a bitch in 20 second flat. You cannot bully me or intimidate me, you want to fight let's do it face to face don't hide behind your wife name. Maybe it is time to start telling people the real truth. This is my advice for you, don't mess with me and tell your disciples the same. I am not afraid of any one of you

This is a threat of unspecified reprisals. Although I assume that the challenge to fight and the "advice" not to "mess with me" were not actual threats of violence, the implied threat of retaliation of some kind is implicit but unmistakable. Indeed, Ogundele's warning that she "can go from nice to a bitch in 20 seconds flat" is a warning that she can quickly make things tougher should she be crossed. Of course, these comments were not made out of the blue or in the abstract—but in express response to Marsland's post rallying employee support for Marshall in the sexual harassment case she had filed. In this context, Ogundele's comments would reasonably be read as a not so subtle implied threat of retaliation for Marsland's protected and concerted activity. See, *Alterman Transport Lines, Inc.*, 308 NLRB 1282, 1286 (1992) (responding to question about drivers' loss of work, supervisor unlawfully implied retaliation when he replied "No more Mr. Nice Guy"); *Warehouse Groceries Mgmt., Inc.*, 254 NLRB 252, 258 (1981) (in context of discussing suspected union activity at facility manager referred to job loss occurring after union activity at other store was "squashed" and unlawfully added, "I can be a nice guy, but I can be nasty"); *Montgomery Ward & Co.*, 160 NLRB 1729, 1735 (1966) (in context of antiunion remarks statement that "I can be a nice guy" but "I don't have to be" is unlawful).

Ogundele's second post was also unlawful. Leaving aside the unalleged issue of disparagement of the union and its supporters, the post warns that following "the people who are sending you email, sending letters to your home and calling to join[ ] their cause . . . will lead you to unemployment." In the context of an ongoing union organizing campaign, and in the context of her post generally, an employee reading her post would reasonably conclude—indeed, it may be said that it would be unreasonable not to conclude—that Ogundele was referring to union activists. The warning is an explicit threat of job loss for those following the union activists. Burke-Parsons Bowlby, 288 NLRB 956, 959–960 (1988) (unlawful threat of job loss for supervisor to respond to employee's statement that it was "union time" by stating that "you[ ] all are going to wind up in the soup line"), enfd. 905 F.2d 803 (4th Cir. 1990).[30]

The Respondent's defense is without merit. Essentially, it argues (R. Br. at 19) that Ogundele's postings were a personal "lashing out" motivated by personal offense, do not explicitly mention the word union, and do not expressly state that she was going to take actions against people at work. However, Ogundele's intentions and motivations are beside the point.[31] Moreover, her failure to explicitly use the word union or to explicitly state that her threats would be carried out through use of her supervisory authority at work does not constitute a defense. The issue is the reasonable implications of Ogundele's remarks. Their reasonable implication is coercive. See, e.g., *Leather Center, Inc.,* 308 NLRB 16, 27 (1992) (manager unlawfully told employee he knew she was talking to employees about union "and that she should be careful" and manager unlawfully told another employee that "he was messing up by becoming involved with the Union" which was "not only jeopardizing his own job, but also the jobs of the people in his family who worked for the Respondent"); *Print Fulfillment Services*, 361 NLRB No. 144 (2014 (manager's anger and statement that he was "disappointed" in employee for supporting union found to be unlawful threat). As an agent of the Respondent, Ogundele's threats of reprisals against employees for union and protected activity are properly attributable to the Respondent, without regard to the "personal" capacity in which she made her threats.[32]

Finally, while the Respondent disciplined Ogundele for her remarks, nothing approaching timely repudiation of her unlawful conduct was conveyed to the employees. Hence, the Respondent cannot avoid liability for Ogundele's remarks based on a theory of repudiation. See, *Passavant Memorial Area*

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is possible there were comments following Marsland's post that were not reproduced, although the final comment on GC Exhibit 7 was made at 9:46 a.m. November 11, which I believe to be after Ogundele's first post. In any event, the introduction to Ogundele's first post makes clear that she is responding to Marsland. Her second post references her first post. The chief point is that an employee reading these posts would reasonably view Ogundele's postings as a response to Marsland's post, based on the references in Ogundele's post.

[30] I do not reach the question of whether Ogundele's concluding statement in her second post, that employees have "opened a can of worm[s] that you can not close. You pick the wrong qirl" is a threat of unspecified reprisal. Given that the finding of a violation based on it would not materially affect the remedy, I decline to consider it.

[31] *GM Electrics*, supra (The test "does not depend on the motive or the successful effect of the coercion"), and cases cited supra.

[32] *Glenroy Construction Co.*, 215 NLRB 866, 867 (1974) (employer violated Act based on supervisor's unauthorized and "personal" statement to employee that "he" did not want employee back to work because of Board charges filed by employee, even though employer was willing to reinstate employee and was waiting for employee to return to work), enfd. 527 F.2d 465 (7th Cir. 1975). Accord, *Ideal Elevator Corp.*, 295 NLRB 347, 347 fn. 2 (1989) ("the Board continues to hold that under Sec. 2(13) of the Act 'an employer is bound by the acts and statements of its supervisors whether specifically authorized or not.'" (quoting *Dorothy Shamrock Coal Co.*, 279 NLRB 1298, 1299 (1986), enfd. 833 F.2d 1263 (7th Cir. 1987)); *Triangle Sheet Metal Works, Inc.*, 238 NLRB 517, 520 (1978)("even though Biegler's comments were not authorized by higher management, he plainly was a supervisor and an agent of Respondent within the meaning of the Act and, therefore, his conduct is legally attributable to Respondent").

Hospital, 237 NLRB 138 (1978).[33]

F. Complaint paragraph X

(Marsland's Discipline for the September 24 staff meeting incident)

a. The emergency room; staffing for breaks

The hospital's emergency room has 19 rooms with 24 in-room beds, and six additional beds in hallways or a waiting room. There are a total of approximately 30–40 nurses who work in the emergency room (including part-time and per diem nurses).

The first two rooms of the emergency room department are used as "fast track" rooms, devoted to treatment of "lower acuity" patients, i.e., patients with less severe injuries, such as an ankle sprain, or medication refills. Patients assigned to fast track usually have a problem akin to what is dealt with in a nonemergency "urgent care" medical facility. Rooms three through six have a variety of patients, and often patients with mental health diagnosis are placed in rooms five and six because they are across from the charge desk and easily observed. Rooms seven, eight and ten also tend to have patients with mental health issues. Room nine has its own bathroom and oncologic patients or patients having sexual assault exams are often assigned to that room. Rooms 11–15 typically house the most critical or "high acuity" patients, such as trauma or burn patients, or someone about to imminently give birth. Rooms 16–19 were described as "a mixed bag" in terms of who is assigned there.

Amy Mathews is the nursing director of the emergency department. The unit manager reports to Mathews. In the summer and fall of 2015, the unit manager was Kevin Harris. There is a charge nurse on duty, and the remaining nurses are staff nurses.

Scott Marsland, who has been referenced earlier in this decision, is a staff nurse in the hospital's emergency department. He transferred there from elsewhere in the Hospital in 2007. He has worked as a charge nurse in the emergency room, a preceptor, and worked with a group of physicians and pharmacists to develop software applications used in the department. He was known to management to be supportive of the union drive. In addition to his encounter with Pedersen in the cafeteria, Marsland was listed in an April 28 email from Mathews to Pedersen as one of about ten emergency room employees "Known Pro" union. (Approximately 11 employees were listed by name as "Anti" union).

Marsland, testified that based on his 15 years of experience "the biggest issues that's persisted through that time has been the difficulty of nurses in all departments getting breaks consistently," a problem Marsland and his coworkers discussed in terms of "what we felt were unsafe staffing ratios." Marsland has spoken with his director Mathews about it in the past and in 2013, wrote a letter on the subject to Hospital CEO Rudd, which led to a formal meeting on the subject with Rudd and Mathews.

More recently, Marsland wrote to the New York State Department of Labor in June 2015 about the break issue. Marsland estimated that "[h]istorically" nurses get their lunch breaks "less than 50 percent of the time." However, since the advent of the union organizing campaign, Marsland testified that he received lunch breaks more than 50 percent of the time. Indeed, the record includes an email dated April 28, from Susan Nohelty to Crumb and Mathews stating that

One of the major complaints by staff in the ED is their inability to take meal breaks. In light of the union activity, John would like a plan to be place as to how we can get staff to take their meal breaks.

Mathews testified that getting staff to leave their patient assignments to take a break is a frequent problem in the emergency department. According to Marsland, "the discussion of not getting breaks is part of the air that we breathe in at Cayuga Medical Center." A chief problem for the nurses in trying to take their breaks was their concern that there was not adequate coverage for their patients during the breaks.

When an emergency nurse takes a break, "coverage" for the patients under the nurse's care is provided in different ways, with the charge nurse playing a large role in determining how the break will be covered. Sometimes the charge nurse can cover a staff nurse's break. Sometimes a nurse from another department can cover. Often a nurse working in the Fast Track section of the emergency room is free to cover an emergency room nurse on break if there are no patients in the Fast Track section. This is one method used to cover breaks.

However, according to Marsland, relying on Fast Track nurses to cover breaks for the rest of the emergency department nurses is problematic:

Historically the nurses work in the Fast Track Section are nurse[s] that are either kind of burnt out and coasting towards retirement or nurses that are neophytes that don't have a high level of critical skill. And they're kind of getting [ ]up to speed in the Emergency Department.

Marsland testified that there was "disgruntlement" and repeated discussion among the emergency room nurses, as often as weekly, about a nurse named "Deb [Scott's] abilities and whether or not she was capable of covering breaks." Deb Scott has taken on a role as a nurse educator but spends about 50 percent of her time working in the Fast Track section of the emergency department. Marsland had been told by Cheryl Durkee that concerns regarding Scott had been brought to emergency room director Amy Mathews on a multiple occasions. Durkee confirmed that the competency of some of the Fast Track nurses to care for the more critically ill patients in the emergency room during breaks was discussed on multiple occasions with the charge nurse, and that she had discussed it with unit manager Kevin Harris.

[33] A third post (GC Exh. 10) by Ogundele had "nothing to do" with the other two, according to Ogundele. There is no testimony from Marsland, Marshall, or anyone, identifying the date of this third post, or providing more context. It does concern the union and Marsland, as Ogundele admitted. It is similar in many respects to the two posts discussed above. It certainly contains additional threats of unspecified reprisals. However, given the uncertainty surrounding the date and circumstances of its posting, and given that the finding of a violation based on it would not materially affect the remedy, I decline to consider the third post.

In this regard, Marsland testified that another nurse, Gayle Peck, who had been out of the work force for many years and who came back to nursing about a year before the hearing, had been floating to the Fast Track section of the emergency room when the unit was shortstaffed. Marsland testified that Peck sometimes—not as frequently as Scott—was assigned to cover emergency room nurses' breaks, and that her ability to adequately provide break coverage was a subject of conversation among the nurses.

b. The September 24 staff meeting

Mathews holds "bi-weekly" staff meetings with the emergency department staff. Mathews testifies that at the meeting she "expect[s] feedback and I expect for us to talk about certain things in the department. Things that can make it better. Challenges we have." There is "dialogue" between employees and management at every meeting. The subject of breaks has been a topic of a number of meetings.

A staff meeting was held on September 24, 2015, at approximately 7:15 a.m., with the approximately eleven nurses then at work gathering at the charge nurse's station. In addition, a provider, such as a physicians' assistant, would have been in the vicinity of the meeting. However, the meeting was held out of the earshot of patients, according to Mathews. As director of the emergency room, Mathews convened and conducted the meeting.

Mathews began the meeting by talking about the issue of covering lunch breaks. She praised the nurses for taking more of their breaks in the last couple of weeks. She stressed the need for nurses "to take care of one another" and for the nurses to "get out to breaks." Mathews mentioned, as an example, that the day before, nurses from Fast Track, specifically Deb Scott and Gayle Peck, had covered several staff nurses' breaks.

Marsland had previously refused to take a lunch when Deb Scott was assigned to cover his break. Marsland gave a couple of examples where Scott had covered his patients where there were "important things that should have been done that weren't." Marsland testified that the day before this meeting he had a conversation with a nurse uncomfortable with the coverage situation mentioned by Mathews. When the nurse and Marsland met on break in the cafeteria, the other nurse told him that she was "really uncomfortable" because of the nurse covering her patients. This nurse "had several unstable patients. And she was concerned about Deb's capacity to care for those patients."

Hearing Mathews' comments lauding the break coverage provided by Scott and Peck, Marsland blurted out that he was "not comfortable with Deb taking care of my patients, that I didn't think that she was competent to care for critical patients." Marsland said, "You know, if you're going to have nurses cover breaks, they need to be capable of handling critical unstable patients."

Mathews responded, telling Marsland, "I don't think this is the right forum for this to be addressed. If you have concerns you should come see me." Marsland persisted in his comments regarding Scott. Mathews, who testified that she was "trying to move it along" to avoid these kind of statements about another employee, asked Marsland to stop, "I think it was like three times." Marsland went on to make comments about Peck, to whom Mathews had also referred in her earlier comments. Marsland said that Peck, who was new to the floor and had been there only a day or two, "is like a nursing student. And she should not be by herself in Fast Track. She doesn't even know how to mix up a banana bag," which Marsland explained was an IV bag with vitamins "that's probably one of the first things that you learn as an emergency nurse." Mathews told Marsland that "it's inappropriate" and "we need to move on." She said, "That's it. That's enough. This isn't the place. . . . we need to move on." Mathews then switched the topic of the meeting to her next item on the agenda, and that was the end of Marsland's comments.

Marsland's account of the incident was similar. As Marsland put it, Mathews "tried to shut down my comments. And I persisted and she tried to shut it down." Marsland testified that before he stopped talking he said, "we're all aware that there is a complaint within the New York State Department of Labor about breaks at this point. And sooner or later the hospital is going to have to follow the New York State labor law."

Neither Deb Scott nor Gayle Peck was in attendance at the meeting.

However, after rounding, Mathews returned to her office to find the phone ringing. It was Deb Scott, "beside herself," saying that she had heard what had happened at the staff meeting.

c. Marsland is issued a disciplinary warning

Mathews testified that she viewed Marsland's comments as violating the Nursing COC rule, discussed above, prohibiting the criticizing of coworkers or other staff in the presence of others in the workplace. This is because, as Mathews testified, Marsland "was saying in front of a group of a total of 11 people, plus providers that were sitting nearby that this nurse is incompetent. So he wasn't going to take a break." Mathews testified that Marsland was "publicly ridiculing her competence in front of other people. . . . [I]f he had a concern, he should have come and addressed it privately, not . . . openly ridicule her in front of other people that don't know whether its real or not." Mathews testified that she had never previously "disciplined anybody in the past for voicing a legitimate concern. But nobody has voiced a concern that has torn down another person in front of a group of people. . . . [T]hat's not the forum to be tearing somebody else apart. I wouldn't let them do it to him. I wouldn't let them do it to anybody else."

Mathews determined that she would issue discipline to Marsland for the incident. The evidence shows that Mathews consulted with Pedersen, and she says she might have talked also to Crumb about the discipline before it was issued to Marsland. Mathews asked Pedersen in an email, "is there anything more than the code of conduct that we can use with Scott's incident. Does it only get a written verbal for his actions?"

However, in the end, the basis of the discipline was Marsland's COC violation, specifically, according to Mathews, for violating the COC rule against criticizing coworkers or other staff in the presence of others in the workplace. Mathews testified that she took action against Marsland because "I had

thought about it and we have a Nursing Code of Conduct and you need to hold everybody to that."

On October 5, 2015, Mathews told Marsland that she needed to talk to him. Marsland told her, "if this is about the Union, I am not going to go talk to you anywhere." Mathews told Marsland, "No, it's not about the Union. It's about what you said during the staff meeting the other day."

Marsland and Mathews then went back to Mathews' office. In the meeting, he was issued a "verbal written warning" for his conduct at the September 24, 2015 meeting. The warning is the first in a multistep disciplinary procedure. The notice cited the following "code of conduct violations":

- Criticizes coworkers or other staff in the presence of others in the workplace or in the presence of patients.
- Publicly shames others

As the "Reason for Counseling" the disciplinary notice stated:

> In the 0715 staff meeting on 09/24/2015 the Emergency Department Team was discussing strategies used to successfully implement lunch breaks during the previous days in the department.
>
> In front of 11 team members during this staff meeting Scott verbally and in a bullying manner criticized ED team member, Deb Scott, who was not present at the meeting. Scott was openly verbalizing that Deb Scott was "not a competent Emergency Department RN to care for his patients"
>
> Scott was instructed that his comments were inappropriate and that the staff meeting was not the forum for such conversation. Scott continued repeatedly in a persistent manner to openly criticize and verbally ridicule Deb Scott regardless of being instructed to stop his behavior. Scott then began to openly criticize another RN, Gail Peck who has just begun cross training in the ED because she needed significant help mixing a patient medication.
>
> **Expectation:**
>
> The expectations are that you will:
>
> - Follow the Nursing Code of Conduct.
> - You will not criticize staff in the presence of others in the workplace.
> - You will not publicly shame others
>
> Failure to comply with the Nursing Code of Conduct and further incidents will result in progression of the disciplinary process. A written copy of the Nursing Code Conduct has been provided to you and is also available via the Maxima eLibrary Policy and Procedure web server.

