

## Motions

2:10-cv-07395-GAF -FMO James F. Small v. Southern California Permanente Medical Group et al  
(FMOx), DISCOVERY

### UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

#### Notice of Electronic Filing

The following transaction was entered by MacKay, Robert on 12/14/2010 at 12:24 PM PST and filed on 12/14/2010.

**Case Name:** James F. Small v. Southern California Permanente Medical Group et al  
**Case Number:** 2:10-cv-07395-GAF -FMO  
**Filer:** James F. Small  
**Document Number:** 21

**Docket Text:**  
**NOTICE OF MOTION AND MOTION to Supplement the record with *Administrative Decision and Revised Transcripts* filed by Petitioner James F. Small. Motion set for hearing on 1/10/2011 at 09:30 AM before Judge Gary A. Feess. (Attachments: # (1) Exhibit 1 (Administrative Decision), # (2) Exhibit 2 (Revised Transcript Part I), # (3) Exhibit 2 (Revised Transcript Part II))(MacKay, Robert)**

**2:10-cv-07395-GAF -FMO Notice has been electronically mailed to:**

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**2:10-cv-07395-GAF -FMO Notice has been delivered by First Class U. S. Mail or by fax to :**

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Los Angeles, CA 90017-5449

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**H:\R21com\Region 21 C Cases\21-CA-39296\HQ Guidance\10(j)\Scanned Version of ALJD filing\Motion to Supplement.pdf

**Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=12/14/2010] [FileNumber=10804934-0] [06cecb98c44fbbbae7aa61d82fd32c10df945a3a15fee618e75fce2251b67fb9d8



49e78a2f7fd08d069d021e62406691817f263f71871749c311e26a1e5f6b1a]]

**Document description:**Exhibit 1 (Administrative Decision)

**Original filename:**H:\R21com\Region 21 C Cases\21-CA-39296\HQ Guidance\10(j)\Revised Transcripts and ALJD\ALJD.pdf

**Electronic document Stamp:**

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**Document description:**Exhibit 2 (Revised Transcript Part I)

**Original filename:**H:\R21com\Region 21 C Cases\21-CA-39296\HQ Guidance\10(j)\Revised Transcripts and ALJD\Revised Hearing Transcripts 10.18.pdf

**Electronic document Stamp:**

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**Document description:**Exhibit 2 (Revised Transcript Part II)

**Original filename:**H:\R21com\Region 21 C Cases\21-CA-39296\HQ Guidance\10(j)\Revised Transcripts and ALJD\Revised Hearing Transcripts 10.19.pdf

**Electronic document Stamp:**

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7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10  
11 JAMES F. SMALL, Regional Director )  
of Region 21 of the National Labor )  
12 Relations Board, for and on behalf of )  
the NATIONAL LABOR )  
13 RELATIONS BOARD,

14 Petitioner,

15 and

16 SOUTHERN CALIFORNIA )  
PERMANENTE MEDICAL GROUP; )  
17 AND KAISER FOUNDATION )  
HOSPITALS,

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19 Respondents.  
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Civil No. CV10-7395 GAF FM0x

NLRB's MOTION TO SUPPLEMENT  
RECORD WITH ADMINISTRATIVE  
LAW JUDGE DECISION, and  
REVISED TRANSCRIPT REFERRED  
TO IN THE DECISION

Date: January 10, 2011  
Time: 9:30 a.m.  
Judge: Hon. Gary A. Feess  
Courtroom: Roybal 740

1 The Petitioner, National Labor Relations Board, an agency of the United  
2 States Government, hereby moves to supplement the record with the decision of  
3 the Administrative Law Judge (hereinafter ALJ) from the administrative  
4 proceeding, and a copy of the revised transcript referred to in the ALJ's decision.

5 The motion is made on following grounds:

6 1. Petitioner filed its Petition for Injunction under Section 10(j) of the  
7 National Labor Relations Act (hereinafter Petition) with the Court on October 4,  
8 2010, seeking to enjoin Respondents from engaging in certain conduct and to  
9 direct Respondents to engage in certain affirmative conduct.

10 2. The matter is currently under submission by the Court. As of the date  
11 of this filing, the Court has not issued its decision in this matter.