Reviewing the "Reason for Counseling" portion of the disciplinary notice from the witness stand, Marsland testified that he did not disagree with the factual recitation of what had occurred, except that he did disagree that he acted in a "bullying" manner or that he had "ridiculed" anyone.

The meeting between Marsland and Mathews was recorded by Marsland. The recording and an agreed-to transcript of the recording were admitted into evidence as General Counsel Exhibits 34(a), and (b).

The disciplinary meeting involved, in addition to the issuance of the verbal warning, a candid but respectful exchange of views between two people who had worked together for some time. Mathews, to a large extent, reiterated the same points she made in her testimony: the issue was "talking about somebody outright in front of an open group of people" and that Marsland "continued" when she asked him to stop. Marsland expressed somewhat terse, but straightforward agreement with Mathews' points—although he seemed surprised when Mathews mentioned his comments about Peck, he contended that his comments about Peck were "benign."

However, while he "acknowledged my mistake," he seemed incredulous that it was being treated as a disciplinary event. Marsland told Mathews that "we all know the context of this" and when Mathews asked, the "context of what," Marsland replied, "of the union attempt." Mathews said "it has nothing to do with the union. Marsland said, "I have trouble believing that because you and I have worked together as long as we have, and there have been plenty of things that have come up with me, and this is the first time you're giving me a verbal warning." Mathews reiterated that it had nothing to do with the Union.

Marsland refused to sign the verbal warning disciplinary notice, and argued that the code of conduct was not enforced against many others—and he offered some examples---of people who gossiped and acted inappropriately. Mathews said she was unaware of the examples he was giving. Marsland also argued that the COC, while it is supposed to apply to management, "it's not applied to management": "You know, the reason they finally got rid of that—that bastard who was in the ICU, who was—who violated every single line on that code of conduct. You know, who—who engaged in sexual harassment, who engaged in intimidation"—Mathews told Marsland, "This isn't about Joel."

They talked further, Marsland saying, "I think the message you're telling me, I'm not supposed to use anybody's name in a staff meeting. Pro or con. You just don't want people talking about"—Mathews added, "not when you're talking openly about people in a derogatory sense . . . . in front of other people." Marsland added, "You know, we need—we need to be able to talk to each other, not just me talk to you. Like—I mean, that's part of why we want a union. Like, nurses need to be able to talk to each other, exactly. That's what I'm saying about Deb."

Marsland then gave some specific examples of his concerns about the employee in question, in more detail than he went into in the staff meeting.

On cross-examination Mathews agreed that every month she sends out the results of monthly patient surveys to the entire department—including to doctors, nurses, and aides. These patient surveys include all patient comments, including some that criticize nurses by name.

Analysis

The General Counsel alleges that the Respondent's discipline of Marsland violates Section 8(a)(1) of the Act. More specifically, the General Counsel alleges two independent albeit relat-

ed theories of violation. First the General Counsel argues that Marsland's discipline is unlawful because it was imposed pursuant to an unlawful rule—i.e., the COC rule against criticizing coworker or staff in front of others. Second the General Counsel argues that, apart from the COC rule, the conduct for which Marsland was disciplined constitutes protected and concerted activity, and therefore disciplining him for it is unlawful. I will consider the second theory first, and then turn to the theory of violation based on the unlawful rule.

The General Counsel alleges that Marsland was disciplined for protected and concerted activity, and that any misconduct he engaged in during the course of that protected activity is insufficient to cause him to lose the Act's protections.

Certainly, the issues of breaks and staffing are at the core of Section 7's concerns, as they are issues "intimately related to the conditions under which the employees worked." *Misericordia Hospital Center,* 246 NLRB 351, 356 (1979), enfd. 623 F.2d 808 (2d Cir. 1980); *Valley Hospital Medical Center*, 351 NLRB 1250, 1252 (2007), enfd. 358 Fed. Appx. 783 (9th Cir. 2009); *Chipolte Mexican Grill*, 364 NLRB No. 72, slip op. at 1 fn. 3 (2016) (petition over breaks protected by Act); *William Beaumont Hospital*, 363 NLRB No. 162, slip op. at 1 fn. 2 (2016).

As a threshold matter, I agree with the General Counsel that in making his comments at the meeting, Marsland was acting in concerted fashion for purposes of the Act. The Respondent argues that Marsland acted alone, and thus, his actions were not concerted and, therefore, not protected. However, the concept of "mutual aid or protection" focuses on the goal of concerted activity; chiefly, whether the employee or employees involved are seeking to "improve terms and conditions of employment or otherwise improve their lot as employees." *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565 (1978). "[T]he analysis focuses on whether there is a link between the activity and matters concerning the workplace or employees' interests as employees." *Fresh & Easy Neighborhood Market*, 361 NLRB No. 12, slip op. at 3 (2014). In this case, at a meeting of employees, Marsland raised an issue that had repeatedly been a subject of previous employee meetings, and that had been repeatedly discussed among the employees themselves and, indeed, had just been raised to Marsland by a coworker the day before, had been the subject of a Department of Labor charge, and was recognized by upper management as "One of the major complaints by staff in the ED." As Marsland so vividly put it: "the discussion of not getting breaks is part of the air that we breathe in at Cayuga Medical Center."

The fact that Marsland was the only employee to respond to Mathews' raising of the subject at an employee meeting does not undercut the concerted nature of Marsland's conduct. As the Board has recently reiterated, "concerted activity includes cases 'where individual employees seek to initiate or to induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management.'" Fresh and Easy Market, supra at slop op. 3 (emphasis added), quoting *Meyers Industries*, 281 NLRB 882, 887 (1986) (Meyers II), affd. 835 F.2d 1481 (D.C. Cir. 1987). That is what Marsland did. See, *Consumers Power Co.*, 282 NLRB 130, 131–132 (1986) (finding that even if employee had acted alone, his individual complaint would have been concerted because it was a continuation of his and his coworkers' earlier concerted complaints raised at the employer's weekly meetings"); *JMC Transport*, 272 NLRB 545 fn. 2 (1984), enfd. 776 F.2d 612 (6th Cir. 1985) (finding an employee's pay protest concerted because it was "a continuation of protected concerted activity" involving a meeting wherein two employees jointly complained to management about wage payments); *Mike Yurosek & Sons, Inc.*, 306 NLRB 1037, 1038 (1992) ("We will find that individual action is concerted where the evidence supports a finding that the concerns expressed by the individual are logical outgrowth of the concerns expressed by the group.").

The Respondent also argues that it did not discipline Marsland for speaking up on the issue of providing employees adequate break coverage, but rather, for his criticism of coworkers and having to be asked, perhaps three times, to stop. However, as far as Board precedent goes, this argument is a red herring. "Where, as here, the conduct at issue arises from protected activity, the Board does not consider such conduct as a separate and independent basis for discipline." *Goya Foods Inc.*, 356 NLRB 476, 477 fn. 8 (2011). The aspect of Marsland's conduct to which the Respondent objects—his persistence in making negative comments about two other employees' performance—was part of the res gestae of Marsland's protected conduct of bringing to Mathews the concerns on the subject of employees taking their breaks. His comments were inextricably linked with and directly related to this oft-discussed and protected subject. Even assuming, arguendo, that Marsland should not have made the comments he made about other employees, even assuming that it constituted misconduct to continue in the face of Mathews' direction for him to stop, the comments were inextricably part of—indeed, they make no sense apart from—Marsland's and the employees well-known concerns about the Hospital having the staffing on hand to enable them to take their breaks.

Given this, the issue is whether Marsland may be subjected to discipline for his actions made in the course of engaging in protected and concerted activity. When an employee is disciplined for conduct that is part of the res gestae of protected concerted activities, "the pertinent question is whether the conduct is sufficiently egregious to remove it from the protection of the Act." *Stanford Hotel, LLC*, 344 NLRB 558, 558 (2005); *Roemer Industries, Inc.*, 362 NLRB No. 96, slip op. at 6 (2015).[34]

To the extent that Marsland's offense was criticizing co-employees in front of others, his actions cannot reasonably be found to have cost him the protection of the Act. The Board has explained, quoting the Seventh Circuit in *Dreis & Krump Mfg. v. NLRB*, 544 F.2d 320, 329 (7th Cir. 1976), that "the

[34] I note that the mildness or the severity of the discipline is not at issue. Where an employee is engaged in misconduct during the course of protected activity, either he loses the protection of the Act because of the misconduct, and may be disciplined, or he does not and may not be. *Eagle-Picher Industries*, 331 NLRB 169 (2000) (lack of severity of discipline not a determining factor in whether discipline lawful; rejecting judge's reliance on his finding that employer issued only "mild discipline" to employee as factor in finding discipline lawful).

standard for determining whether specified conduct is removed from the protections of the Act [is] as articulated by the Board: communications occurring during the course of otherwise protected activity remain likewise protected unless found to be so violent or of such serious character as to render the employee unfit for further service." *St. Margaret Mercy Healthcare Centers*, 350 NLRB 203, 204–205 (2007) (internal quotes omitted) (Board bracketing).

In terms of Marsland's criticism of the two other employees, it may have been impolite or more forward and direct than was comfortable. It was not well-received by at least one employee who was not present. But it also must be said that it was nonprofane, and nonthreatening, and did not involve direct confrontation, much less a physical confrontation. Far worse has been found not grounds for losing the protections of the Act.[35]

Of course, this is a hospital, not a factory or a restaurant kitchen. But in full context that also cuts in favor of Marsland, in my view. Most significantly, Marsland was not engaged in criticism in the sense of gossip or lewd demeaning jokes. This was a serious matter about a subject of central concern to management and the employees. In other words, the comments, whatever else they were, were on topic and about a profoundly protected and concerted subject. Indeed, the Hospital routinely circulates to employees, patient survey responses that include criticism of nurses by name. As with the survey responses, with Marsland's comments one cannot, one must not, forget that the employees and the Hospital, in an emergency department no less, are engaged routinely in matters of life and death. The stakes are high and whatever one thinks of Marsland's comments, they were not of a petty nature or on an unimportant matter, or unrelated to employee terms and conditions of employment.[36]

The point is not that Marsland is right—the merits of his opinion are beside the point and beyond my ken. The point is that if the Act protects emotional, vigorous and robust discussions among employees, and it does,[37] then Marsland's criticisms of employee performance, rooted as they were in the protected and concerted issues of staffing and breaks, must remain protected. Under the circumstances, it is a stretch to accept that they constitute "misconduct" at all.

The other objection to Marsland's comments was rooted in his persistence in making the comments over the objection of Mathews. Viewed as a confrontation with a supervisor, "the proper inquiry in this case is whether [Marsland's] conduct was so egregious to lose the protection of the Act under Atlantic Steel." *Public Service Co. of New Mexico*, 364 NLRB No. 86, slip op. at 7 (2016), referencing *Atlantic Steel Co.*, 245 NLRB 814 (1979). "Typically, the Board has applied the *Atlantic* Steel factors to analyze whether direct communications, face-to-face in the workplace, between an employee and a manager or supervisor constituted conduct so opprobrious that the employee lost the protection of the Act." *Triple Play Sports Bar & Grille*, 361 NLRB No. 31, slip op. at 4 (2014), enfd. 629 Fed. Appx. 33 (2d Cir. 2015).

The first Atlantic Steel factor looks to the place of the discussion. In this case, the incident took place at an employee meeting, a meeting where Mathews "expects feedback" and "dialogue." The Board has held that this warrants the first factor weighing in favor of protection. *Datwyler Rubber & Plastics, Inc.*, 350 NLRB 669, 670 (2007) ("With respect to the first factor, the place of the discussion weighs in favor of protection. [The employee's] outburst occurred during an employee meeting, where employees were free to raise workplace issues"). Moreover, while the incident occurred in front of other employees, it was outside the earshot of patients, and did not entail a risk of disruption of production as the employees who could hear were assembled at the meeting. *Datwyler Rubber & Plastics*, Id. (location "would not disrupt the Respondent's work process").

The subject matter of the comments is the second *Atlantic* Steel factor. Here, as discussed above, the subject matter of Marsland's comments was employee coverage so employees could take breaks, and more generally an issue of staffing. This must be considered a subject at the heart of the Act's protection and indeed, the subject was addressed at the meeting in response to management raising the subject.

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[35] See e.g., *Roemer Industries*, 362 NLRB No. 96, slip op. at 9 (unlawful to discharge employee union griever who calling coemployee a "backstabber"); *Nor-Cal Beverage Co.,* 330 NLRB 610 (2000) (employer violated Sec. 8(a)(3) by disciplining employee pursuant to anti-harassment policy for calling another employee "a scab" to his face during protected activity); *Tillford Contractors*, 317 NLRB 68, 69 (1995) (union steward did not lose protection of the Act for confronting employee over concern that contract was being breached, threatening to file internal union charges against him, and telling him "You've got no goddamn business being here," and "The best thing you could do is get the hell away from us"); *Postal Service*, 250 NLRB 4 (1980) (employer violated the Act by disciplining union griever who called supervisor "stupid ass" during discussion of possible grievance); *Union Carbide Corp.,* 331 NLRB 356, 359–360 (2000) (employee engaged in protected activity did not lose the protection of the Act by calling his supervisor a "f-g liar."); *St. Margaret Mercy Healthcare Centers*, 350 NLRB at 204–205 (nurse did not lose Act's protection by speaking critically with other nurses about newly implemented managerial policies and, in a statement overheard by a supervisor, telling a colleague that management had "not [been] truthful" with employees and that their new evaluation process "was just a management ploy").

[36] This is driven home, in gripping fashion, by some of the incidents shared by Marsland privately with Mathews during his disciplinary meeting, where he elaborated on his concerns in far more detail than he did at the group meeting. See, GC Exh. 34(b) at 9–11.

[37] "Labor relations often involve heated disputes likely to engender ill feelings and strong responses. Accordingly, an employee's right to engage in concerted activity permit[s] some leeway for impulsive behavior." *Iovan Health Systems v. NLRB*, 795 F.3d 68, 86 (D.C. Cir. 2015) (internal citations omitted) (court's brackets); *Consolidated Diesel Co. v. NLRB*, 263 F.3d 345, 354 (4th Cir. 2001) ("There would be nothing left of § 7 rights if every time employees exercised them in a way that was somehow offensive to someone, they were subject to coercive proceedings"); *Blue Chip Casino, LLC*, 341 NLRB 548, 555 (2004) ("The Act designs a system where . . . it is necessary that discussion among employees and attempts to persuade be robust and vigorous. A necessary consequence of such robust discussion is that some employees may feel annoyed or otherwise upset by the efforts to persuade them. But employees may have to endure some level of annoyance if the Act's goals are to be achieved").

The third ***Atlantic*** Steel factor is the nature of the outburst. In this regard Marsland's offending conduct was to continue to talk about the issue, and more specifically to continue his criticism of two other employees, after Mathews repeatedly told him to stop, or, as Marsland put it "tried to shut down my comments." While I fully agree that an employee does not have the right to take over or disrupt a staff meeting, and while Marsland might have been "out of line" to persist over Mathews objections, I find that his actions fall far short of the type of "opprobrious conduct" (*Atlantic Steel*, 245 NLRB at 816) that would weigh against continued protection of the Act. The Board distinguishes between true insubordination and behavior that is only disrespectful, rude and defiant. At most, Marsland's was the latter. *Goya Foods, Inc.*, 356 NLRB at 478 (employee who initially refused supervisor's instruction to punch out and go home but then complied, was found to have engaged in disrespectful, rude, and defiant behavior, and thus, to fall under the Act's protection). Unlike so many "Atlantic Steel" cases, Marsland's conduct involved no profanity, no threats—there is not even evidence of yelling. Moreover, it is of significance to assessing the scope of disruption represented by Marsland's comment that this was a meeting where Mathews "expect[s] feedback" and gets it "every staff meeting." The meetings are designed for employees to weigh in. Thus, if Marsland went too far and ignored the directive to cease his commenting, it was in the context of a meeting where employees were encouraged to speak up. Thus, Marsland's offense was not raising the issue but rather, not cutting off his commentary immediately as directed. Moreover, it is clear from Mathews' testimony, the disciplinary meeting, and the write-up of the discipline, that the weight of Mathews' concern and decision to discipline Marsland was his criticism of coemployees and their ability to safely cover breaks. Marsland's unwillingness to stop speaking when told to, played a minor role in this disciplinary event. And as discussed above, the criticism of coemployees, where, as here, it was firmly rooted in a subject directly related to employee terms and conditions of employment, is protected activity. In other word, when you remove the protected subject matter from the equation, you are left with an offense of continuing to address a legitimate subject after being told to stop, a portion of the offense that even Mathews did not emphasize. I am sure that if he had not criticized coworkers, there would be no issue at all. There was no estimate given for how long after Mathews asked him to stop that Marsland continued, but based on all the testimony it was not an extended event, perhaps a minute, perhaps two. His continuing to speak after Mathews asked him not to, has all the earmarks of an impulsive and not premeditated event, another factor weighing in favor of continued protection under the Act. *Kiewit Power Constructors, Co.*, 355 NLRB 708, 710 (2010) (observing that the employee's conduct consisted of a brief, verbal outburst in finding factor weighed in favor of protection), enfd. 652 F.3d 22 (D.C. Cir. 2011); *Kingsbury, Inc.*, 355 NLRB 1195, 1204 (2010) ("A line must be drawn between situations where employees exceed the bounds of lawful conduct in a moment of exuberance or in a manner not activated by improper motives and those flagrant cases in which misconduct is violent or of such serious character as to render the employees unfit for further service") (internal quotations omitted).