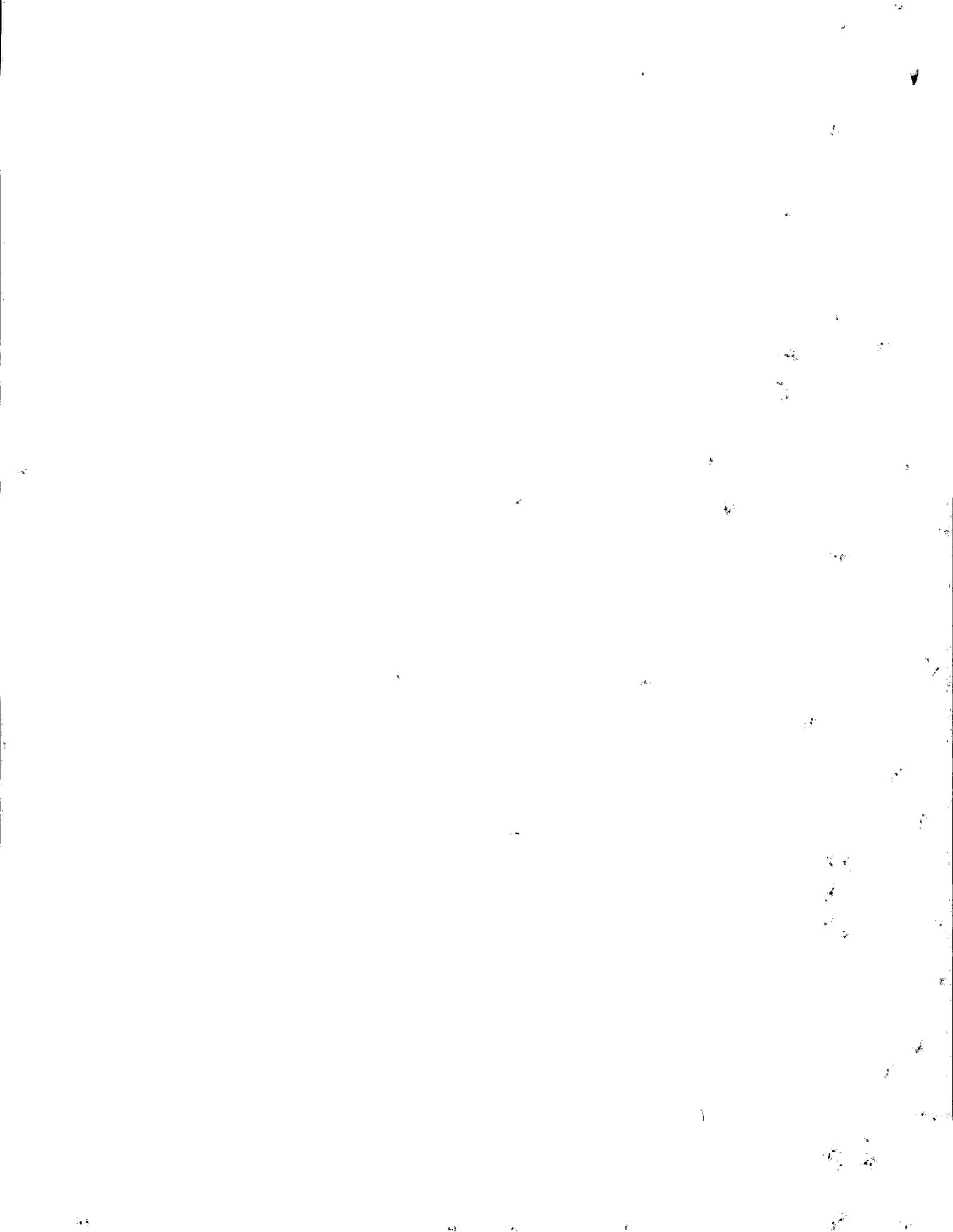
12 3. The record in the NLRB proceeding closed on October 19, 2010, and  
13 briefs were filed with the ALJ on November 17, 2010.

14 4. The ALJ issued his recommended decision on December 13, 2010, a  
15 copy of which is attached as Exhibit 1.

16 5. In his decision, at page 2, footnote 2, the ALJ explained the  
17 circumstances surrounding the issuance of a revised transcript. A copy of the  
18 revised transcript is attached as Exhibit 2.

19 6. Under Petitioner's own Rules and Regulations, Petitioner has an  
20 obligation to apprise the Court of changed circumstances in an injunction  
21 proceeding. (See 29 C.F.R. Sec. 102.94(b)).

22 7. Accordingly, Petitioner moves that the recommended decision of the  
23 ALJ be received into the record, along with the revised transcript.



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3 I. Argument

4 1. As was previously discussed in the original Memorandum of Points &  
5 Authorities in Support of the Petition for Injunction, the legal standard for the  
6 Court to apply in injunction proceedings under Section 10(j) of the Act includes  
7 the analysis of whether or not there is a likelihood of success on the merits before  
8 the Board. Thus, the ALJ's recommended decision regarding the administrative  
9 complaint is relevant to the Court's consideration of whether the Acting General  
10 Counsel would ultimately prevail in the administrative proceeding. The next step  
11 in the administrative process is an appeal of the ALJ's decision to the Board. Thus,  
12 the ALJ's findings with respect to the administrative complaint are relevant to the  
13 matter pending before the Court. Petitioner therefore moves for the admission of  
14 the ALJ's recommended decision into the record for the Court's consideration.

15 2. Petitioner respectfully submits that the decision of the ALJ  
16 substantially strengthens the Regional Director's likelihood of success on the  
17 merits of the 10(j) petition and thus warrants the granting of the interim relief  
18 requested. Courts have repeatedly relied on ALJ decisions in Section 10(j)  
19 proceedings, finding that favorable ALJ decisions bolster the Board's "reasonable  
20 cause" or "likelihood of success." See *Overstreet v. El Paso Disposal, LP*,  
21 668 F.Supp.2d 988, 1005 n. 28 (W.D. Tex. 2009), affd. \_\_ F.3d \_\_, 2010 WL  
22 4351961 (5<sup>th</sup> Cir. November 4, 2010); *Pye v. Excel Case Ready*, 238 F.3d 69, 73  
23 n.8 (1st Cir. 2001); *Rivera-Vega v. ConAgra, Inc.*, 70 F.3d 153, 157 n. 3, 160-61  
24 (1st Cir. 1995). See also, e.g., *Lineback v. Spurlino Materials, LLC*, 546 F.3d 491,  
25 502-503 (7th Cir. 2008); *Ahearn v. Jackson Hospital*, 351 F.3d 226, 238 (6th Cir.  
26 2003); *Silverman v. J.R.L. Food Corp.*, 196 F.3d 334, 337-38 (2d Cir. 1999).

27 3. The decision by the ALJ is only an interim decision and does not  
28 negate the NLRB's request for injunctive relief. Section 10(j) of the National

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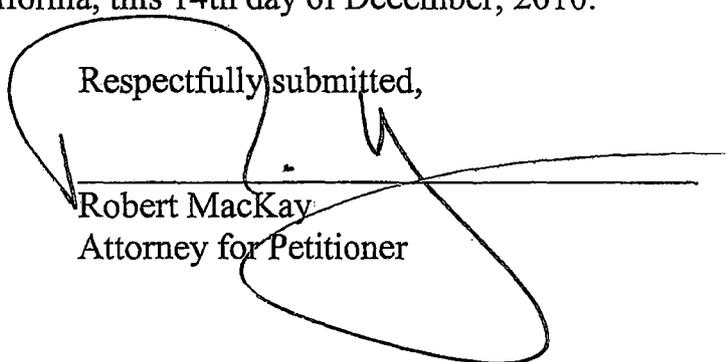
1 Labor Relations Act authorizes the NLRB to seek interim injunctive relief to  
2 preserve or restore the status quo while the parties are awaiting resolution of the  
3 unfair labor practice dispute by the Board. An injunction under Section 10(j)  
4 remains in effect until the Board conducts its review of the administrative law  
5 judge's recommendation and issues its decision. See *Schaub v. West Michigan*  
6 *Plumbing & Heating, Inc.*, 250 F.3d 962, 968 (6th Cir. 2001); *Sharp v. Webco*  
7 *Industries*, 225 F.3d 1130, 1136 (10th Cir. 2000)(noting that ALJ decision is not  
8 self enforcing). Thus, as the administrative litigation is still ongoing and the time  
9 before a final Board Order may be months away, or longer, the risk of irreparable  
10 harm not only continues, but also increases.

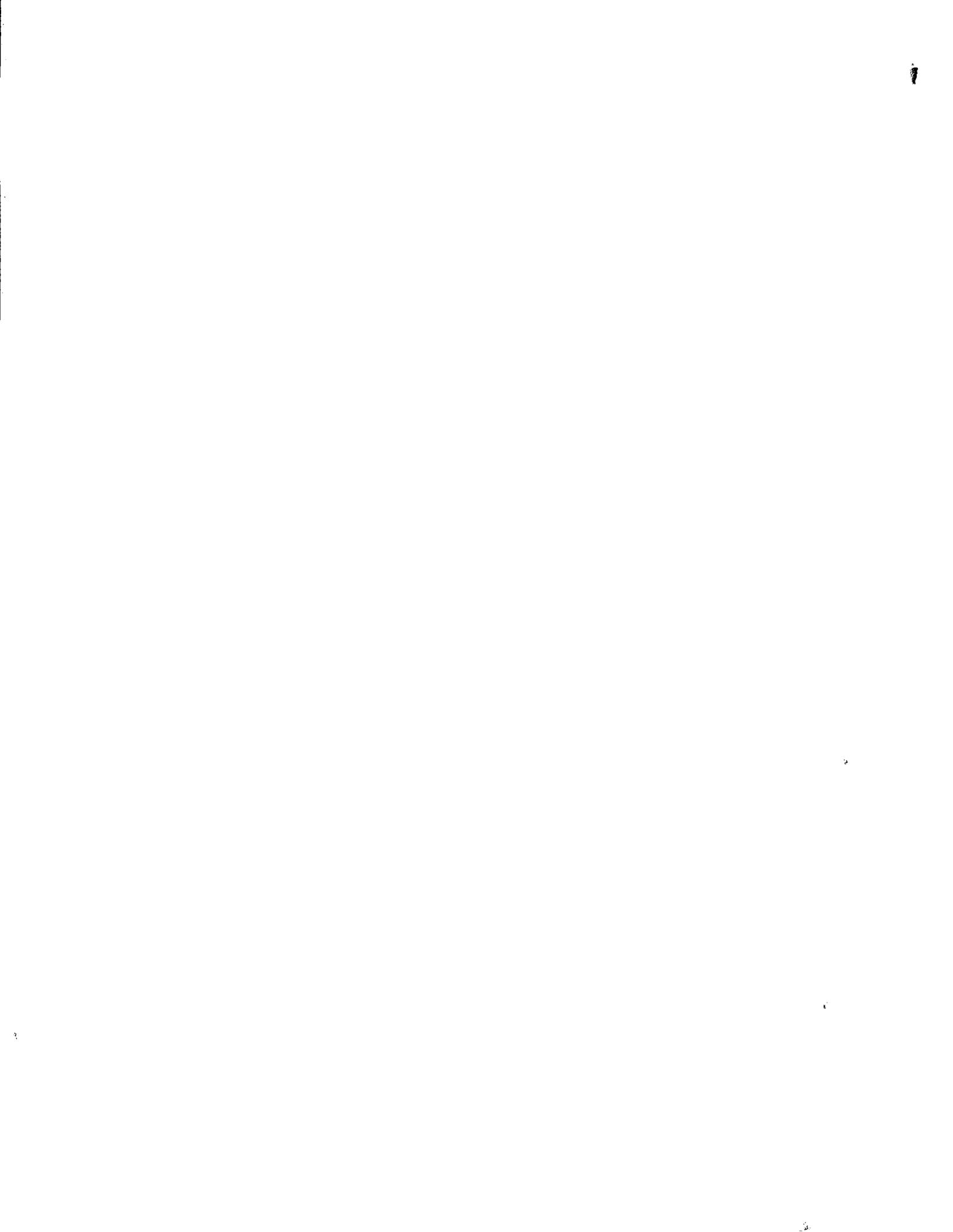
11 4. The ALJ concluded that Respondents violated Section 8(a)(1) and (5)  
12 of the Act by unilaterally cancelling the April 1st wage increase and discontinuing  
13 the benefits at issue in the underlying case, and has recommended an order calling  
14 for Respondents to restore the wage increase and benefits at issue. Based upon the  
15 Regional Director's strong likelihood of success on the merits as now supported by  
16 the decision of the ALJ, the interim relief requested by the Board is just and proper  
17 and would be in the public interest to protect the employees' statutory rights and  
18 the parties' collective-bargaining relationship.