Finally, the fourth Atlantic Steel factor cuts against protection. There was no unfair labor practice by the employer that provoked the outburst.

In sum, there is one Atlantic Steel factor, the fourth, that weighs against protection of the Act. Three Atlantic Steel factors weigh in favor of protection. This suggests that Marsland's conduct remain protected. See *Noble Metal Processing, Inc.*, 346 NLRB 795, 795 fn. 2 (2006) (lack of provocation "clearly outweighed by the initial three factors" which weighed in favor of continued protection of Act).

Having said that, the Board properly rejects the concept "that the final outcome is determined simply by counting the number of factors favoring and disfavoring protection." *Tampa Tribune*, 351 NLRB 1324, 1327 fn. 19 (2007), enft. denied on other grounds, 560 F.3d 181 (4th Cir. 2009). See, *Trus Joist MacMillan,* 341 NLRB 369, 371–372 (2004) (Board has found that the severe nature-of-the-outburst factor alone may carry enough weight to cause forfeiture of the Act's protection). Apart from counting of the factors, I find that the second and third factor most strongly weigh in favor of the protection of the Act. The subject is central to the purpose of the Act. The misconduct is slight, for all the reasons stated. In sum, I believe it would be unprecedented—completely unmoored from precedent—for the Board to find that in these circumstances Marsland has lost the protection of the Act. I am unaware of any case in which such a brief, nonthreatening, nonprofane incident led to the loss of the Act's protection. Applying Atlantic Steel, I would find that Marsland did not lose the protection of the Act.

Accordingly, I find that Marsland was disciplined for conduct engaged in during the course of protected and concerted activity. His comments and actions in the course of this protected activity do not warrant loss of the Act's protections. His discipline violated Section 8(a)(1) of the Act.

Although that ends the matter, I note that the General Counsel's other theory of liability—that Marsland was unlawfully disciplined under an unlawful rule—has also been proven. The Board holds that,

> discipline imposed pursuant to an unlawfully overbroad rule violates the Act in those situations in which an employee violated the rule by (1) engaging in protected conduct or (2) engaging in conduct that otherwise implicates the concerns underlying Section 7 of the Act.

Continental Group, Inc., 357 NLRB 409, 411–414 (2011), clarifying standard set forth in *Double Eagle Hotel & Casino*, 341 NLRB 112, 112 fn. 3 (2004), enfd. 414 F.3d 1249 (10th Cir. 2005).

Even when it has been shown that the employee violated the rule by engaging in protected conduct or conduct that otherwise implicates Section 7 concerns, Board precedent provides that the employer has an affirmative defense available to it to avoid liability:

> Nevertheless, an employer will avoid liability for discipline imposed pursuant to an overbroad rule if it can establish that the employee's conduct actually interfered with the employ-

> ee's own work or that of other employees or otherwise actually interfered with the employer's operations, and that the interference, rather than the violation of the rule, was the reason for the discipline. It is the employer's burden, not only to assert this affirmative defense, but also to establish that the employee's interference with production or operations was the actual reason for the discipline.

Continental Group, 357 NLRB at 412.

Given this standard, there can be no question but that the discipline of Marsland violated the Act. As I have found, supra, the rule which Marsland was disciplined for violating unlawfully overbroad. I have found that Marsland was disciplined under the rule by engaging in protected activity, as required by prong 1 of the Continental Group theory of liability. Even assuming, arguendo, that Marsland's conduct was not protected, his actions "otherwise implicate" Section 7 concerns—the issue was breaks and staffing—and accordingly, use of the overbroad rule to discipline Marsland would violate prong 2 of Continental Group. The Respondent has not asserted an affirmative defense, as required by Continental Group. Moreover, given that the incident occurred during a staff meeting, any effort to show that Marsland's conduct "actually interfered with [Marsland's] own work" would be unavailing, as would any effort to "establish that the employee's interference with production or operations was the actual reason for the discipline." 357 NLRB at 412. Accordingly, I find that Marsland's was unlawfully disciplined under an unlawfully broad rule, in violation of Section 8(a)(1).

G. Complaint paragraph XII and IX

(Marshall's suspension, warning, demotion, adverse evaluation, and confidentiality of disciplinary meeting)

1. Complaint paragraph XII(a)

a. Team leaders, charge nurses, and the ICU

As discussed, Anne Marshall was a nurse in the hospital's intensive care unit (ICU). Marshall began at the Hospital in 2007 as a per-diem employee. In 2011, she became a full-time staff nurse. Soon thereafter she became a charge nurse in ICU. In August 2013, she became a team leader. Until her suspension on June 26, 2015, Marshall had an unblemished disciplinary record, and an unbroken record of superlative annual personnel reviews dating back to the first annual review in May 2008, issued after her hire in 2007.

The team leader role was created in ICU in 2011. Nurses interested in the position applied through an internal application process. Christine Mancelli was a team leader and charge nurse, along with Marshall, in the ICU from 2011 when the position was first established until she resigned in October 2015. Mancelli testified that from the inception of the team leader position efforts were made through meetings, discussions, and draft documents, to establish the parameters of responsibilities and duties for employees in this new leadership role. However the Hospital "never seemed to be able to get anything formalized." Rough drafts of a job description were discussed but never adopted. As Mancelli testified, "we worked very hard to establish a specific job role, duty, and expectation list or some type of policy. And we were never able to get that. And there was a whole lot of responsibility and accountability for the job with no clear guidelines and formal description of duties."

Despite the lack of a formal job description, in practice both team leader and charge nurse are "lead" positions with significant responsibility for daily operations including patient flow, leadership of other staff nurses, interface with other department charge nurses at twice-a-day inter-departmental bed meetings, oversight of nurse-to-patient assignments, unit admissions and discharges, and other responsibilities beyond direct patient care. Charge nurses and team leaders also played an active role in staffing, anticipating "holes" in the schedule and contacting off-work nurses in an effort to have them come in work as needed. Team leaders have some responsibility for quality assurance and payroll functions that charge leaders do not typically have.[38]

Many of these responsibilities overlap with responsibilities of unit and departmental heads. The departmental directors also have staffing responsibility and are the final departmental authority. They ultimately oversee the department, from budgeting to discipline, and serve as the liaison between the hospital's administration and the unit.

Among the nurses, the team leader is in charge when he or she is working, but sometimes a charge nurse is used when there are no team leaders. However, it is also accurate that formally the nurses report to the department director, not to the team leader.

The role of the team leader changes with changes in the department director. As Mancelli testified, particularly in the ICU, which had a series of interim directors beginning in April 2015, each director has "a different management style, a different idea of how things should be run and how things should flow, and kind of the expectations of us and other nurses."

The hospital's ICU has 16 beds. As the name "intensive care unit" suggests, the Hospital's most acutely sick patients are assigned to ICU. Staffing ratios are necessarily low in ICU: typically two patients to one nurse, although sometimes one nurse to one patient is necessary for some critically ill patients. Approximately 20–25 nurses work in the ICU. The standard schedule is three 12-hour shifts per week. Up to six nurses work per 12-hour shift.

Staffing and the nurse-to-patient ratio were signal issues in the union drive. Specifically, ICU nurse Mancelli, testified that "we frequently almost chronically function with not enough nurses to the patient ratio." Within certain guidelines, nurses self-schedule for their shifts. However, once the schedule is completed and approved and posted by the director, there are almost always unfilled slots in the schedule. Off-duty nurses are regularly telephoned or texted and asked to come in to work beyond their standard scheduled hours. The issue of staffing, and the need to "fill holes" in the schedule by calling in nurses is a subject well known to the nurses and managers in the ICU department. Marshall testified that as team leader and charge

[38] As Marshall explained it, "Every team leader is a charge nurse, but not every charge nurse is a team leader."

nurse she (and other team leaders and charge nurses) would spend time, multiple times a week, contacting nurses to come in on days where the schedule had unfilled slots and the number and acuity of patients warranted more nurses at work. Calls are made days in advance and as little as four hours before a shift that needs to be filled. Sometimes directors offer nurses incentives to work additional hours to fill scheduling holes. Team leaders do not have authority to offer such financial incentives. Perhaps for this reason, Mancelli's view was that directors had more success at convincing nurses to come in and fill shifts than the team leaders.

Mancelli testified that as a team leader she has made calls to fill holes and also that she received calls from the director and from the other team leader, Marshall, seeking to have her come in to work. Marshall has called or texted Mancelli to fill holes multiple times when Marshall was team leader. Mancelli estimated she received calls/texts from Marshall asking her to fill in once or twice a week. During these same times that she received calls from Marshall she also received calls from the director, and occasionally from the unit secretary.

b. Marshall's June 26 suspension

As referenced above, Marshall was active in the union campaign, a fact known to management no later than April 2015. She was known to be a source of the prounion postings appearing in the hospital, and, as discussed above, management engaged in and condoned among employees a concerted and aggressive countereffort to remove postings that were put up by Marshall and others. Marshall testified that her position as team leader helped her with her union activity:

> I was seen as a leader. I was visible. I was at the bed meeting with all charge nurses from the other units twice a day. And also I was able to travel to all different parts of the hospital to see people on different units.

As also referenced above, Marshall's relationship with the new ICU interim director, Joel Brown deteriorated within a few weeks of his arrival in early April. This was, as discussed above, in part explicitly related to her union activities, in part related to Marshall's bringing to Brown the concerns of other nurses about the Marilyn Manson song he played for the nurses, which resulted in complaints to management and a sexual harassment charge filed by Marshall with the state. Indeed, it is hard to separate out Marshall's union activity from other sources for the mutual dislike between Brown and Marshall. But clearly union activity was a large part of the issue, and the matter of Marshall's union activity was a source of complaint by Brown to upper management. By June 2, Pedersen was asking Brown for "some specifics regarding Anne that I can share with Ray"[39] Brown responded:

> Asking people to not follow my leadership regarding evaluation, scheduling and telling them that 'we are trying to get him fired.'
>
> While on shift and in a leadership position she continues to post, call and have conversations bout unionization. She is also rude to those that are loyal to CM and to any leadership that she come[s] in contact with (i.e., Cindy Williams, Cynthia Sullivan, and Ms. Barr.)

Complaints about Marshall's union activity were also forwarded to Pedersen by Brown on June 19—this note originally went to Crumb and Brown from a PICC nurse, Cynthia Sullivan. Brown also forwarded a second note to Pedersen on June 19, apologizing for Marshall's union activity, and stating: "Seems that Ms. Marshall really ramps up when I am away. I apologize for her behavior."

On June 26, Marshall was called into a meeting with Crumb, Brown, and Ogundele, sometime between 2 p.m. and 3 p.m., and told that she was being suspended for the remainder of the shift and the next day's shift.

According to Crumb, the problems with Marshall leading to the disciplinary action began on Wednesday, June 24. There was a problem that day when there was a delay getting an ICU nurse to take over from the cardiac department nurse for a patient transferred from the cardiac department into ICU.[40] Jessica Miller, the head of the cardiac department, testified that she could not say that the delay was directly Marshall's fault, but that it was an interaction that took place under Marshall's leadership.

Miller also described another incident later that day. A dispute about whether ICU or the heart department personnel would remove a patient's sheath led Miller to go to the ICU to resolve the issue. While there, House Supervisor Cindy Brown asked Marshall about the staffing problem in ICU. According to Miller, Marshall told Brown, "Nobody's coming," and, asked by Brown who she had called, Marshall said "nobody." This is what Miller wrote in a June 25 email to Joel Brown complaining about Marshall. However, it is notable that Cindy Brown's June 24 email to Joel Brown, copying Crumb, complaining about this very same incident does not state that Marshall told Brown that she did not call anyone. To the contrary, Cindy Brown's email states that Marshall told her that "all calls had been made and emails sent no one is coming." (R. Exh. 7). There is nothing in Cindy Brown's email indicating that Marshall said that she had made no phone calls.[41]

Later, as the staffing problems continued, Marshall was accused by various supervisors of being "disrespectful" and "con-

[39] Ray is not identified on the record but is likely the Hospital's labor attorney, Raymond Pascucci.

[40] Formally, the entity I refer to as the cardiac department is called the Cayuga Heart Institute, which is a part of CMC. The record does not speak to the precise relationship between the entities.

[41] Cindy Brown's email indicates that "Jess [Miller] the cath lab manager was present along with Cynthia Sullivan witnessing this conversation." Neither Cindy Brown nor Sullivan testified. Crumb claimed in her testimony that she talked to Cindy Brown about the incident and Brown reported that Marshall "had told us that she had made phone calls to bring staff in when, in actuality, she had not." As referenced above, the contemporaneous email from Cindy Brown does not state this. Contrary to Crumb's testimony, there is no evidence that she was told by Brown that on June 24, that Marshall misstated whether she had called staff.

frontational" and other such inappropriate reactions. In particular, House Supervisor Cindy Brown urged in an email "severe consequences" for Marshall's refusal—with Marshall citing safety concerns relating to staffing—to accept a directive from Joel Brown that three patients be assigned to one nurse in order to free ICU staff to take further patients.

More generally, in her testimony Miller complained about Marshall, testifying that "just in general," the cardiac department staff has had "a more challenging time interacting with the ICU under [Marshall's] leadership versus any other team leader." Miller dated the "increasingly more challenging" interactions with Marshall to "maybe two months prior" to these late June incidents.

On Friday June 26, in the early afternoon, Marshall was accused of misstating whether she had phoned people to come in to relieve the staff problems. Crumb testified that Ogundele, the house supervisor, told her that Marshall had told her [Ogundele] that Marshall said she made phone calls to try to shore up staffing, but that later admitted to Joel Brown that she did not actually call anyone. According to the email (R. Exh. 3) Ogundele sent to Brown at 1:38 p.m. (copied to Crumb, Nohelty, and Pedersen), Ogundele came to ICU after a 12:30 p.m. call from Marshall concerned about upcoming staffing levels at 3 p.m. During the call Ogundele asked Marshall "if there was anyone that she can call[ ] in for overtime she said she called everyone and no one called back." Ogundele came to ICU where she, Marshall, and Brown, stood together in front of the board in ICU listing patients and staff, and Marshall and Brown bickered about staffing. Brown went to his office to call a nurse (Goldsmith) to see if he would come in that evening, and the nurse said he would. "Joel then asked Anne to give him the names of the nurses she had called so that he doesn't have to call them again, then she said she did not call anyone after she told me she called everyone."[42]

Brown also called Crumb to discuss the issue with her. According to the email (R. Exh 12) Brown sent to Nohelty and Pedersen, copied to Crumb, at 1:25 p.m. June 26, Brown contacted Ogundele and told her to come to the ICU to assist with the staffing problem that Marshall had just advised him about. According to Brown's email, in front of Ogundele, Brown and Marshall had a testy exchange about whether a particular nurse was considering calling off sick and whether Marshall would be calling her again to find out if she was, in fact coming in. Brown's email stated that Ogundele had "earlier asked if calls had been made and [Marshall] had told her that she had called." Brown then advised Ogundele that an emergency bed meeting was needed, and then Brown contacted Crumb to request an emergency bed meeting. At that point, according to Brown, before the emergency bed meeting and before he went into his office to call a nurse, Scott Goldsmith to come in, Marshall stated "that she did not make any calls."[43]

Notwithstanding the discrepancies regarding events, after Brown and Ogundele sent their emails, Marshall was suspended within about an hour or an hour and a half. But the record and timing is murky. Pedersen admitted that the decision to suspend Marshall was made in a meeting he attended on June 26, although he said that he did not make the decision. He testified that the CEO of the Hospital, John Rudd was also in attendance, "and involved in the conversation." In addition, the Medical Director and Vice President of Nursing was at the meeting. It is unclear when this meeting took place, and given the time line of events, it is a little mysterious. No testimony about this meeting appears in the record.[44]

Crumb testified that she made the decision to suspend Marshall. She admitted conferring with Nohelty and Pedersen—Nohelty to "let her know what was going on and for [Pedersen] to be sure that were following the disciplinary process appropriately." Crumb did not mention attending a meeting where the decision was made, although that is possibly what was meant by "confer." She did not mention "conferring" with the CEO or the Medical Director.

As noted, this was Marshall's first disciplinary action in her employment with the Hospital. Up to this date, her annual evaluations had been exemplary. Crumb testified that the employer's general practice with respect to disciplinary action is "a progressive process." According to Crumb:

> Usually there's a verbal warning that can be presented in writ-

[42] I note that at trial, Ogundele told the story differently, and the trial version included numerous internal discrepancies as well as discrepancies with her pretrial affidavit, sworn to on September 8, 2015, where she indicated that these events took place much later in the day, and that Brown—not Ogundele—had first asked Marshall if she had called nurses to come in, and did so while the three stood at the board. According to the affidavit, after Brown left to call the nurse to come in, he returned and asked Marshall who she had called and Marshall then said she had not called anyone. Ogundele's affidavit also stated that she was summoned to the meeting at which Marshall was suspended just ten minutes after the encounter with Brown and Marshall. Her trial testimony was different still. She first testified that the encounter with Marshall happened after the 2 p.m. bed meeting, and that Marshall told Brown that she had called everyone but a few minutes later told Brown "I didn't call anybody." She added while standing at the Board with Brown that Marshall twice said that "it's not my job." However, when presented with the 1:38 p.m. email, Ogundele corrected her testimony to say that she received a call from Marshall around 12:30 p.m., and that there was an emergency bed meeting around 1 p.m. to discuss the staffing problems where Marshall stated (allegedly in front of Crumb and other managers) that she had called all the nurses and no one was willing to come in. According to Ogundele, the incident where Marshall then told Brown she had not called any nurses occurred after that.