19 WHEREFORE, the Petitioner respectfully prays that an order issue  
20 receiving the ALJ's decision, along with the revised transcript referred to by the  
21 ALJ in the decision, into the record in this matter.

22  
23 Dated at Los Angeles, California, this 14th day of December, 2010.

24 Respectfully submitted,

25  
26   
27 Robert MacKay  
28 Attorney for Petitioner



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

SOUTHERN CALIFORNIA PERMANENTE MEDICAL  
GROUP; and KAISER FOUNDATION HOSPITALS

and

NATIONAL UNION OF HEALTHCARE WORKERS

Case 21-CA-39296

**ORDER TRANSFERRING PROCEEDING TO  
THE NATIONAL LABOR RELATIONS BOARD**

A hearing in the above-entitled proceeding having been held before a duly designated Administrative Law Judge and the Decision of the said Administrative Law Judge, a copy of which is annexed hereto, having been filed with the Board in Washington, D.C.,

**IT IS ORDERED**, pursuant to Section 102.45 of the National Labor Relations Board's Rules and Regulations, that the above-entitled matter be transferred to and continued before the Board.

Dated, Washington, D.C., **December 13, 2010.**

By direction of the Board:

Lester A. Heltzer



Executive Secretary

NOTE: Communications concerning compliance with the Decision of the Administrative Law Judge should be with the Director of the Regional Office issuing the complaint.

Attention is specifically directed to the excerpts from the Board's Rules and Regulations appearing on the pages attached hereto. **Note particularly the limitations on length of briefs and on size of paper, and that requests for extension of time must be served in accordance with the requirements of the Board's Rules and Regulations Section 102.114(a) & (i).**

Exceptions to the Decision of the Administrative Law Judge in this proceeding must be received by the Board's Office of the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570, on or before **January 10, 2011.**

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

SOUTHERN CALIFORNIA PERMANENTE MEDICAL  
GROUP; and KAISER FOUNDATION HOSPITALS

and

Case 21-CA-39296

NATIONAL UNION OF HEALTHCARE WORKERS

*Robert Mackay and Lindsey R. Parker, Attys.*  
for the Acting General Counsel.

*Michael R. Lindsay and Seth L. Neulight, Attys.*  
(Nixon Peabody) for Southern California Permanente  
Medical Group and Kaiser Foundation Hospitals.

*Jennifer L. Goldberg, Atty.* Kaiser Foundation  
Health Plans, Inc.

*Florice Orea Hoffman, Atty.* (Law Offices of  
Florice Hoffman) for National Union of Healthcare Workers.

**DECISION**

Statement of the Case

WILLIAM L. SCHMIDT, Administrative Law Judge. I heard this case at Los Angeles, California, on October 18 and 19, 2010. The Regional Director for Region 21 of the National Labor Relations Board (NLRB or Board) issued the complaint on August 27, 2010, alleging that Southern California Permanente Medical Group and Kaiser Foundation Hospitals (Respondents or Kaiser) engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act (Act).<sup>1</sup> The complaint is based on an unfair labor practice charge filed against Kaiser on March 30, 2010 (and amended on June 14, 2010) by the National Union of Healthcare Workers (NUHW or Charging Party).

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<sup>1</sup> An employer engages in an unfair labor practice within the meaning of Section 8(a)(5) by refusing "to bargain collectively with the representatives of (its) employees." An employer who violates Section 8(a)(5) also derivatively violates Section 8(a)(1), the provision that makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7." Section 7, the core provision of the this nation's basic labor relations law, guarantees employees the right "to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and . . . (if they so chose) to refrain from any or all such activities."

The issue presented here is whether Kaiser violated Section 8(a)(5) and (1) by withholding certain benefits (a two percent across-the-board wage increase, reimbursement for continuing education tuition costs for courses required to maintain licensure (tuition reimbursement), and paid time-off for stewards to attend union-conducted training sessions (on-the-clock steward training)) from employees in three collective bargaining units under agreements negotiated by their prior representative, the Service Employees International Union – United Healthcare Workers West (SEIU-UHW). Although Kaiser admits that many other terms and conditions of employment became inapplicable to the employees in these three units because they exercised their statutory right to select a new bargaining representative (see e.g. GC Exhs. 10 and 11), I have concluded after careful consideration that the limited charge, the remarkably modest complaint, and the narrow scope of the issues the Acting General Counsel litigated at the hearing do not warrant findings and conclusions broader than I have made below.