[43] In his testimony, Brown testified that he (not Ogundele as stated in his June 26 email) asked Marshall if she had made calls to shore up staffing "and she assured me that she did. That calls had been made and she sent texts and emails and no one had responded to her." According to Brown, after he called a nurse and got him to come in—offering to make him charge nurse for the shift—the nurse told Brown he had not been contacted before. According to Brown's testimony, Brown went out to the desk with Ogundele and Marshall and asked Marshall who she had called so that he would not duplicate calls—and Marshall told him she did not make calls.

[44] As noted, above, I generally found Pedersen to be a credible witness. A possible exception is this suspension-decision meeting. I find it hard to believe that it occurred on June 26, in the midst of a busy day and just hours or even minutes after Crumb learned of Marshall's incident with Brown and Ogundele. In any event, as discussed below, the Respondent has offered almost no evidence on this meeting.

ing as a verbal warning; then a written warning; then suspension -- and that can be various lengths of time – and then termination.

Marshall's suspension ignored this "usual" process.

Sometime between 2 and 3 p.m. that afternoon Marshall was called into the ICU conference room for a meeting with Crumb, Joel Brown and Ogundele. Crumb told Marshall that someone had told her that Marshall had not made phone calls to bring in staff that she had previously indicated she had made. Marshall told Crumb and Brown that "I did make phone calls." She told them "I did not call every single person on the list but that I did make calls. And that they were aware that there were holes in the schedule."

Marshall was told that she was suspended for the remainder of the shift (approximately four hours, from 3 PM to 7 PM and for the next day (Saturday 7 a.m. to 7 p.m. shift). Marshall left at about 3 p.m., Friday and served her suspension for the remainder of the day and for the Saturday shift. Her first scheduled day back to work was Wednesday July 1.

Marshall met with Crumb and Brown again on July 1. As in the suspension meeting of the previous Friday June 26, Crumb did most of the talking. Crumb began stating that "we wanted to get back together . . . to talk about what your plans are to be successful in charge nurse role." Marshall pointed out that in eight years, "I've had excellent evaluations. . . . I've been promoted. I've never had a disciplinary action. . . . And I take care of my patients and the staff to my best ability."

Crumb told Marshall her concern was that Marshall told "your director or our house supervisor that your role that day that you were too busy in order to make phone calls." Marshall responded, "I did make phone calls that day. . . . I stated to Cindy Brown that I had made phone calls and that nobody was coming. She was aware of it. I had said it in the morning in the bed meeting. Chrissy brought it up to Joel Tuesday, before that day. I made calls. . . . I made as many calls as I possibly could while taking care of patients."

In the face of Marshall's insistence that she made calls, Crumb said, "Well, well, all I know is that the information that I got from an outside employee outside of ICU, said that there was a conversation that she heard you say, no, I did not make any calls."

Marshall said, "Well, that's not what I said. I did make calls. . . . I even came in on Thursday evening, on my own time, to make sure there would be enough staff for Friday morning, and that calls were made." Marshall reiterated this, and stated that there were only so many calls that she can make if she is to take care of patients too. Crumb said, "Well, obviously there was a big communication . . . . issue here. So going forward, my expectation would be that you will communicate with your director or the house supervisor."

Crumb then turned the conversation to Marshall's demeanor, telling her that "there are times where you—you come across kind of, I don't know what the right word is, Ann, but I don't want to say 'antagonistic' but that's what it feels like sometimes." Marshall said she was "sorry that's people's interpretation. That's not how it's meant to sound." Crumb said that "we're not working well together as a team" and "the more we can stick to the code of conduct . . . all of us, the better off that we're going to be." Marshall agreed with these sentiments.

They then talked about the procedure for filling "holes" in the schedule, and Crumb agreed ("That's fair") with Marshall's statement that "It's not just my responsibility or any other team leaders' responsibility to make sure they're filled. Everybody has to make sure they're filled." Brown expressed agreement with this. ("Absolutely"). Crumb and Marshall talked about the challenges of "filling holes" in the schedule, and that calls can be made even before the schedules come out. But Crumb directed the conversation back to "collegiality" and suggested that Marshall's tone in bed meetings when she told others at the meeting that additional patients could not be taken at ICU was "not helpful." Marshall replied that at the bed meetings she says "this is where we are, I can take this many more until I have more staff." Crumb said, "I just really would appreciate if we could work closer together . . . as a team. And not against each other." Marshall agreed with this. ("Absolutely"). Asked if he had "any other expectations" for Marshall, Brown said, "Just the code of conduct . . . . And the professional demeanor. Me and you, you know, we seem to be at odds; we need to be seen as a cohesive team." Marshall agreed with this. The meeting turned to immediate scheduling issues that needed to be handled, and the meeting ended soon after.

On July 8, Crumb met with Marshall regarding the June 26–27 suspension. Crumb asked Marshall why she felt that the suspension "should be lifted." Marshall said that in the July 1 meeting Crumb had "said that it was a miscommunication" and Marshall did not think a miscommunication warranted a suspension. Crumb denied using that term and said that "I think that the issues that we talked about were not only the issue of finding staffing" but also "that you stated that you made phone calls." Crumb told Marshall that "you admitted to three different people that you had not made phone calls." Marshall denied that she admitted this. She said, "And people will tell you I made phone calls. They will tell you that I called them. Did I call every single person on the list. No." Crumb responded, "That's where . . . I may have said 'miscommunication." That you did not make it clear that you had not made calls to everyone, because that's . . . what they heard." But Crumb added, "but that's not the only thing that was concerning. . . . [Y]our behavior throughout the whole process. You know, you were confrontational. You were less than helpful in problem solving." Marshall disagreed, stating that she had "brought up numerous times that we had staffing holes. I had made calls. I came in on my day off to make calls to make sure the next day was completely staffed. . . . So I don't know what more I can do. We put out that schedule. Joel approved it. He knew days ahead that we were in a crisis as far as staffing. He let five day people go on vacation at the same time. That's crazy. So there's nobody to call if they're not working." Crumb agreed that all the vacations were "[n]ot helpful" but stated, "I believe that your approach and your less than professional conduct are more the reason why that you were suspended." Marshall disagreed, contending that Browns' scheduling had led to the staffing crisis, and indicating that "nothing's fixed. Tomorrow there's no charge nurse and there's four nurses off."

Crumb said, "Okay. Well, I'm going to uphold the suspension. I believe your behavior was inappropriate at times, confrontational, and disrespectful." Marshall said she disagreed. Crumb said, "you can disagree. Going forward, we looked at talking about upholding the code of conduct, like we discussed it at the team leader meeting." Crumb then produced a letter documenting the suspension. The letter was dated July 1, and stated, in part:

> This memo will confirm our decision to suspend you without pay for your scheduled shifts on Friday June 25 and Saturday June 27 due to your performance as a Team Leader and Charge Nurse, where your actions regarding placement of patients in the ICCU was not appropriate. In addition, your interactions with other staff members was not professional and you purposely were not truthful regarding the contact other staff members to determine availability

> Marshall wrote a note at the bottom indicating she did not agree with the document.

Analysis

The General Counsel alleges that Marshall's June 26 suspension was unlawful. In her brief, counsel for the General Counsel alleges, first, that the suspension was unlawful because it was based on unlawfully overbroad rules. However, that allegation is not contained in the complaint—indeed, while it is alleged in the complaint as to other actions taken against Marshall, it is specifically omitted as to the suspension. See, complaint paragraph XII(g), as amended by the notices of intent to amend (GC Exh. 1(r) and ALJ Exh. 2 and Tr. 9–16), omitting complaint paragraph XII(a) from reference in complaint paragraph XII(g) and XIII. Hence, I do not consider that argument.

The complaint does allege, as also argued by the counsel for the General Counsel, that Marshall's suspension constituted unlawful antiunion discrimination in violation of Section 8(a)(3) of the Act. See, complaint paragraphs XII(a), (g) and XIV. I turn now to that argument.

The Supreme Court-approved analysis in 8(a)(1) and (3) cases turning on employer motivation was established in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). See *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 395, (1983) (approving *Wright* Line analysis).

The Wright Line test, while applicable to pretext cases in which the employer has no legitimate motive for the action taken against an employee, was chiefly adopted as a mode of analysis in the "dual motive situation where the legitimate interests of the parties most plainly conflict." Id. at 1083:

> In such cases, the discipline decision involves two factors. The first is a legitimate business reason. The second reason, however, is not a legitimate business reason but is instead the employer's reaction to its employees' engaging in union or other protected activities. This latter motive, of course, runs afoul of Section 8(a)(3) of the Act. [Id.].

In *Wright Line*, the Board determined that the General Counsel carries his burden by persuading by a preponderance of the evidence that employee protected conduct was a motivating factor (in whole or in part) for the employer's adverse employment action. Proof of such unlawful motivation can be based on direct evidence or can be inferred from circumstantial evidence based on the record as a whole. *Robert Orr/Sysco Food Services*, 343 NLRB 1183, 1184 (2004), enfd. 184 Fed. Appx. 476 (6th Cir. 2006); *Embassy Vacation Resorts*, 340 NLRB 846, 848 (2003).

Under the Wright Line framework, as subsequently developed by the Board, the elements required in order for the General Counsel to satisfy its burden to show that an employee's protected activity was a motivating factor in an employer's adverse action, "are union or protected concerted activity, employer knowledge of that activity, and union animus on the part of the employer." *Adams & Associates, Inc.*, 363 NLRB No. 193, slip op. at 6 (2016); *Libertyville Toyota*, 360 NLRB 1289, 1301 (2014); enfd. 801 F.3d 767 (7th Cir. 2015).

Such showing proves a violation of the Act subject to the following affirmative defense: the employer, even if it fails to meet or neutralize the General Counsel's showing, can avoid the finding that it violated the Act by "demonstrat[ing] that the same action would have taken place in the absence of the protected conduct." Wright Line, supra at 1089. For the employer to meet its *Wright Line* burden, it is not sufficient for the employer simply to produce a legitimate basis for the adverse employment action or to show that the legitimate reason factored into its decision. *T. Steele Construction, Inc.*, 348 NLRB 1173, 1183 (2006). Rather, it "must persuade that the action would have taken place absent protected conduct by a preponderance of the evidence." *Weldun Int'l Inc.*, 321 NLRB 733 (1996) (internal quotations omitted), enfd. in relevant part 165 F.3d 28 (6th Cir. 1998). See *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983) (approving Wright Line and rejecting employer's claim that its burden in making out an affirmative defense is met by demonstration of a legitimate basis for the adverse employment action).

If the employer fails to prove that the same action would have taken place in the absence of protected activity, then the General Counsel's initial showing that unlawful motive was a part of the reason for the adverse action proves the violation. In such cases, the Board will not weigh the relative quantity or force of the unlawful motive compared to the lawful motive: the violation is established if the employer fails to prove it would have taken the action in the absence of protected activity.[45]

Applying *Wright Line* to Marshall's June 26 suspension, the

[45] As the Board explained in *Wright Line*:

> in those instances where, after all the evidence has been submitted, the employer has been unable to carry its burden, we will not seek to quantitatively analyze the effect of the unlawful cause once it has been found. It is enough that the employees' protected activities are causally related to the employer action which is the basis of the complaint. Whether that "cause" was the straw that broke the camel's back or a bullet between the eyes, if it were enough to determine events, it is enough to come within the proscription of the Act.

Wright Line, supra at 1089 fn. 14.

General Counsel's prima facie case is easily met. Marshall was a vigorous and open supporter of the union drive at the Hospital. The Respondent's knowledge of this is not in doubt. She was identified as "a ringleader" by management as of May 8, and her activities were reported to management, and indeed, a report on her activities was solicited on June 2, and the response included reference to her union activities. The Respondent's knowledge of Marshall's union activity is not a disputed issue in this litigation. (See, R. Br. at 24; Tr. at 161.)

Finally, the element of union animus on the part of the employer is firmly established. I note that in evaluating the element of union animus in the Wright Line test, the Board holds that it is unnecessary for the General Counsel to make a "showing of particularized motivating animus towards the employee's own protected activity or to further demonstrate some additional, undefined 'nexus' between the employee's protected activity and the adverse action." *Libertyville Toyota*, 360 NLRB 1298, 1301 fn. 10; *Adams & Associates, Inc.,* 363 NLRB No. 193, slip op. at 6 ("we emphasize that such a showing is not required"). However, in this case, there is significant evidence of animus directed like a laser on Marshall and her union and protected activities.

Marshall's extensive posting of union materials in the hospital and distribution of union materials in the break room were met with a vigorous, concerted, and unlawful effort to remove that literature. Crumb rallied employees and managers with the admonition: ""They have the right to put up and we have the right to take down"—this was in direct response to a report of Marshall's union activity. Brown took down Marshall's postings as many as four times a day and he testified that he turned in the confiscated union materials to the HR office. Moreover, Marshall was personally threatened—told that management knew she was the "ringleader" of the union movement and threatened that if she did not stop, the HR department would get involved.

In addition to this documented animus, there are additional suspicious features surrounding the suspension that raise an inference of discrimination under the circumstances. For one thing the process of deciding on the suspension was unusually hasty, and shrouded from view. Crumb testified that she made the decision to suspend Marshall. However, Pedersen testified that the decision was made in a meeting he attended on June 26 where the Medical Director and the Vice President of Nursing and the CEO were present. According to Pedersen, the CEO of the Hospital was there and "involved in the conversation." The involvement of these people in a disciplinary decision is itself, unusual, as Pedersen's testimony made clear.

While we have no details about what was discussed at this meeting, or when on June 26, it was conducted, what is clear is that if the story is true then in the middle of a hectic day otherwise devoted to a staffing crisis in the ICU, this group of top administrators found time to meet and in that meeting to make a decision to suspend Marshall. Marshall's encounter with Brown and Ogundele occurred sometime between 1 p.m. and after 2 p.m., depending on which of the conflicting management testimony is accurate. In between the staffing crisis in ICU, the emergency bed meeting, the regular bed meeting at 2 p.m., time was made to make a decision to suspend Marshall, and this news was delivered to her in a meeting with Crumb, Ogundele, and Brown sometime before 3 p.m. Alternatively, as I suspect is possible, the decision to suspend Marshall was made earlier in the week, and the meeting of June 26, merely confirmatory, the incident on June 26, seized upon to justify a decision already made.

Importantly, the resort to suspension for an employee who had no prior disciplinary record is—we know from Crumb—"unusual" and at odds with normal practice. Crumb testified that the employer's general practice with respect to disciplinary action is "a progressive process." According to Crumb:

> Usually there's a verbal warning that can be presented in writing as a verbal warning; then a written warning; then suspension—and that can be various lengths of time—and then termination.

As noted, before the suspension Marshall had an unblemished disciplinary record, and as discussed below, an unbroken record of superlative annual reviews. For reasons unexplained, in Marshall's case the disciplinary process began with suspension. The Respondent did not follow its "usual" process with regard to Marshall's initial discipline. Of course, the Respondent is not bound by any progressive discipline system, but it offered no explanation (credible or otherwise) for ignoring the "usual" process here. This unexplained failure to abide by the progressive discipline is a factor raising an inference of discriminatory treatment under the circumstances. *AdvoServ of New Jersey*, 363 NLRB No. 143, slip op. at 33 (2016).

Further, it is notable that Crumb's "investigation" of Marshall did not involve getting Marshall's side of either the June 24 or June 26 incidents before the decision to suspend her was made. The array of emails that poured into Crumb's office in the 40 hours before she was suspended appear to be an obvious effort to document Marshall's misconduct. But the significant discrepancies in these accounts, the known antiunion bias against Marshall of Joel Brown, who zealously collected, cut and pasted and forwarded these emails to Pedersen (R. Exh. 6) and the complicated, fluid, and ambiguous dynamics of each situation for which Marshall was punished, only add to the suspicion raised by the fact that neither Crumb nor anyone else in management showed interest in getting Marshall's side of the story before deciding to suspend her. Nor did Crumb make any effort, for instance, to check with off-duty nurses or otherwise attempt to verify whether or not Marshall made the staffing calls she claims she made—the issue which the Respondent situates as the heart of her offense.[46]

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[46] *Diamond Electric Mfg.,* 346 NLRB 857, 860 (2006) ("the failure to conduct a meaningful investigation or to give the employee [who is the subject of the investigation] an opportunity to explain may, under appropriate circumstances, constitute an indicia of discriminatory intent. The Board has considered this factor in several recent cases to find discharges unlawful where employees were denied the opportunity to provide a potentially exculpatory explanation prior to being discharged, and to dismiss allegations of unlawful discharge where such an opportunity was provided") (Board's bracketing) (footnotes omitted) (quoting *K&M Electronics*., 283 NLRB 279, 291 fn. 45 (1987) (" The failure to conduct a meaningful investigation or to give the employee

Thus, the General Counsel has demonstrated and I find that antiunion animus was a motivating factor—and a significant one—in Marshall's June 26 suspension. Under *Wright Line*, this proves a violation of the Act, subject to the Respondent's defense. The Respondent can avoid a finding that it violated the Act by demonstrating by a preponderance of the evidence that the same action would have taken place even in the absence of the protected conduct. *Boothwyn Fire Co. No. 1*, 363 NLRB No. 191, slip op. at 7 (2016); *Willamette Industries,* 341 NLRB 560, 563 (2004); *Wright Line*, supra.