On the entire record,<sup>2</sup> including my observation of the demeanor of the witnesses,<sup>3</sup> and after considering the briefs filed on behalf of the Acting General Counsel, Respondents, and NUHW, I have concluded that Respondents violated the Act, as alleged, by denying the employees the benefits in question based on the following

## Findings of Fact

### I. Jurisdiction

Southern California Permanente Medical Group (Southern California Permanente), a California professional partnership, operates health care clinics that provide medical services for members of Kaiser Foundation Health Plan, Inc., a nonprofit health maintenance organization. Kaiser Foundation Hospitals, a California nonprofit public benefit corporation, operates various health care facilities in California, Oregon, and Hawaii that provide health care services to the Kaiser Foundation Health Plan members. Only the Southern California facilities of Kaiser Foundation Hospitals are involved in this proceeding.

During a representative 12-month period ending July 30, 2010, Southern California Permanente derived gross revenues in excess of \$250,000 from its business operations, and purchased and received at its Southern California facilities goods valued in excess of \$5,000 directly from points outside the State of California. During the same period, Kaiser Foundation Hospitals derived gross revenues in excess of \$250,000 from its Southern California business operations, and purchased and received at those facilities goods valued in excess of \$5,000 directly from points outside the State of California.

<sup>2</sup> In their brief (R. Br. 3-4, fn 4), Respondents' moved to correct the transcript reference to "pharmacist field" to "Guild for Professional Pharmacists." There being no opposition, the motion is granted. This reference appears at Tr. 58: 17 of the revised transcript rather than at Tr. 62-63 cited in Respondents' brief. Respondents' transcript reference is to the original transcript version which inexplicably contained the off-the-record discussions that occurred at the hearing. The revised edition of the transcript issued after Respondents' brief was filed. References here are to the revised transcript edition. No findings in this decision have been based on off-the-record exchanges shown in the original transcript version.

<sup>3</sup> I find Respondents' claim that certain testimony of NUHW representative Ralph Cornejo should be discredited (R. Br. 3-4, fn. 4) largely an unnecessary, gratuitous shot at this witness. As to those matters that matter in this case, his testimony is significantly corroborated by Respondents' own witnesses.

Based on the foregoing facts, largely admitted by Respondents, I find that Southern California Permanente and Kaiser Foundation Hospitals are each an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and are each health care institutions within the meaning of Section 2(14) of the Act. Respondents also admit, and I find, that NUHW is, and has been, a labor organization within the meaning of Section 2(5) of the Act at relevant times.

## II. Alleged Unfair Labor Practices

### A. Relevant Facts

This labor dispute involves three collective bargaining units located in Kaiser's Southern California region known as the Health Care Professionals (HCP) unit, the Psych-Social Chapter (PSC) unit, and the American Federation of Nurses (AFN) unit. The AFN unit is limited to employees who work at Kaiser's Los Angeles Medical Center; the other two units include employees of both Respondents who work region-wide. Historically, SEIU Local 535 represented the employees in all three units. In 2007, SEIU-UHW-West (SEIU-UHW) became the recognized representative after Local 535 merged into that larger organization.<sup>4</sup>

The Board certified the SEIU-UHW's affiliated predecessor as the representative of the AFN unit in the 1970s. This unit includes:

All employees covered by the collective-bargaining agreement until February 3, 2010, including all in-patient registered nurses, all home health and hospice registered nurses including level II hospital, level II step down, level III specialty unit, level III charge and PHN employed by Kaiser Foundation Hospitals at its facility located at Kaiser Los Angeles Medical Center, 1526 North Edgemont Street, Los Angeles, California, excluding all office clerical employees, guards and supervisors as defined in the Act.

By its terms, the most recent SEIU-UHW agreement applicable to AFN unit was to be effective from October 1, 2005, through April 30, 2012.

The PSC unit resulted from the consolidation of two bargaining units, one in the Los Angeles area and the other in the San Diego area, that the Board certified in the 1980s. Following the consolidation of those two separate units, the PSC unit includes:

All employees including per diems covered by Kaiser Psych-Social Chapter collective-bargaining agreement until February 3, 2010, including CDRC III, behavioral health nurse case manager, behavioral health case manager, psychiatric social worker, psychiatric associate, child development specialist, medical social worker III, psychosocial clinician II, psychosocial counselor II, psychosocial clinician III, psychosocial counselor III, psychologist, psychologist – San Diego, CDRC I, social worker associate, medical social worker I, associate psychosocial clinician, CDRC II,

<sup>4</sup> Ralph Cornejo, the director of Kaiser operations for SEIU-UHW from 2004 to 2009 and then for the NUHW after he left the SEIU-UHW in 2009, testified without contradiction that this merger occurred in 2007 and that Local 535 represented the three units involved here when the 2005 collective bargaining agreements were negotiated. Tr.27. Presumably, the copies of the collective bargaining agreements in evidence (GC Exhs. 4, 5, and 6) are merely copies produced after this merger to reflect this changed circumstance as all three designate the SEIU-UHW as the union party.

psychological assistant, educational therapist, medical social worker II, psychiatric counselor, psychosocial clinician I, psychosocial counselor, psychiatric RN, psychiatric nurse, R.N. – San Diego, clinical nurse specialist, psychiatric nurse counselor, health connect coordinator, psychosocial advice nurse, psychiatric nurse, R.N., and psychosocial counselor I employed by Southern California Permanente Group and Kaiser Foundation Hospitals within the Southern California Region, excluding all office clerical employees, guards, and supervisors as defined in the Act.

10 By its terms, the most recent SEIU-UHW agreement applicable to PSC unit was to be effective from October 1, 2005, through February 1, 2011.

Respondents voluntarily recognized to the SEIU-UHW as the exclusive representative of the HCP unit in 2003. That unit includes:

15 All employees including per diems that had been covered by the Southern California Health Care Professionals collective-bargaining agreement until February 3, 2010, including CDRC III, behavioral health nurse case manager, behavioral health case manager, psychiatric social worker, psychiatric associate, child development specialist, 20 medical social worker III, psychosocial clinician II, psychosocial counselor II, psychosocial clinician III, psychosocial counselor III, psychologist, psychologist – San Diego, CDRC I, social worker associate, medical social worker I, associate psychosocial clinician, CDRC II, psychological assistant, educational therapist, medical social worker II, psychiatric counselor, psychosocial clinician I, psychosocial counselor, psychiatric RN, psychiatric nurse, R.N. – San Diego, clinical nurse specialist, psychiatric nurse counselor, health connect coordinator, psychosocial advice nurse, psychiatric nurse, R.N., and psychosocial counselor I employed by Southern California Permanente Group and Kaiser Foundation Hospitals within the Southern California Region but excluding all office clerical employees, guards, and supervisors as defined in the Act.

30 By its terms, the most recent SEIU-UHW agreement applicable to this unit was to be effective from October 1, 2005, through January 31, 2012.

35 Over the years the scope of the bargaining that occurred between various Kaiser entities and the labor organizations that represent Kaiser employees, including those in the three bargaining units involved here, evolved into a complex system of national, cross-regional, and local negotiations. The following all-party stipulation at the representation hearing that preceded the election and certification of the NUHW for these three Southern California Kaiser units describes this evolution.

40 From the outset of these bargaining relationships and continuing to date, the employers have negotiated collective bargaining agreements covering each one of those bargaining units in separate negotiations.

45 In 1996, Kaiser Permanente organizations nationwide and an organization known as the Coalition of Kaiser Permanente Unions entered into what has been termed a national partnership agreement.

50 The coalition consists of local and international unions that represent employees of Kaiser Permanente organizations in each of (its) geographic regions. The coalition was formed for the purpose of facilitating collective bargaining with the employer.

And (SEIU-UHWW) . . . or its predecessor unions participated in the coalition, continue to participate in the coalition, and have participated since 1996.

5 In 2000, the coalition unions and Kaiser Permanente organizations agreed to engage in a process of national bargaining. The national bargaining took place during the summer of 2000 and was followed by local bargaining involving each of the coalition bargaining units and the appropriate Kaiser Permanente employers.

10 At the conclusion of the bargaining process, what was ratified was both the local agreement and the National Agreement as an addendum to those local agreements.

15 In 2005, the parties, that is the coalition and its constituent local unions and the Kaiser Permanente organizations, engaged in a similar process of national bargaining. There had been no national or local contract negotiations in the intervening five years.

20 The difference between 2000 bargaining and 2005 bargaining was that in addition to national and local bargaining there was a third set of negotiations involving Kaiser Permanente organizations and each of the SEIU Locals that represented Kaiser Permanente employees. This was called cross regional bargaining and included the three bargaining units that are the subjects of the petitions in these matters as well as a statewide UHW bargaining unit consisting of the former SEIU Locals 250 and 399 and SEIU Local 105 from Colorado and SEIU Local 49 from the Portland area.

25 Again, at the conclusion of bargaining, the National Agreement and the local agreement as well as the cross regional agreements were ratified together and the National Agreement again became an addendum to the local agreements.

30 Thereafter, SEIU Local 535 merged with UHW. In 2008, pursuant to the terms of the National Agreement, the coalition, its constituent unions, and Kaiser Permanente organizations engaged in bargaining over a contract reopener which included topics designated in the contract including wages and one benefit. Those negotiations concluded with an agreement which was thereafter ratified by employees in each of the constituent bargaining units.

35 (See GC Exh. 2) Not all of the unions Kaiser recognizes as an employee bargaining agent participate in the coalition referred to in the above stipulation. For example, the California Nurses Association, the Guild for Professional Pharmacists, and Operating Engineers Local 150 all represent units of Kaiser employees but do not participate in the coalition bargaining.

40 The contractual documents reflect the complex bargaining that produced them. In all three agreements, the applicable National Agreement is appended at the end of the local and the master agreements, the latter resulting from the cross-regional negotiations. The portion of the local/master agreement in each contractual document that constitutes the master agreement  
45 portion is identified by shaded text. (GC Exhs. 4, 5 and 6)

50 Each agreement contains the basic wage structure and a variety of fringe benefits. Two fringe benefits, the tuition reimbursement and paid time off for stewards to attend union-sponsored steward training sessions are set out partly in the local portion of the comprehensive collective bargaining agreements and partly in the National Agreement. The across-the-board wage increase at issue resulted from provisions in the National Agreements and national negotiations.