The Respondent has not met its burden on this record. First of all, as mentioned above, the decision to suspend Marshall is shrouded. However, we know from Pedersen's testimony that the involvement of so much senior management is unusual. The Respondent chose not to explain for the record what happened at this meeting. Given the Wright Line evidentiary burdens, the unusual and the opaque nature of this meeting must weigh against the Respondent's claims that it would have taken the same action against Marshall in the absence of her activity.

Second, there is no evidence at all that the Respondent has ever suspended or taken action against an employee for anything remotely similar to charges levied against Marshall. The Respondent relies (R. Br. at 29) on what it denominates as "five other similarly-situated employees who were similarly disciplined for engaging in roughly comparable violations"—but this evidence is undermining to the Respondent's case.

What is the comparator evidence offered by the Respondent? 1. In April of 2016, an employee (probably a pharmacy tech) received a verbal warning for "verbally abusing" another employee or manager (the name is redacted), calling them an "ass hole" and "using curse words loudly enough to be heard from the hall." 2. In October 2016, an RN employee was suspended for two days "after counseling, coaching, written warning, and [an] improvement plan with goals," the employee engaged in "threatening behavior toward other peers" and "criticiz[ed] coworkers and uses rudeness." 3. In May 2012, an RN employee from the emergency department received a final written warning after "repeated . . . explosive and aggressive behavior, hollering profanity, and slamming of patient charts in the patient care area . . . witnessed by patients and their families." The employee had been "counseled numerous times in the past following the disciplinary process for this exact behavior . . . . The explosive behavior and rage that [name deleted from record exhibit] demonstrates makes the entire interdisciplinary team in the Emergency Department and support services feel threatened and unsafe." 4. In July of 2009 an employee was suspended for three days—the offending conduct is not described in the disciplinary letter of this six-year old incident. 5. In February 2006, an employee—Scott Marsland, in fact—received a written warning for "lost temper" "foul language" "angry, 'hateful'" ineffective feedback.

Marshall's suspension for a first ever offense stands in stark contrast to the historical record provided by the Respondent for the purposes of buttressing its case. There was no counseling for Marshall. No "written warning," no improvement plan preceding suspension. Rather, the Respondent, in an apparent unprecedented action, went straight to suspension for Marshall. I will not consider this evidence, offered by the Respondent as evidence of disparate treatment which would add to the weight of the General Counsel's case,[47] but it stands there unexplained, strongly undermining the Respondent's claim (and burden to show) that it would have taken the same action against Marshall in the absence of protected activity. *AdvoServ of New Jersey,* 363 NLRB No. 143, slip op. at 33 (2016).

The Respondent's position is that Marshall's conduct on June 24 and June 26 was so egregious that it would have taken the same action against her even in the absence of her record of union activity. At bottom, the argument amounts to the contention that, although once a stellar employee, since the advent of the union drive, and since Brown played the Marilyn Manson song to the nurses—prompting a sexual harassment charge filed by Marshall—this previously heralded employee had been difficult to work with, "outspoken" and "condescending," "aggressive" "disrespectful" and even dishonest about resolving the staffing shortfalls. And that this misconduct would have prompted the suspension even in the absence of her protected activities.

I think it clear that there was a concerted effort to document incidents about Marshall. We know that a report on her activities was requested from Pedersen, for "Ray," as early as June 2. It is hard to believe that the panoply of emails sent to Crumb regarding events on June 24 and June 26 were all independently initiated. In particular, Brown's June 25 afternoon email (R. Exh. 6) sent to Pedersen with the subject line "Timeline" is a remarkable compilation of every complaint about Marshall from the previous day and stretching into the previous weekend, including the overly-exacting complaint that Marshall did not correct other employees' conversations (see R. Exh. 6, p. 3). Although not included with the exhibit, the document states that it has attached emails, hand copy of letters, code of conduct violations, and an outline. This compendium of complaints about Marshall and reports on her from managers and co-employees was provided to Pedersen before the events of June 26.

It is unexplained why Brown provided this to Pedersen. Clearly, Marshall was in the sights of the Respondent. Her actions were being documented with great care.

That is easy. But why? This is where, even giving the Respondent the benefit of the doubt, the Wright Line burdens of proof leave the Respondent's case foundering. I do not and do not need to defend all of Marshall's conduct. I assume that this is a "dual motive" case. In other words, I assume that the Re-

an opportunity to explain has been regarded as an important indicia of discriminatory intent"); *Amptech, Inc.*, 342 NLRB 1131, 1146 (2004) (failure to inquire of [disciplined employee] as to what had occurred constituted a rush to judgment attributable to Respondent's unlawful motivation to take adverse action against the leading pro-union employee on the premises"), enfd. 165 Fed. Appx. 435 (6th Cir. 2006); *Southern Electronics Co., Inc.*, 175 NLRB 69, 72 (1969), enfd. 430 F.2d 1391 (6th Cir. 1970) (investigation . . . was a one-sided affair with the purpose not being to determine precisely what occurred in the stockroom that morning, but rather to secure sufficient reasons to justify a discharge").

[47] *Avondale Industries*, 329 NLRB 1064, 1066 (1999).

spondent had legitimate grounds for their frustration with Marshall.

But the issue is whether the Respondent has proven that it would have taken the same action—i.e., it would have suspended Marshall on June 26—in the absence of her union and protected activity. *ManorCare Health Services*, 356 NLRB 202, 228 (2010) (employer's Wright Line burden requires it to prove "it would have taken the same action against" employees in the absence of union activity) (Board's emphasis), enfd. 661 F.3d 1139 (D.C. Cir. 2011).

The record leads me to disbelieve this defense. The unexplained and admittedly "unusual" resort to suspension for a first time offense, the zealous effort to "paper" the record with inconsistent management accounts of Marshall's failings, but with no real interest by Crumb in determining what actually happened, the affirmative inconsistency of the comparator evidence with Marshall's offense, and the unexplained top level meeting where the decision to suspend Marshall was made, all undermine the Respondent's claims that Marshall would have been suspended for her conduct in the absence of union activity. I find that Marshall's suspension violated Section 8(a)(3) of the Act.[48]

Finally, and independently, I note a further and glaring additional problem for the Respondent's defense, even if it's claimed motive for the suspension was accepted. While I have heretofore assumed that Marshall's alleged misconduct presented a legitimate grounds for dissatisfaction with Marshall, in fact, Marshall's alleged misconduct on June 24 and June 26 directly related to her efforts to challenge the Hospital on their methods and practices with regard to staffing.

The misconduct attributed to her—from the claim by Cindy Brown that there should be "severe consequences" for Marshall's refusing to assign three patients to one nurse for reasons of safety, to the claims that she was belligerent, uncooperative, and "difficult" about solving the ICU's staffing problems—is all conduct deeply rooted in protected and concerted activity. Even the conflict over whether and how many times she represented that she called off-duty staff is, in its essence, part of the res gestae of Marshall's fight for enough staff. The record is one of Marshall—albeit with discord and defensiveness—advancing an issue that was central to the nurses concerns and to the union drive. As one nurse told Crumb—in comments discussed more below—Marshall "fights for enough staff" and "the Adm doesn't listen about the true staffing needs."

The point is not whether Marshall was wholly right or wrong. The point is not whether Marshall engaged in misconduct, or acted defensively and at times antagonistically. The point is that the source of the conflicts reported by management to Crumb on June 24 and June 26 involve as their res gestae protected and concerted activity by Marshall. Marshall's "misconduct" must be considered through that lens. *Goya Foods Inc.*, 356 NLRB 476, 477 fn. 8 (2011) ("Where, as here, the conduct at issue arises from protected activity, the Board does not consider such conduct as a separate and independent basis for discipline." As to this misconduct, "the pertinent question is whether the conduct is sufficiently egregious to remove it from the protection of the Act." *Stanford Hotel, LLC*, 344 NLRB 558, 558 (2005); *Roemer Industries, Inc.,* 362 NLRB No. 96, slip op. at 6 (2015).

"[T]he standard for determining whether specified conduct is removed from the protections of the Act [is] as articulated by the Board: communications occurring during the course of otherwise protected activity remain likewise protected unless found to be 'so violent or of such serious character as to render the employee unfit for further service." *St Margaret Mercy Healthcare Centers,* 350 NLRB 203, 204–205 (2007), quoting *Dreis & Krump Mfg. v. NLRB*, 544 F.2d 320, 329 (7th Cir. 1976). None of Marshall's misconduct meets that standard. In short, the Respondent's Wright Line defense is based on actions that are themselves violative of the Act. Thus, even if the Respondent's argument that it would have suspended Marshall in the absence of her union activity is accepted, it would not provide the Respondent a defense. Instead it would prove that the Respondent had disciplined Marshall for conduct that, at its core, was protected and concerted activity. However, this issue need not be reached, as I have found, for the reasons set forth above, that the Respondent would not have suspended Marshall on June 26, in the absence of her union activity.

2. Complaint paragraph XII(b) and (c)

(The verbal warning)

a. The QA incident filed by Brown

On July 3, there was another incident between Brown and Marshall. This incident resulted in a verbal warning being issued to Marshall on July 10.

On July 3, the ICU was particularly short-staffed, and was missing a clerk who had transferred, and her replacement had not yet begun work at ICU. A new patient was being admitted and a nurse, Robert Stires, asked Brown if he would take his patient for a scheduled testing procedure because the admission needed to be handled. Brown said no. Marshall went to Brown and said, "we need some help" but Brown again said that he could not assist. Marshall appealed to him, explaining the predicament the unit was in. Marshall told Brown, "If you can't take the patient I need to take the patient because Robert had another one on multiple drips that was intubated and he couldn't leave that patient." Marshall asked Brown, "can you at least get me a ward clerk so somebody can be up here entering orders." According to Marshall, she stood in the hall by the doorway to the floor's kitchen while Brown used the phone on the desk in the hall opposite the kitchen door to call for a ward clerk. This would mean that Brown and Marshall were 3–4 feet apart (based on review of the photo of the area in General Counsel's Exhibit 26). Brown said, "you don't have to stand there." Marshall said, I want to know what's going on before I leave [to take the patient for the test].

Brown's account is different. He testified that he rejected Marshall's request that he take the patient for a scan and asked Marshall to do it. Brown testified that Marshall said she could not because she was acting as the ward clerk. Brown asked the PICC nurse Sullivan to watch the phones while Marshall took

[48] As any conduct found to be a violation of Sec. 8(a)(3) would also discourage employees' Sec. 7 rights, any violation of Sec. 8(a)(3) is also a derivative violation of Sec. 8(a)(1). *Chinese Daily News*, 346 NLRB 906, 933 (2006), enfd. 224 Fed. Appx. 6 (D.C. Cir. 2007).

the patient for the scan. Brown got on the hallway desk phone to call for a unit clerk to assist and said that "when I turned [Marshall] was almost nose to nose with me." Brown said he asked her to "step back" and she said, "I can stand anywhere I want." Brown testified that Marshall refused to step back and so he stepped back to the desk, hung up the phone, and went around her.

A few minutes later Brown filed an incident report into the hospital's QA system, an internal system for reporting incidents that occur with staff or patients, or anyone else. While there was conflicting testimony by Brown and Marshall about the incident (describe above), the QA report filed by Brown stated, in pertinent part:

> I was asked by Ms. Anne Marshall to get a ward clerk to assist her. At this point I took two steps back and picked up the phone to call the house supervisor. While it was ringing Ms. Marshall had entered my personal space. I looked at her and told her "you do not have to stand there" [.] Her response was "I can stand where I want." I then turned my back to her and secured a UC from the house supervisor. I hung up the phone and advised Ms. Marshall, who was still in my personal space that a clerk was on their way.

Later that day Marshall received an email indicating that Brown had filed the internal complaint (the QA) against her. Marshall approached Brown in his office, and standing in his office doorway, asked Brown if they could talk about the QA. According to Marshall, Brown said, "absolutely not. Get out of my office or I'll have you removed by security." Brown's account varied only in that he testified that he threatened to call security after Marshall repeatedly refused to move out of his doorway. Brown also told Marshall that she could "talk to Dr. Hannon"—a doctor working on the ICU—about the QA, because Hannon had witnessed the incident that was the basis of the QA. Marshall asked for an administrator on call. Brown left and met with the administrator, Tony Votaw, and they discussed the issue. Votaw then came up to the floor after Marshall called him again. Votaw told Marshall that she "was picking on Joel."

Crumb received the incident report and Brown called her and told Crumb not just about the "personal space" incident in the QA but also the aftermath. According to Crumb's notes, Brown said "he felt trapped" by Marshall when she stood in the doorway and after he asked her to leave repeatedly he asked to her to "stop harassing him" and "told her he would call security."

b. Crumb's investigation

Crumb decided to conduct an investigation of the matter. She called or saw each staff member working that day in the area to "ask if they had either heard or seen or witnessed any behaviors [or[interactions between Joel and Anne." Crumb made notes of her conversation. None of the notes Crumb took reveal anything remotely resembling Brown's account.

According to Crumb's notes of her investigation, one nurse "heard them talking about staffing with no negativity." Two nurses had heard about the incident only from Marshall and one nurse advised Marshall to try to talk to Brown. However, after Marshall did so she came back and told the nurse that it "wasn't any help b/c Joel asked her to leave + if she didn't he was going to claim harassment." The physician, Dr. Hannon, was in his office next to Brown's. "[H]e heard

Anne say can we talk about this and Joe's response was stop harassing me. He could not hear anything else and the conversation was brief." The ICU educator, Newton told Crumb that "Joel just wants to find a way to fire h[er]."[49] Some of the interviewees were critical of Brown: saying that he "holds grudge," that Marshall asked Brown "for help + he refused," and that he offers extra money to some nurses and not others. One nurse told Crumb that Marshall "fights for enough staff" and that "the Adm doesn't listen about the true staffing needs." Crumb's notes state that Cynthia Sullivan told her that "interaction with Joel + Anne is unprofessional [and] embarrassing." Crumb also took a report from Marshall, which mirrored her testimony, cited above.

Notwithstanding these reports, "based on my investigation" Crumb concluded that Marshall violated the COC and Brown's "personal space" and deserved a verbal warning for being confrontational. Crumb said she based this on Brown's account and the account she says she received from PICC nurse Sullivan. Brown's account, essentially, is set forth above and in the QA report. Sullivan's supposed account of events warrants a few remarks.

Crumb testified that she talked to Sullivan and Sullivan told her it was "an unpleasant situation" between Brown and Marshall, and that Marshall was "real close" to Brown, and that Brown "asked [Marshal] to step back because she was in his personal space, and he felt uncomfortable." According to Crumb, Sullivan also told Crumb that Marshall thought . . . that she was not in his personal space."

Sullivan did not testify. Crumb consistently relied on documents and leading questioning to assist in her testimony. That is of particular concern here.

General Counsel's Exhibit 41 is a typewritten document created by Crumb. She identified (Tr. 964) this document as the notes she took about her conversations when she interviewed the nurses about the Brown/Marshall incident. (The document begins: "Interview with staff about the incident with Joel Brown and Anne Marshall.")

However, it turned out that this typed document was a condensation, derived from handwritten notes of the conversations she had with the nurses (and others). The typed notes were created perhaps a week after Crumb took the handwritten notes. The existence of the original handwritten notes came to light only at trial through questioning of Crumb, after extensive testimony by her about the investigation, using GC Exhibit 41 as an aid to her testimony. The original handwritten notes were not produced pursuant to subpoena. Asked their whereabouts, Crumb testified "I think they are in Alan's car." The handwritten notes were retrieved, produced to the General Counsel, and placed into evidence as General Counsel's Exhibit 42.

There are differences between the typed document that

[49] Crumb wrote "him" about this incident which involved Brown and Marshall. I find that Crumb meant to write "her."

Crumb created and first presented as the notes of her investigatory conversations and the handwritten originals. These differences raise serious concerns. The handwritten notes contain far more critical comments about Brown. These are not found in the typed notes. Also excised from the typed document are comments that "Anne fights for enough staff" and that the "Adm doesn't listen about the true staffing needs. etc" and that "Joel just wants to find a way to fire h[er]," among other comments. Also missing from the typed document is Crumb's note: "Interviewed 8 staff on that day. Asked if they saw or heard any interaction between Joel + Anne? Were they aware of any? All 8 did not witness anything."

The omission of these notes from the typed version of the notes provided in response to the subpoena and presented at trial as the notes of the investigation, is highly suspicious. No explanation was provided. Perhaps most suspicious, given Crumb's testimony that she ignored the comments of the staff whose input she solicited, and relied on Brown and Sullivan's opinions in determining to issue discipline to Marshall, is the fact that Crumb's contemporaneously taken handwritten notes do not contain Sullivan's indictment of Marshall's conduct to which Crumb testified. The handwritten notes of her conversation, from which Crumb claimed to have created the typed document, state as to "Cynthia": "interaction with Joel + Anne is unprofessional [and] embarrassing."

However, the typed notes do not contain that neutral statement from Cynthia Sullivan. Rather, inexplicably, the typed notes refer to Sullivan as having "Reviewed her rewritten statement." There is no statement, written or rewritten from Cynthia Sullivan in the record. There is no explanation offered for how or why Sullivan's interview on the issue appears to have been conducted differently, and at a later time, than the interview of the other staff found in the original notes. Given Crumb's testimony on how she went about her investigation and the creation of the typewritten investigation notes, and given the record evidence of Sullivan's dislike for Marshall's union activity and her active engagement, with Crumb's support, in "thr[owing] out" Marshall's union postings and complaining about Marshall's union activities, and, given that, unlike Marshall, Sullivan was considered "loyal" to the Respondent, this is all painfully suspect. [50] Suffice it to say that the notes Crumb claims to have made of her interviews with staff do not include the indictment of Marshall's conduct by Sullivan that Crumb claimed was made to her. The reference in the typed version of the notes to Sullivan reviewing a "rewritten statement" suggests that the Respondent has not revealed the full or real process used to discipline Marshall. The weight of the evidence is that the results of this investigation were rigged.[51]

a. Crumb's July 8 meeting with Marshall

During the July 8 meeting at which Marshall had been issued her suspension letter (discussed above) Crumb turned the discussion to the previous Friday, July 3, and the incident that Brown reported to the QA. Marshall explained her version of events regarding the staffing issues that led to her dispute with Brown, as described above. Crumb asked Marshall if she blocked the doorway of Brown's office. Marshall stated, "No. And Dr. Hannon was right there, and I'm sure if you ask him he'll tell you exactly what happened and how nasty Joel was to me." Crumb indicated that was "going to call everybody that was on shift that day" and "I'll try to get hold of Dr. Hannon."

b. Crumb's July 10 meeting with Marshall; issuance of warning

Another meeting was held July 10, two days later, to talk about the incident Brown reported to QA and its aftermath. Crumb declared that it was "more of a he said/she said . . . sort of situation. I think that after we talked the other day, we talked about the code of conduct. . . . And I think that I'm going to give you a verbal warning, that I know—the code of conduct—happened. . . . . People find you to be confrontational and disrespectful." Marshall said she had followed the code of conduct and Crumb replied, "maybe we need to work on why others don't feel that." Marshall interjected, "I think we need to look at who the others are that feel I don't." Crumb said, "Okay, That's fair." Marshall continued, "Because if you asked the people that I work with directly, my peers, they will tell you I do [follow the code of conduct]."

Crumb then asked Marshall for assistance in scheduling and integrating some new ICU employees into the upcoming schedules. They discussed that for several minutes and the meeting ended.

At this meeting, Crumb provided Marshall a memo dated July 10, confirming the verbal warning. Crumb stated that she assumed Marshall would not want to sign it.

The memo stated:

> Anne, this memo will confirm our conversation today. As you know, an incident report was submitted regarding an interaction that you have with Joel Brown on Friday July 3. I have

[50] GC Exh. 45 (June 19 email from employee Cynthia Sullivan to Crumb and Brown, forwarded to Pedersen: "Must be I threw out enough of hers because now she's using hospital paper & green paper is in our copier right now"; Brown followed up with an email at the top of the exhibit that makes clear that Sullivan was referring to Marshall); GC 46 (June 19 email from employee Cynthia Sullivan to Brown, forwarded to Pedersen, on the subject of "union propaganda": "it's really annoying that Anne has to spend her time hanging up union postings instead of doing her job as the charge RN. . . . As fast as they are thrown away off the breakroom table she puts out new ones"); GC Exh. 48 (June 2 email from Brown to Pedersen, describing Marshall as "continu[ing] to post, call and have conversations about unionization. She is also rude to those that are loyal to CMC and to any leadership that she comes in contact with (i.e., . . . Cynthia Sullivan").

[51] Crumb claimed that she relied upon Sullivan because Sullivan was "the witness who had witnessed the whole situation." This appears to be untrue. There is no indication that Sullivan witnessed the encounter between Brown and Marshall where Marshall stood in the doorway of Brown's office. This was part of the basis of the disciplinary warning, and was overheard by others interviewed with Crumb, including witnesses that corroborated Marshall's account. See, e.g., notes of Dr. Hannon interview by Crumb. In any event, contrary to Crumb's testimonial account of Sullivan's statement, the account in Crumb's original handwritten notes of Sullivan's account does not cast blame. Of course, we do not know what is in Sullivan's "rewritten statement," referenced but not disclosed in the typed version of the interview notes created by Crumb.

completed my investigation of this incident having interviewed all staff that were working that day.
As a result of that investigation I have determined that your interactions with the Director Friday afternoon were not in accordance with our Nursing Code of Conduct.
On Wednesday June 30 you met with Joel and me to determine how you will more appropriately fill your responsibilities as Team Leader and Charge Nurse. During our conversation it was agreed that you would follow and uphold the Nursing Code of Conduct and participate collaboratively with leadership and staff on problem solving. We reiterated that it was our objective to function as a team to do the right things for our patients, and it is not acceptable to behave in a manner that is confrontational and not in accordance with professional standards as discussed.

According to the QA, it was reported that your behavior and interactions with the Director were not respectful but aggressive and confrontational in nature. These behaviors included

- A confrontational dialogue where you were requested numerous times to leave the door of the director's office but refused to leave -until you were advised that security would be called.

- Following the director within his personal space and in the opinion of another staff member of harassing him about getting ward clerk help

While we understand that there can be varying opinions regarding the actions that took place, it is important to again reinforce the necessity to interact professionally and in accordance with the Nursing Code of Conduct. Key elements are:

- Interacting with others in a considerate, patient and courteous manner
- Being honest, truthful, and respectful at all times.
- Avoiding inappropriate and disruptive communications/behaviors that include but are not limited to;

Displaying behaviors that would be considered by others to be intimidating, disrespectful or dismissive
Disregards or is insensitive to the personal space or boundaries of others,

This letter will be considered a verbal warning reinforcing the need to follow the Code of Conduct in your interactions with others.

I am confident that there will not be any additional violations in the future. However, in the event that there are, appropriate disciplinary action will need to be taken.

In mid-July, Brown's contract was not renewed and he left the Hospital's employ.

Analysis

The General Counsel alleges that the July 10 verbal warning given to Marshall was unlawful on a number of theories: a violation of 8(a)(3) as retaliation for Marshall's union activities (complaint paragraph XII(c), (g), and XIV); an independent violation of 8(a)(1) on a theory that verbal warning penalized her for violating unlawfully overbroad rules and on a separate theory that verbal warning penalized protected and concerted activity. (Complaint paragraph XII(b), (c), (f) and XIII.)

The General Counsel chiefly argues that the verbal warning enforced unlawfully overbroad rules against Marshall in violation of Section 8(a)(1). I decline to reach that theory. In the first place, contrary to the allegations of the General Counsel, I have found that two of the three rules cited in the verbal warning memo were not unlawfully maintained. More importantly, I think that viewing Marshall's July 10 verbal warning as an unlawful application of rules misses the gravamen of the problem. With the June 10 warning, the Respondent, on its face, punished Marshall for an incident that occurred during the course of protected and concerted activity. However, even that is pretextual—the Respondent's pressing of this matter against Marshall constitutes retaliation against Marshall for her union activity.

As discussed above, the Supreme Court-approved analysis in discrimination cases turning on employer motivation was established in *Wright Line*, 251 NLRB 1083 (1980). The standard is discussed at length, above. With regard to the General Counsel's prima facie case under Wright Line, most of the factors discussed with regard to the suspension also satisfy the General Counsel's prima facie burden with regard to the verbal warning issued against Marshall a few days later. Marshall was a vigorous and open supporter of the union drive at the Hospital and the Respondent's knowledge of this is not in doubt. The element of union animus is established, as with the suspension, based on the Respondent's ongoing unlawful effort to remove Marshall's union literature, and the personal threat made against Marshall if she continued in her union activity. In addition, as I have found, just two weeks before the verbal warning issued against Marshall, she had been unlawfully suspended. The evidence of discriminatory animus is additive. The finding that the suspension was the production of unlawful animus adds even more weight to the General Counsel's prima facie on the verbal warning.

In addition, the investigation undertaken by Crumb was relied upon in a patently suspicious way, a suspicion only accentuated by the Respondent's initial failure to produce the actual handwritten notes from the investigation pursuant to subpoena, which, as discussed, contained a number of differences from the typed notes that Crumb initially identified as "the notes that [she] took." Unlike with the suspension, in the case of the verbal warning, Crumb undertook an investigation, but she ignored what it uncovered, relying instead on the known-to-Crumb-to-be-biased Brown, and the known-to-Crumb-to-be-biased Sullivan, the latter whose alleged "statement" indicting Marshall was "rewritten" and "revised" although neither the original or revised statement made its way into evidence, and although Sullivan was not called to testify. This rigged investigation not only adds to the weight of the General Counsel's showing of

discriminatory animus, but provides convincing evidence that the Respondent's reasons for the verbal warning were pretextual.

In this instance, the complaint against Marshall was lodged by Brown, a manager known to be hostile to Marshall on many grounds, including her union activity. The Respondent took it and ran with it, without regard to the fact that the investigation did not support Brown's claims. Crumb reached the conclusion she wanted to reach, not for the reasons she claimed. It is well-settled that a finding of pretext "defeats any attempt by the Respondent to show that it would have discharged the discriminate[e]s absent their union activities." *Rood Trucking Co.,* 342 NLRB 895, 898 (2004); *Austal USA*, 356 NLRB 363, 363–364 (2010); *La Gloria Oil & Gas Co.,* 337 NLRB 1120, 1124 (2002). The Respondent's July 10 verbal warning of Marshall violated Section 8(a)(3) and, derivatively, 8(a)(1) of the Act.[52]

1. Complaint paragraph XII(d) and IX

(Marshall's demotion; notification of confidentiality in disciplinary meeting)

a. Interaction with new ICU interim director

The following week after Marshall's July 10 verbal warning, Brown's contract was not renewed and he lost his job at the Hospital. In mid-August 2015, Sandra Beasley became the interim director of ICU. Beasley left in the fall of 2015, perhaps in October, and was replaced by Gloria Prince.

When Beasley assumed her duties as interim director Marshall was on vacation and she did not meet Beasley until the morning of August 28. Marshall estimated that Beasley had been working about a week at that time. About 6:30 a.m. on August 28, Beasley came into the back hallway where Marshall was getting a charge report from another nurse, Scott Goldsmith. Beasley introduced herself to Marshall. They shook hands, and then Marshall continued speaking with Goldsmith about the charge report. A little later in the morning Beasley asked Marshall to come find her before the 8:30 interdepartmental bed meeting so they could go together to it.

Marshall said that 8:25 she realized she needed to go to the bed meeting and did not want to be late. She looked in Beasley's office and in the back hallway, but did not see her. Marshall went alone to the bed meeting. Afterwards, Beasley approached Marshall and told her that she was upset that Marshall had not taken her with her to the bed meeting. Marshall told Beasley that she looked for her and did not see her. Marshall told her, "I knew you'd been here before." (when Marshall was on vacation). "You'd been brought there before. You knew what time it was held every day. I didn't want to be late, so I went ahead and went without you."

At some point in the day, the nurse in charge of maintaining the schedules, Crystal Root, mentioned to Marshall that there were holes in the schedule for the upcoming weekend. According to Marshall's unrebutted testimony, she came to Marshall and said, "do you know there are holes?" Marshall said, "yes, I'm well aware. Everybody is aware. Sandra knows about it." Marshall told Root to go to talk to Beasley about the holes, "because I had already made calls and had nobody who was willing to come in. There was nothing more I could do." Marshall testified that she made calls the day before and "I had made some that morning too. This is a continuous thing with these phone calls." At some point thereafter Beasley asked Marshall to make additional calls, and Marshall testified that she did.

Beasley emailed Crumb telling her that she had decided to have a disciplinary meeting that day with Marshall, and that she would have Kansas Underwood, a nursing director who oversees the hospital's fourth floor palliative care unit, sit in on the meeting.

Beasley's complaints, as she put it in the email to Crumb that afternoon, were four: One that morning Marshall had "pretty much flipped me away when I informed her that I would like to meet with her sometime today so that we can get to know one another." Two, Marshall left for the bed meeting without Beasley. Three, Marshall responded to a concern expressed by Sharon [last name not given, perhaps Sharon Newton, ICU educator] about upcoming staffing issues by telling the employee who expressed concern "to take it to Sandra" instead of calling staff herself. Finally, Beasley wrote that Marshall "became argumentative" during a conversation they were having over proper staffing levels.

Crumb responded that "Anne's behavior today is the same we have been seeing for months." She encouraged Beasley to meet with Marshall and to have Underwood there, and to review expectations and go over the events of the day as examples of "what you don't expect from a Team Leader." Crumb told Beasley to "[g]ive Alan an update when the meeting is over. Good Luck. Call me after." Beasley met with Marshall, with Underwood at the meeting. Beasley did not testify at the hearing. (She no longer works for the Hospital and the representation was made that her whereabouts are unknown to the Respondent.) Underwood testified that the meeting began with Beasley telling Marshall that Underwood was present as a witness, and then Beasley addressed "a few specific incid[ents] with her that happened earlier in the day."

Underwood testified: "If I recall it was that, when Sandra said hello to Anne, she was sort of flippant about it and not kind."[53] Then Beasley asked Marshall why she went to the bed meeting without her, and Marshall told her, Well, you know, I'm not your babysitter. You can find it there yourself. Then Beasley mentioned the staffing situation "that there [were] too many [nurses] on Sunday, not enough nurses on Tuesday." Beasley stated that it was her expectation that Marshall would make the calls to nurses to see if they would come in on Tuesday and Marshall became angry and said that it was not her role and that she had never had a job description for the job. Beasley said that "I think it's clear that you know your role as a charge nurse and as a team leader." Marshall turned to Underwood and expressed that she knew Underwood was there as "an

[52] Given my conclusions, I do not reach the General Counsel's alternative Section 8(a)(1) theory that Marshall was disciplined for protected and concerted activity, or that Marshall was unlawfully disciplined for violating an unlawfully overbroad rule.

[53] On cross-examination Underwood recalled that "Anne was very flippant with Sandra when they first encountered each other."

intimidation tactic." Underwood denied this, saying that she was here "for a third party witness." According to Underwood, Marshall said "I am not going to have this conversation with you" and that she was being "intimidated" or "bullied" because "of the union." Beasley said that she had worked in both union and nonunion environments, but "[t]his is about your professionalism." Underwood testified that Marshall then stood and left angrily declaring that "I'm not going to talk to you any longer." She refused to sit back down when Beasley asked her and then left, ending the meeting.[54]

After the meeting, Beasley wrote a lengthy email to Pedersen, Nohelty, and Crumb, copying Underwood, stating that "[i]t was a necessity to meet with Anne Marshall today based on her behavior and work performance throughout the day." The letter provides a lengthy account of the meeting, purporting to set forth Beasley's comments and Marshall's comments in the meeting, as they debated their respective versions of the days' events.[55]

> Nohelty responded 12 minutes later, thanking Beasley and stating:
>
> This is the behavior that Ann has displayed all along. It certainly did not take her long to show her true colors. We will have to address her behavior first thing Monday morning when Alan returns. If you need me over the weekend, you now have all my numbers. If you need me to come in, I can do that as well.

Beasley responded: "Thank you. We haven't resolved the shortage for Sunday. So we'll have to see how the weekend goes. Have a[ ] great weekend and I will see everyone on Monday."

Some time, either over the weekend or on Monday, Crumb says she spoke with Beasley, Pedersen, Nohelty, and Underwood about these emails and about Marshall. There is no record account of what was stated in these discussions. Neither Underwood nor Pedersen testified about these conversations at all. Nohelty and Beasley did not testify.

According to Crumb, in consultation with Pedersen and Nohelty, "We reached a decision that Anne's behavior wasn't what we expected to see in a Team Leader or Charge Nurse and that we would demote her back to registered staff nurse." Nohelty did not testify. Pedersen did not testify about his involvement in this decision, or any involvement in the late August events. Indeed, he did not seem familiar with the details of Marshall's discipline from June and July. Crumb did not speak with Marshall. There is no evidence that Crumb spoke with Goldsmith, the nurse with whom Marshall was working the morning when Beasley first approached Marshall. Crumb testified that it was the combination of the summers' events that resulted in the decision:

> Because of a series of behaviors that Anne had been having from June—two incidents in June, incident in July; now here we are with a new interim [director] and its starting off being the same behavior from—it's just that it wasn't the behavior we expect to see in a Team Leader and Charge Nurse—confrontational, not following through on requested—like going to a bed meeting. She didn't follow through on getting Sandra, and just her unprofessional behavior during the meeting with Anne, her storming out of the meeting; it just all added up in the—into a package.

b. The August 31 demotion meeting

On Monday, August 31, Beasley asked Marshall to come with her to Crumb's office. Marshall asked for a witness. Although several proposed witnesses were rejected, Marshall and management finally agreed to have a social worker named Kim Pacquin attend as a witness. Thus, the meeting consisted of Crumb, Beasley, Pacquin, and Marshall.

Crumb began by indicating to Marshall that Marshall had met with Beasley already, and Marshall acknowledged that Beasley had shared her concerns in that meeting.

Marshall said, referring to Pacquin: "can I just start by saying that I requested to have you here because I didn't feel comfortable." Beasley followed up by saying, "let me second that by saying that whatever is said in this room, please keep it confidential." Pacquin responded, "Oh absolutely."[56]

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[54] I do not credit Marshall to the extent that Marshall testified that Beasley mentioned the Union first. Her pretrial affidavit on this point (read into the record) is essentially consistent with Underwood's account of how the subject of the union was introduced into the conversation. At trial, Marshall appeared to agree with her affidavit testimony after it was read to her.