Apropos the tuition reimbursement, the benefit is actually established and described within the framework of a region-wide policy, Policy No. SCR-HR-3.03. This policy provides for the reimbursement of eligible employees<sup>5</sup> for tuition costs they incur for taking courses for credit at accredited educational institutions described in the policy and that relate to "an employee's work assignment" or "to obviously improve the employee's potential for reasonable career advancement and employability." However, the policy provides that employees represented by a union in the Labor Management Partnership (LMP) may receive reimbursement for continuing education courses, to wit:

Employees represented by LMP unions are also eligible for courses (including for basic skills programs, e.g., computer, basic math, second language and medical terminology courses) provided by an accredited institution, professional society or government agency for Continuing Education and/or to obtain or maintain licensure, degrees and certification. This includes courses, workshops, seminars, professional conferences, educational meetings, and special events taken/attended for Continuing Education and/or to attain or maintain' licensure or certification.

The National Agreements applicable to the three units involved here contained identical language vaguely alluding to a tuition reimbursement benefit as a part of a workforce development concept. (GC Exh. 4, 5, and 6, National Agreement Section 1. D 3 c, a, p. 29 ) That language, which makes no reference to any existing tuition reimbursement policy, provides:

The workforce development education and training objectives are to:

- *prepare individuals to engage in learning processes and skills training;*
- *support employees in meeting their professional and continuing educational needs;*
- *train professional and technical employees for specialty classifications;*
- *provide education and training in new careers and career upgrades;*
- *support employees in adapting to technological changes; and*
- *ensure alignment with the needs of the organization.*

The parties recognize the need to raise awareness of the availability of tuition reimbursement opportunities. By April 2006, each Regional Team will complete a study to determine the current utilization of tuition reimbursement, education leave (including Continuing Education Units) and other allocated budgeted resources. The teams should then determine how to remove barriers to access, (e.g., degree requirements), and increase participation in these programs. This may require amendment of local collective bargaining agreements and/or policies. After the regional studies have been completed, the National

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<sup>5</sup> This policy defines eligible employees as "All regular full-time, part-time and Local 7600 on-call employees scheduled 20 or more hours per week who have been in an active status for at least six consecutive months prior to term start date are considered eligible employees. [NOTE: Certain provisions of this policy only apply to employees represented by a union in the Labor Management Partnership.]" R. Exh. 3.

5 Team, working with the Regional Teams, will develop a communications strategy to raise the awareness levels in each region. Tuition reimbursement may be used in conjunction with education leave by employees for courses to obtain or maintain licensure, degrees and certification. Tuition reimbursement dollars may also be used for basic skills programs (e.g., computer, basic math, second language and medical terminology courses).

10 However, in all three instances the local agreements contain provisions, though not identical, related to employee participation in the in the Respondent's tuition reimbursement regional policy. Thus, the HCP agreement states: "Eligible employees shall be entitled to participate in the Kaiser Permanente Program as set forth in the Employer's policy." (GC Exh. 4, p. 43) The relevant provision in the AFN agreement provides: "The Employer's tuition reimbursement program will apply to Registered Nurses who successfully complete approved courses." (GC Exh. 5, p. 30) The PSC agreement provides: "Full-time and part-time employees shall be entitled to participate in the Kaiser Permanente Tuition Reimbursement Program as set forth in the policy." (GC Exh. 6, pp. 52-53) Regardless of the contractual vagueness and ambiguities, the parties stipulated that Respondents provided the tuition reimbursement benefit to the employees involved here pursuant to Section 1.D.3.c of the National Agreements until February 3, 2010. Tr. 34.

20 Similarly, the National Agreements each contain identical language in a section devoted to "Education and Training" that contains broad concepts and goals for employee development including steward training. (GC Exh. 4, 5, 6, National Agreement Section E, 3 at p. 31) This provision provides:

### 25 3. STEWARD EDUCATION, TRAINING AND DEVELOPMENT

30 The CIC (Common Issues Committee) agreed to support union steward training and education and recommended that stewards have time available each month to participate in training and development activities. The parties agree to support stewards in training and development such as:

- *education and training programs;*
- 35 • *Steward's Council;*
- *Labor Management Partnership Council;*
- 40 • *Partnership sponsored activities; and Partnership environment.*

Training programs for stewards may be developed in the following areas:

- *foundations of Unit Based Teams;*
- 45 • *improvement in Partnership principles;*
- *contract training on the National Agreement;*
- 50 • *fundamentals of Just Cause;*
- *leadership skills;*

- *effective problem solving; and*
- *consistency and practice.*

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Labor and management will work jointly on steward development. Accountability will rest with senior operational and union leaders on the Labor Management Partnership Council (or equivalent) in each region.

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The local portion of the PSC agreement contains the following provision in Article IX providing explicitly for paid time off for steward training. That provision (Section 3-Steward Training) provides:

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Pursuant to the terms of the National Agreement, stewards will receive four paid hours per month to participate in training and development. As outlined in the CIC memorandum dated August 22, 2005, these hours should be aggregated to allow flexibility when more than four (4) hours is needed at one time.

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(GC Exh. 6, p. 6) Neither the HCP nor the AFN agreements contain a similar local provision providing for paid time off for steward training. Nevertheless, no contention is made that paid time off for steward training was not provided for stewards employed in those two units.