[55] I note that this document contains the first claim that Marshall "'flipped' Beasley off during their introduction that morning, a claim endorsed and relied upon by Crumb. Beasley wrote: "I shared with Anne my perception of that she 'flipped' me off during our morning introduction which I found to be unkind, disrespectful, and unprofessional." I note that Underwood did not support this claim in her testimony. Underwood testified—twice—that Beasley accused Marshall of being "flippant," a very different accusation. Crumb and Underwood were intelligent and articulate. They know the difference between "flippant" and the obscene gesture known as "flipping someone off." I presume Beasley knew the difference too. Beasley's premeeting email informed Crumb that Marshall "pretty much flipped me away," is different than the assertion that Marshall "flipped me off." Notably, and probatively, Crumb's pretrial affidavit does not assert that she believed that Marshall "flipped [Beasley] off" or "gave her the middle finger," although at trial Crumb testified—remarkably in my view—that she interpreted Beasley's complaint that way. Instead, her affidavit states that "Sandra told me about how she was treated by Anne, about the treatment, how she was dismissive and disrespectful." Crumb agreed with counsel's representation that in her affidavit the word "flippant" is crossed out (as originally drafted by the Board agent) and Crumb wrote in the word "dismissive." It strikes me as highly unlikely that something as provocative as raising the middle finger at a supervisor would be left out of an affidavit discussing the very episode. The prevalence of the word "flippant" in this record is interesting. Like a plant grows when watered, the fabrication that Marshall "flipped off" Beasley took root over the course of the demotion.

[56] The question of to whom the "confidentiality" warning was made was considered by all parties to be of significance in this litigation. Here, I note the issue of *by* whom the confidentiality warning was given. The stipulated-to recorded audio and transcript of the meeting

The meeting turned to Marshall's offenses. Beasley stated,

> But based on the level of the concerns and the—and from my standpoint the egregiousness of the continuation of that day, and how you stormed out of the room ending the conversation, when the conversation was totally appropriate.

Marshall interrupted to say that "I don't agree it was appropriate. You can't ask me questions about the union or my involvement." Beasley denied asking Marshall that, saying, "you jumped to that conclusion and you didn't listen to what I said." Marshall argued about what was stated at their previous meeting, with Marshall insisting that Beasley brought up the union, and "that's when I ended the conversation."

> Based on the lack of professionalism that you showed that day, and also based on the lack of—the poor job performance you did when I asked you about scheduling and you had another nurse to come to you and point out that there was an issue, that you weren't: even willing to follow—up and to ask specifically, because you directed them back to me, and I specifically had to come to you as a team leader to ask you to call staff—

At that point, Marshall interrupted to say that this "had already been done. Nobody was coming. I informed you of that." Marshall and Beasley went back and forth about whether the calls she made the previous day needed to be repeated the following day in an effort to obtain enough staff. Marshall pointed out that when "the same people were called and the no's were all exactly the same."

Beasley then said: So what we're going to do at this point is we're going to step you down out of the team leader position into a staff position."

Marshall protested that "I know this is complete retaliation and bullying. That's what this is. It's evident."

Beasley denied this, stating that "you know, there is some history there with the behaviors that you presented to me, not even knowing me, you flipped me off." Based on the record, this was the first time this accusation had been made to Marshall. Marshall vehemently denied it: "I never, ever did that." Beasley said, "Yeah, you did. You did."

Beasley told Marshall that Marshall's first meeting with her, the new director, that first morning "wasn't customer service friendly at all." Beasley raised that Marshall left without her for the bed meeting, saying that Marshall "[d]idn't even come to see whether I was ready, not ready. 8:30 I walk on the unit, you were already gone." Marshall replied, "That meeting is at 8:30. I had to go. I was busy that day. There was a lot going on." Then Beasley raised their subsequent conversation where Marshall told Beasley, "I don't have to hold your hand, you're not a baby." Marshall said, "you knew where it was. You had been escorted there previously" and Marshall stated that she looked for Beasley in her office at 8:25 but she was not there, and Beasley suggested she had been there then, or maybe shortly thereafter.

Beasley said that "we're not going to continue going around in a circle, I'm just going to let you know that effective immediately we're going to step you down out of the team leader position and back into a staff nurse." Marshall said, "Okay. And I know exactly what this is about, so that's all that has to be said." Beasley replied. "Well, I'm sorry that's your perception, but it's not retaliation." Marshall stated, "Well I find that hard to believe when you're the one at the first meeting who brought up union, and now this is happening. So that's all I need to know." Crumb added at this point that it's the "charge, as well . . . . [b]ecause that's part of a charge nurse's responsibility . . . . to follow through on staffing changes." Beasley added, "It's not appropriate at any time, whether you feel like the conversation is not right, you don't just jump and storm out of a room. You don't." Marshall replied, "I gave you two instances to stop talking about the union. I told you [you] couldn't talk to me about it." Beasley denied that she ever asked Marshall about the union. The meeting ended.

Several days after the meeting, Crumb and Beasley prepared and gave to Marshall a letter, dated September 2, headed "Letter of Expectation—Transition to Staff Nurse," stating:

> On August 31, 2015. you were informed that based on repetitive unacceptable behaviors which include but not limited to the failure to follow the provisions of the Nursing Code of Conduct and Mutual Respect through professional leadership. that you were being transitioned into a Clinical Staff Nurse position effective immediately. Therefore officially, at the end of your shift on August 31, 2015, you are no longer to assume the role of a Team Leader nor as a Charge Nurse within Cayuga Medical Center.
>
> As you move forward you are expected to follow the Nursing Code of Conduct & Mutual Respect Provision. In addition, you are required to follow all applicable policies, procedures provisions and guidelines within Cayuga Medical Center.
>
> Anne, you are a valuable member of our organization and we want you to be successful in your new role. Therefore the requirements of your new role are inclusive of the expectations that are listed below.
>
> Expectations:

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shows that Beasley made the comment, as stated in the text. This warrants discrediting of Crumb's testimony that "basically" she (Crumb) said, "Kim, you're here as a witness to this conversation between myself, Sandra and Anne; and this information is confidential, and do you feel that you can keep this information confidential?" Although I agree and find that Beasley's comment about "confidentiality" was directed to Pacquin and, appropriately, Pacquin responded, Crumb's inaccurate testimony about this remark illustrates what I perceived to be a tendentious tendency in her testimony generally. Her account of her comments is tailored to burnish the Respondent's litigation interest in showing that the remarks were directed to Pacquin, and not to the meeting attendees generally. In this case, Crumb's account is disproven by the stipulated-to recorded audio and transcript of the meeting—she didn't make any comments about confidentiality, Beasley did. But I believe, as demonstrated here, that a litigation-inspired gloss covered much of her testimony, albeit there is not always a tape recording available to so clearly demonstrate it.

- Serve as the initial point of contact for internal and external customers.
- Upholding the Nursing Code of Conduct and Mutual Respect Provision.
- Respond to internal and external customer needs promptly and professionally.
- Maintain a professional demeanor when speaking with someone over the telephone and/or when seen in person.
- Maintain professionalism at all times.
- Maintain a positive attitude and be aware of verbal and nonverbal behavior (Body language is 55% of the communication process) and tone of voice.

Analysis (demotion)

The General Counsel contends that Marshall's demotion was a continuation of the Respondent's unlawful actions toward Marshall. He argues that the demotion was based on the application of unlawfully overbroad rules and continued retaliation for Marshall's union activities.

I agree that Marshall's demotion was unlawful. Beasley's complaints with Marshall that prompted the discipline appear particularly trumped up. As Marshall put it, "you don't get demoted for not bringing someone to a bed meeting." Particularly odd—and particularly undermining to the Respondent's defense—is the Respondent's invention of and reliance on the claim that Marshall "flipped off" Beasley upon their first introduction—that she, "gave her the middle finger." As discussed above, this fabrication took root from the initial and very different contention that Marshall was "flippant" when she met Beasley. I think that Marshall's "flippancy" was transformed into an obscene gesture precisely because the legitimate grounds for demoting Marshall were so thin.

Beasley did not testify. But it appears that Beasley was primed and ready for Marshall to return from vacation and moved immediately to discipline her for invented and minor slights, with upper management poised to guide the matter to completion. I do not think that we know the full story. The decision to demote Marshall was made in consultation with Pedersen and Nohelty. Nohelty did not testify. Pedersen testified extensively, but not about this decision. In any event, the day Marshall returned from vacation, Beasley was loaded for bear, and the bear was Marshall. I suppose Marshall can be faulted for getting angry and leaving the disciplinary meeting, but she understood what was happening. It hardly provides believable grounds for the demotion.

The Wright Line analysis does not have to be repeated in depth. The General Counsel's prima facie case is rock solid, and the demonstrated animus towards Marshall only grows with each subsequent violation. And in this case, the Respondent's effort to show that it would have demoted Marshall in the absence of her protected conduct is unavailing. The pretextual nature of the reasons for the demotion are demonstrated by its invention of the claim of Marshall's obscene gesture, not to mention the trivial nature of the offenses attributed to her. Moreover, the Respondent has not shown that it would have demoted her without reliance on the unlawful warnings issued to Marshall earlier in the summer. Indeed, Crumb specifically testified that the demotion was the result of "a series of behaviors" including the "incidents in June" and the "incident in July." It is well settled that a decision to discipline an employees is tainted if the decision relies on prior discipline that was unlawful. *Care Manor of Farmington, Inc.*, 318 NLRB 725, 726 (1995); *Dynamics Corp.*, 296 NLRB 1252, 1253–1254 (1989), (discharge based on previously issued unlawful warnings violates Section 8(a)(3)), enfd. 928 F2d 609 (1991). Marshall's demotion violated Section 8(a)(3).[57]

Analysis (confidentiality directive)

I reject the General Counsel's contention that the instruction to the disciplinary witness Pacquin to keep matters stated in the meeting confidential violated the Act.

As I have found, this direction was given to the witness to the meeting, social worker Pacquin—not to Marshall. And I have found that Pacquin, not Marshall, responded to the directive. Marshall surely had reason to be upset about this meeting, but I reject the claim that she reasonably understood this to be a directive to her that she should keep the matter confidential. There is no evidence, based on any events other than at this meeting that the Hospital ever communicated a policy to employees that discouraged them from discussing their own or other coemployees' disciplinary actions. The only evidence is that the Hospital had a policy of not broadcasting an employee's discipline to other employees. Based on the evidence, I reject the contention that Crumb (as alleged in the complaint) or Beasley (as the facts show was the one to mention confidentiality) "informed employees that the contents of the meeting were to be kept confidential." I will recommend dismissal of paragraph IX of the complaint.[58]

2. Complaint paragraph XII(e)

(The negative annual performance evaluation)

Hospital employees receive annual performance appraisals. According to the employee handbook, the appraisals "are used to determine pay increases and become part of your employee personnel file." Typically the department directors perform annual evaluations for the staff nurses under their direction between mid-April and the end of June of each year. Evaluations affect raises and bonuses, and are considered when an employee seeks to transfer to another job within the Hospital.

[57] Given my finding, I do not reach the General Counsel's alternative claim that the demotion constituted an unlawful application of an unlawfully overbroad rule.

[58] The General Counsel relies (GC Br. at 15) upon "admissions" that Pedersen testified that Crumb told him that she told Marshall and Pacquin that the meeting should be confidential, and a position statement submitted by the Respondent that states that Crumb asked that the conversations be kept confidential "because CMH considers individual personnel actions to be private matters." However, as the General Counsel recognizes, the record evidence demonstrates that Crumb did not make the statement at issue, Beasley did. Thus whatever Crumb told Pedersen and whatever the Respondent admitted in a position statement that Crumb said, is beside the point.

The evaluations are a combination of objective (i.e., maintenance of certifications, attendance, educational requirements) and more subjective assessments of performance. Items are rated on a 5 point scale with different weighting given to different areas. An overall score is given at the end.

Marshall's evaluations and scores from 2008 through 2015 were entered into the record. From 2008 to 2014, her overall evaluations were 4.46 (2008), 4.62 (2009), 4.61 (2010), 4.83 (2011), 4.76 (2012), 4.78 (2013), 4.73 (2014). Each evaluation contains many comments, and they are uniformly laudatory. Reading through them, one cannot help but be struck by how highly valued Marshall was and the consistent positive regard for Marshall's work ethic and skills. The summary statements by the Hospital for these years are as follows:

2008

Anne is a valuable member of our department. She has shown what a positive impact one person can make in the ICU Anne demonstrates the highest level of professionalism and teamwork and is always there for her coworkers. She always brings a smile and a positive attitude to the workplace and maintains this even during the toughest of shifts. Her work is thorough and of top notch quality.

Anne has been mentioned by patients and families for her outstanding care and positive attitude. She is positive role model for her peers and an ambassador of team work and positive attitude, for our unit.

2009

Anne is a valuable member of our department. Her positive attitude and smile can brighten a difficult day. Anne brings a lot of experience to the bedside and is always willing to share her knowledge with others and is always willing to help train new staff. Anne is flexible with her schedule and is willing to do what it takes to help the team. She is also one to stay calm when things get very busy which contributes to keeping the team relaxed and on task.

Anne is often mentioned by patients and families for her outstanding care and positive attitude. We are very fortunate to have Anne on our team.

2010

Anne is a valued member of our team, She brings a positive attitude to the workplace and has a very strong work ethic. Although in a per-diem position, she has been working on a very regular basis and brings a nice skill mix to the team. Anne has demonstrated time and again the ability to take care of the most critically ill patients without becoming unglued. She is very poised and professional in her approach to nursing.

Over the past year Anne bas done some charge for us, and is currently active in precepting and mentoring new employees, and is doing an exceptional job. We are very fortunate to have someone like Anne on our team and we hope to maintain her employment here for many years to come.

2011

Anne is very self directed and provides her patients and their visitors/families with the highest quality care, She is always among the first to complete assigned education and is consistent in maintaining her ongoing education. She takes on difficult assignments without complaint and always does a great job. Anne has .also proven to be a great resource to her coworker & I look forward to working with Anne for a long time into the future. Anne is simply an outstanding nurse and employee.

2012

Anne is an excellent employee. She is honest and straight forward. She does an excellent job when in charge and because of this earned a team leader position recently. She is a strong ICCU nurse who is always willing to share her knowledge. She maintains a calm positive attitude and is a good role model for others. Overall she does a great job and I look forward to working with Anne in her new role.

2013

Anne is becoming a strong team leader and has adapted well to her new role over the past year. She does an excellent job with following upon CMS indicators, QA's and kronos needs. As a team leader I want to see Anne work on being more positive about organizational structure and hospital leadership. Overall she is

Doing an outstanding job and I am fortunate to have her as part of my leadership team.

2014

Anne is a good team leader and charge nurse. She has strong clinical skills, is reliable, and has strong work ethic. She does a nice job of assisting with payroll and following up on issues. She is helpful and always looking out for the staff. One thing I would like her to work on is the example she sets with her cell phone and texting throughout the day. Overall I think Ann does a great job and I am pleased with her performance.

In 2015, Marshall was issued a score of 3.73, one full point less than in 2014, and a significant drop in a five point scale.

Crumb testified that in 2015, with an interim director in ICU at evaluation time, and with the Hospital unsure how much longer it would take to find a permanent director, the Hospital decided to wait until fall for the evaluations of the ICU staff.

In April 2015, employees in ICU asked how their evaluations would be done since no one who had witnessed them working over the course of the year would be there to do the evaluation. During a staff meeting an administrator told them "we'll probably use last year's." In the summer, Crumb confirmed to employees that last year's evaluations would be used for the current year.

According to Crumb's testimony: "the message was given at a staff meeting that we would be using the rating for the 2014 evaluation for the 2015 evaluation," with the exception that the "personal accountability" section of the evaluation would be rescored for 2015.

The personal accountability section did not add to an employee's score, but failure to meet any item in it reduced the final evaluation score by 1 full point. Crumb testified that she told the nurses the personal accountability section would be redone for 2015 because "I didn't think it was fair if someone had lost a point in 2014 they could have earned it back in 2015." In other words an attendance or academic deficiency in 2014 could be demonstrated to be corrected. The procedure for 2015, then, as explained by Crumb, was:

> I would take their rating . . . [f]rom 2014. I'd look at their rating, and then I would look at the personal accountability section in 2014 to see if they had lost a point; and if they had lost a point, then I would do an investigation to see if they earned that point back, such as if they had not done their mandatories [educational requirements] in 2014 and did in 2015[,] they would earn that point back.

In fact, this is not what Crumb did, and what she did do was not explained on the record and is highly suspicious.

In 2015, Marshall's evaluation, signed by Crumb, is dated October 30, 2015. The summary page lists her 2014 score, 4.73, and subtracts a point, giving her a 2015 score of 3.73.

The loss of the point is directly attributable to Marshall receiving a negative mark, for the first time, for an item in the personal accountability section of the evaluation.

The only evaluations in the record are Marshall's, for the years 2008–2015. The personal accountability of these evaluations (Section E) in 2011, 2012, 2013, and 2014, consist of four items to be checked (or left blank, in Marshall's case they were always checked). These four items were:

> Maintains all appropriate certifications and licenses for position
>
> Completes all required competencies/Mandatory Education by established deadline dates
>
> Meets the expectations of the attendance policy
> Is compliant with all Red/Rules.

Before 2011, in 2008, 2009, and 2010, there were additional criteria in Section E personal responsibility. In those years there were eight items to be assessed, and a space to mark Yes or No to the left of each item. The items were as follows:

> Follows laws and regulations applicable to the operations of department and organization
>
> Demonstrates a sense of right and wrong by exhibiting honest, ethical behavior
>
> Brings concerns forward to management, human resources or Compliance Officer
>
> Preserves confidentiality of patient and employee information "written or electronic" and observes patient rights
>
> Maintains all appropriate certifications and licenses appropriate for position
>
> Has completed minimum level of competency defined for the position
>
> Completes all required competencies/Mandatory education by established deadline dates
>
> Meets the expectations of the attendance policy

At least in Marshall's case—the record does not speak whether the change was applied to other ICU employees—in 2015, Section E returned to an eight-item Yes/No (with one item omitted and an entirely new one added). Marshall was assessed a "No" on "Demonstrates a sense of right and wrong by exhibiting honest, ethical behavior," a criterion that had not been part of the personal accountability section (or found anywhere else on the evaluations) since 2010. This is the reason that Marshall lost a full point in 2015 compared to 2014. Crumb testified that as far as she knew, no other ICU employee lost a point for this item in 2015. Crumb testified that a few nurses lost a point for failing to complete mandatory education, and one for an attendance issue. However, these were criteria included in the 2014 (and previous years') evaluations.

Notably, the evaluation used for Marshall in 2015 appears different in another way. Section F, the section that follows Section E personal accountability on the page, is a new item, "Medical Center Performance Objectives" that is not found in any previous evaluations in the record.

All of this suggests that a different evaluation sheet was used in 2015, at least for Marshall. Again no explanation is made for this, and it is contrary to the testimony that the personal accountability section from 2014 would be reviewed to see if they could earn back a point lost. In Marshall's case, at least, the personal accountability section used for 2015 contained items not used since 2010, and it was used against her, in a way unique to her—no one else lost a point based on subjective factors newly introduced to the personal accountability section.

> Crumb testified that her reason for downgrading Marshall in the evaluation was:
>
> For all the behavior issues that had happened throughout the year, from the June—the June issues with not being truthful about calling staff in, twice; and her behaviors as far as not being truthful.

Analysis

The General Counsel alleges that Marshall's negative 2015 evaluation was unlawful. In 2015, Marshall was singled out and given a lower ranking on the subjective portion of the evaluation. This was contrary to the procedure for 2015 that Crumb testified she would use. Moreover, as noted above, inexplicably, the Respondent used a new evaluation form in 2015. Marshall was downgraded based on a criterion in this new form that had not been on the evaluation form in recent years. Moreover, according to Crumb, the negative downgrade in evaluation was based on the incidents from the summer that I have found to be

unlawfully motivated.

In terms of a Wright Line analysis, Marshall's union activity, the employer's knowledge, and its animus are obvious. Given the irregular and unexplained criterion on which Marshall's negative evaluation was based, and the fact that in downgrading Marshall the Respondent failed to comply with the process for 2015 evaluations that Crumb testified was the process to be used, the pretextual nature of the Respondent's actions are transparent. This further supports an inference of discriminatory motive and negates the claim that the Respondent would have taken the same action in the absence of the employee's protected activity. *El Paso Electric Co.,* 355 NLRB 428, 428 fn. 3 (2010) ("we rely only on the judge's finding that the Respondent's reasons for its actions were pretextual, raising an inference of discriminatory motive and negating the Respondent's rebuttal argument that it would have taken the same action in the absence of [the employee's] protected activities"); *All Pro Vending, Inc.*, 350 NLRB 503, 508 (2007); *Rood Trucking Co.,* 342 NLRB 895, 897–898 (2004), citing *Laro Maintenance Corp. v. NLRB*, 56 F.3d 224, 230 (D.C. Cir. 1995) ("When the employer presents a legitimate basis for its actions which the factfinder concludes is pretextual . . . . the factfinder may not only properly infer that there is some other motive, but that the motive is one that the employer desires to conceal—an unlawful motive . . . .") (internal quotation omitted); *Whitesville Mill Service,* 307 NLRB 937 (1992) ("we infer from the pretextual nature of the reasons for the discharge advanced by the Respondent that the Respondent was motivated by union hostility"), citing *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466 (9th Cir. 1966).

Independently, the Respondent makes no bones about the fact that the lower evaluation was causally linked to the previous disciplinary incidents meted out to Marshall. As those were unlawful, the unlawfulness of the negative evaluation is established. *Parkview Hospital, Inc.,* 343 NLRB 76, 76 (2004). The Respondent's unfavorable performance evaluation of Marshall for 2015 was unlawful in violation of Section 8(a)(3) of the Act.

Conclusions of Law

1. The Respondent Cayuga Medical Center is an employer within the meaning of Section 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

2. The Respondent violated Section 8(a)(1) of the Act, since about April 28, 2015, by maintaining a Nursing Code of Conduct that includes the following provisions:

> People
>
> Utilizes proper channels to express dissatisfaction with policies and administrative or supervisory actions and without fear of retaliation.
>
> Community
>
> Inappropriate and disruptive communications/behaviors include but are not limited to:
>
> Displays behavior that would be considered by others to be intimidating, disrespectful or dismissive.
>
> Criticizes coworkers or other staff in the presence of others in the workplace or in the presence of patients.

3. The Respondent violated Section 8(a) (1) of the Act, on or about May 7, 2015, and August 26, 2015, by issuing unlawfully overbroad solicitations to employees to report coworkers.

4. The Respondent violated Section 8(a)(1) of the Act, on or about July 8, and within a couple of days thereafter, by directing employees to cease distributing union literature.

5. The Respondent violated Section 8(a)(1) of the Act, on a date in the fall of 2015, or early winter 2016, by informing employees that it was inappropriate to discuss their salaries and/or wages.

6. The Respondent violated Section 8(a)(1) of the Act, on or about May 8, 2015, by interrogating an employee about her union activities and threatening an employee with unspecified reprisals unless she ceased her union activities.

7. The Respondent violated Section 8(a)(1) of the Act, from May 2015 through July 2015, by prohibiting employees from distributing and posting union literature around the Respondent's facility while permitting employees to distribute and post other literature.

8. The Respondent violated Section 8(a)(1) of the Act, on or about November 10 and 11, 2015, by threatening employees on Facebook with unspecified reprisals and with job loss in retaliation for employees' protected and concerted activities.

9. The Respondent violated Section 8(a)(1) of the Act, on or about October 5, 2015, by issuing employee Scott Marsland discipline in the form of a "verbal written warning" because of his protected and concerted activities, and disciplining Marsland pursuant to an unlawfully overbroad rule.

10. The Respondent violated Section 8(a)(3) and (1) of the Act, on or about June 26, 2015, by suspending employee Anne Marshall in retaliation for her union activities.

11. The Respondent violated Section 8(a)(3) and (1) of the Act, on or about July 10, 2015, by issuing a verbal warning to employee Anne Marshall in retaliation for her union activities.

12. The Respondent violated Section 8(a)(3) and (1) of the Act, on or about August 31, 2015, by demoting employee Anne Marshall from her charge nurse and team leader position in retaliation for her union activities.

13. The Respondent violated Section 8(a)(3) and (1) of the Act, on or about October 30, 2015, by issuing Marshall an adverse performance evaluation for 2015, with a point subtracted for the "personal accountability" section, in retaliation for her union activities.

14. The unfair labor practices committed by Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and

desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having maintained unlawful provisions in its Nursing Code of Conduct, shall be ordered to revise or rescind the unlawful rules, notify employees of the rescissions, and republish the code of conduct without the unlawful rules.[59]

The Respondent, having issued unlawful disciplinary warnings to employees Anne Marshal and Scott Marsland, must rescind the warnings. The Respondent, having unlawfully demoted employee Anne Marshall, shall offer Marshall full reinstatement to her former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to her seniority or any other rights or privileges previously enjoyed. The Respondent, having unlawfully suspended employee Anne Marshall for 1-1/2 days, and subsequently unlawfully demoted her, shall make Marshall whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful suspension and demotion of her. The make whole remedy shall be computed in accordance with *Ogle Protection Service,* Inc.,183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interested at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014), the Respondent shall compensate Marshall for the adverse tax consequences, if any, of receiving lump sum backpay awards, and, in accordance with *AdvoServ of New Jersey, Inc.,* 363 NLRB No. 143 (2016), the Respondent shall, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, file with the Regional Director for Region 3 a report allocating backpay to the appropriate calendar year for Marshall. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner.

The Respondent, having issued Marshall an adverse performance evaluation for 2015, shall correct the evaluation by removing the negative assessment for the criterion "Demonstrates a sense of right and wrong by exhibiting honest, ethical behavior," and by removing the one point reduction for 2015 and reissuing the evaluation with a point score of 4.73. The Respondent shall provide Marshall with a copy of the corrected 2015 performance evaluation.

The Respondent shall also be required to remove from its files any references to the unlawful suspension and demotion of Marshall, the unlawfully calculated 2015 performance evaluation, and the unlawful warnings issued to Marshall and Marsland, and to notify each of them in writing that this has been done and that the suspension, adverse evaluation, and warnings will not be used against them in any way.

The Respondent shall post an appropriate informational notice, as described in the attached appendix. This notice shall be posted at the Respondent's facility wherever the notices to employees are regularly posted for 60 days without anything covering it up or defacing its contents. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. In the event that during the pendency of these proceedings the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 7, 2015. When the notice is issued to the Respondent, it shall sign it or otherwise notify Region 3 of the Board what action it will take with respect to this decision.[60]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[61]

ORDER

The Respondent Cayuga Medical Center at Ithaca, Inc., Itha-

[59] In *Guardsmark, LLC*, 344 NLRB 809, 812 fn. 8 (2005), enfd. in relevant part 475 F.3d 369 (D.C. Cir. 2007), in recognition of the potential costs of republishing an entire 211-page employee handbook, the respondent was given the option of supplying employees with inserts for the handbook stating that the unlawful rules have been rescinded, or with new and lawfully worded rules on adhesive backing to cover the old unlawful rules until the handbook was republished without the unlawful provisions. Such temporary accommodations are unnecessary here, as the Nursing Code of Conduct is an unbound three-page document that appears printed from a conventional office computer file with an office printer.

[60] The General Counsel also seeks an order requiring that the attached notice be read to employees during working time by a high-ranking management official at the facility or by an agent of the Board. The reading aloud of a notice is an "extraordinary" remedy ordered in egregious circumstances. *Federated Logistics & Operations*, 340 NLRB 255, 258 (2003), enfd. 400 F.3d 920 (D.C. Cir. 2005). I do not intend to suggest that the unfair labor practices committed by the Respondent were not serious. They were. However, here we do not consider an organizing drive where the employer responded with multiple—indeed with any—discharges. The targeting of Marshall was the most egregious of the violations, yet I believe that her demotion and 1-1/2 day suspension will be as effectively remedied by the traditional remedies ordered as they would by a notice reading. The warning issued Marsland was an unlawful but honest reaction by management to the friction caused by the stance he took in the staff meeting. It did not reflect a calculated attack on employee organizing rights. The other violations are not to be minimized, yet they are well within the ambit of the type of violations to which traditional remedies apply. I conclude that under these circumstances, the General Counsel has failed to make the case that traditional remedies are insufficient to remedy the effects of the unfair labor practices. See, *Perry Brothers Trucking*, 364 NLRB No. 10, slip op. at 3 fn. 6 (2016) (denying General Counsel request that notice be read in case finding unlawful layoff and discharge, two instances of instructing employees not to discuss terms and conditions of employment, and unlawfully indicating that it was futile to engage in protected and concerted activity); *Checkers and Fast Food Workers Committee*, 363 NLRB No. 173, slip op. at 2 fn. 2 (2016) (denying General Counsel request that notice be read in case involving two unlawful discharges, threats of unspecified reprisals, and unlawful decreasing of employees' hours).

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

ca, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Maintaining unlawfully overbroad employee rules including the following rules found in the Nursing Code of Conduct:

People

Utilizes proper channels to express dissatisfaction with policies and administrative or supervisory actions and without fear of retaliation.

Community

Inappropriate and disruptive communications/behaviors include but are not limited to:

Displays behavior that would be considered by others to be intimidating, disrespectful or dismissive.

(b) Soliciting employees to report coworkers or file a complaint against them "If you feel you are being harassed or intimidated" or "If you feel that you continue to be harassed."

(c) Directing employees to cease distributing union literature.

(d) Informing employees that it is inappropriate for them to discuss their salaries and/or wages.

(e) Interrogating employees about union activities.

(f) Threatening employees with reprisals if they do not cease union activities.

(g) Discriminatorily prohibiting employees from distributing and posting union literature throughout the Respondent's facility, or from distributing union literature in nonpatient care areas, including by removing and/or confiscating posted or distributed union literature.

(h) Threatening employees with unspecified reprisals and with job loss in retaliation for employees' protected and concerted activities.

(i) Disciplining any employees for engaging in protected and concerted activities.

(j) Disciplining any employees pursuant to an unlawfully overbroad rule.

(k) Discriminatorily disciplining or demoting or issuing an adverse performance evaluation to any employees in retaliation for union or other protected and concerted activities.

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

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

(a) Rescind or revise the following provisions of the Nursing Code of Conduct, notifying employees of the rescissions, and republishing the code of conduct without the following rules:

People

Utilizes proper channels to express dissatisfaction with policies and administrative or supervisory actions and without fear of retaliation.

Community

Inappropriate and disruptive communications/behaviors include but are not limited to:

Displays behavior that would be considered by others to be intimidating, disrespectful or dismissive.

Criticizes coworkers or other staff in the presence of others in the workplace or in the presence of patients.

(b) Rescind the unlawful disciplinary warnings issued to Scott Marsland and to Anne Marshall.

(c) Correct the adverse performance evaluation issued to Anne Marshall for 2015 by removing the negative assessment for the criterion "Demonstrates a sense of right and wrong by exhibiting honest, ethical behavior," and by removing the one point reduction for 2015, and reissuing the evaluation with a point score of 4.73.

(d) Provide Marshall with a copy of the corrected 2015 performance evaluation.

(e) Within 14 days from the date of this Order, offer Anne Marshall full reinstatement to her job as charge nurse and team leader, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(f) Make Anne Marshall whole for any loss of earnings and other benefits suffered as a result of her unlawful suspension, and/or her unlawful demotion, in the manner set forth in the remedy section of this decision.

(g) Compensate Anne Marshall for the adverse tax consequences, if any, of receiving a lump sum backpay award, and file with the Regional Director for Region 3, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

(h) Within 14 days from the date of this Order, remove from its files any reference to the unlawful warnings given to Anne Marshall and Scott Marsland, and to the unlawful suspension, demotion, and adverse 2015 evaluation given to Anne Marshall, and within 3 days thereafter, notify them in writing that this has been done and that the warnings, suspension, demotion, and adverse evaluation will not be used against them in any way.

(i) Within 14 days after service by the Region, post at its facility in Ithaca, New York copies of the attached notice marked "Appendix."[62] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the

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

Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices in each language deemed appropriate shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice in each appropriate language, to all current employees and former employees employed by the Respondent at any time since May 7, 2015.

(j) Within 21 days after service by the Region, file with the Regional Director for Region 3 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. October 28, 2016

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain unlawfully overbroad employee rules, including in the Nursing Code of Conduct, that restrict you from the exercise of the rights set forth above.

WE WILL NOT solicit you to report coworkers or file a complaint against coworkers "if you feel you are being harassed or intimidated" or "If you feel that you continue to be harassed."

WE WILL NOT direct you to cease distributing union literature.

WE WILL NOT inform you that it is inappropriate to discuss your salaries and/or wages.

WE WILL NOT interrogate you about your union activities.

WE WILL NOT threaten you with reprisals if you do not cease your union activities.

WE WILL NOT discriminatorily prohibit you from distributing and posting union literature throughout the Hospital, or from distributing union literature in nonpatient care areas, and WE WILL NOT remove or confiscate posted or distributed union literature.

WE WILL NOT threaten you with unspecified reprisals and with job loss in retaliation for your participation in protected and concerted activities.

WE WILL NOT discipline you for engaging in protected and concerted activities.

WE WILL NOT discipline you pursuant to an unlawfully overbroad rule.

WE WILL NOT discipline or demote or issue you an adverse performance evaluation in retaliation for your union or other protected and concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind or revise the Nursing Code of Conduct and republish the code of conduct without the following rules:

People

Utilizes proper channels to express dissatisfaction with policies and administrative or supervisory actions and without fear of retaliation.

Community

Inappropriate and disruptive communications/behaviors include but are not limited to:

Displays behavior that would be considered by others to be intimidating, disrespectful or dismissive.

Criticizes coworkers or other staff in the presence of others in the workplace or in the presence of patients.

WE WILL rescind the unlawful disciplinary warnings issued to Scott Marsland and to Anne Marshall.

WE WILL correct the adverse performance evaluation issued to Anne Marshall for 2015.

WE WILL offer Anne Marshall full reinstatement to her jobs as Charge Nurse and Team Leader, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Anne Marshall whole for any for any loss of earnings and other benefits suffered as a result of her unlawful suspension and/or her unlawful demotion.

WE WILL remove from our files any reference to the unlawful warnings given to Anne Marshall and Scott Marsland, and to the unlawful suspension, demotion, and adverse 2015 evaluation given to Anne Marshall, and within 3 days thereafter, notify them in writing that this has been done and that the warnings, suspension, demotion, and adverse evaluation will not be used against them in any way.

CAYUGA MEDICAL CENTER AT ITHACA, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/03–CA–156375 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2018, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system. A paper copy of the foregoing will also be provided via Federal Express overnight delivery to the party listed below.

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Kellie J. Isbell
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By: /s/Raymond J. Pascucci
Raymond J. Pascucci