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Section 2.A.1 of the three National Agreement provides for across the board wage increases applicable to the employees involved here. (GC Exh. 4,5, 6, at p. 46-47) That provision provides that across the board increases will be effective in the pay period closest to October 1 each year. However, Section 3.D. 2 of the National Agreement incorporates a limited re-opener provision that pertains only to across the board wage adjustments and retiree medical benefits." (GC Exh. 4, 5, 6, National Agreement, p. 61) In 2008, the agreements were reopened pursuant to this provision and an agreement was reached that provided for across-

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the-board wage adjustments for the employees in the units involved here in the pay periods closest to October 1, 2008 and 2009 as well as a further adjustment of two percent that was to be effective in the pay period closest to April 1, 2010. (GC Exh. 7) It is undisputed that the unit employees here received the October 2008 and 2009 across the board adjustments but did not receive the April 2010 adjustment.

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On February 27, 2009, the NUHW filed representation petitions with the Board seeking certification as the exclusive collective bargaining representative for the three collective bargaining units described above.<sup>6</sup> Following a hearing on those petitions, the Regional Director for NLRB Region 21 issued a decision and direction of election in which he scheduled an election to resolve the question concerning representation. An extensive campaign ensued

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<sup>6</sup> By now NUHW's origins are well know. Briefly summarized and perhaps oversimplified, the SEIU president at the time, motivated by long-festering policy differences with the officers of the SEIU-UHW, established a trusteeship over that subordinate affiliate in late January 2009, and simultaneously removed several, if not all, of its officers. Almost immediately, those former officers and several SEIU-UHW professional organizers formed the NUHW, and commenced raiding units represented by the SEIU-UHW (as occurred here) and initiated organizing efforts at other locations where they had previously engaged in organizing while serving with the SEIU-UHW. See e.g., *Service Employees v. National Union of Healthcare Workers*, 598 F.3d 1061 (9th Cir. 2010); *Santa Rosa Memorial Hospital*, 20-CA-18241 (JD(SF)-18-10). In this case, the very people who participated in the negotiation of the terms of the SEIU-UHW collective bargaining agreements previously applicable to these three units are now agents of the NUHW.

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after which the employees selected the NUHW as their bargaining representative by overwhelming margins.<sup>7</sup> On February 3, 2010, the NLRB certified the NUHW as the exclusive bargaining representative for the three units.

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Following the certification, representatives of Respondent and the NUHW met on February 12, February 26, and March 18 that are relevant here. It is undisputed that NUHW agent Cornejo requested at the February 12 meeting that Respondent's continue the terms of the SEIU-UHW agreements in effect until October 1, 2010. Cornejo also made specific requests that Respondents continue to apply the existing the tuition reimbursement program for the employees in the three units as well as the paid time off for steward training arrangement. Respondents representatives who came to the meeting prepared only for a "get acquainted" session promised to review Cornejo's requests.

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At the February 26 meeting, Kaiser's representatives admittedly told the NUHW representatives that the agreement would not be extended as requested, that the employees would not received the two percent pay increase that had been negotiated in the 2008 reopener of the National Agreements because that was a "future event", that the employees would not receive be receiving further tuition reimbursements because the NUHW was not a part of the coalition and that benefit only applied to members of the Labor Management Partnership, and that the NUHW stewards would not receive paid time off for steward training for the same reason. From that time through the date of the hearing, Kaiser maintained the same position as to these three matters involved here with one exception.<sup>8</sup>

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In fact, at the March 18 bargaining session, Kaiser presented the NUHW negotiators with a detailed listing of the provisions of the former collective bargaining agreements which it planned to continue and those it would not for each of the three units. (GC Exh. 10) In an accompanying letter, Kaiser specifically asserted that participation in the "Coalition and the LMP" was a pre-condition to the application of the National Agreement to these bargaining units. Thus, the letter states, "This means that if a bargaining unit no longer is a part of the Coalition (NUHW is not, and almost certainly never will be, a member of the Coalition), the provisions of the National Agreement no longer apply to those employees." (GC Exh. 11)

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### *B. Argument and Analysis*

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The Acting General Counsel argues that Respondent's duty to maintain the status quo pending the negotiation of a new agreement required it continue applying many of the terms of the previously existing collective bargaining agreements applicable to the HCP, PSC and the AFN units prior to the February 3, 2010, certification of the NUHW.<sup>9</sup> The Acting General Counsel analogizes the situation here to that which occurs when a collective bargaining agreement expires before a new agreement is negotiated. The Acting General Counsel's brief

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<sup>7</sup> The NUHW received about 95 percent of the votes cast in the AFN unit, 84 to 85 percent of the votes cast in the PSC unit, and about 86 percent of the votes cast in the HCP unit. Tr. 58.

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<sup>8</sup> At the February 26 meeting the NUHW requested that the tuition reimbursement be applied to applications approved up to that date. After consideration, Kaiser agreed to continue tuition reimbursements only to applications approved through March 1, 2010. (GC Exh. 8).

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<sup>9</sup> The Acting General Counsel carefully notes that this case only involves Respondent's refusal to apply the April 2010 wage increase, the tuition reimbursement program, and the steward training arrangement rather than terms typically excludable from the statutory duty to bargain such as union-security requirements, arbitration, no-strike provisions, and any waiver of bargaining rights. GC Br., p. 12.

asserts succinctly, that the "terms survive not only the expiration of a contract . . . but also the nullification of a contract because of a change in bargaining representative." (GC Br., p. 12) In support, the Acting General Counsel relies on the prior Board and court decisions in *Arizona Portland Cement Co.*, 302 NLRB 36 (1991), and *More Truck Lines, Inc.*, 336 NLRB 772, 772-73 (2001), enfd. 324 F.3d 735 (D.C. Cir. 2003).

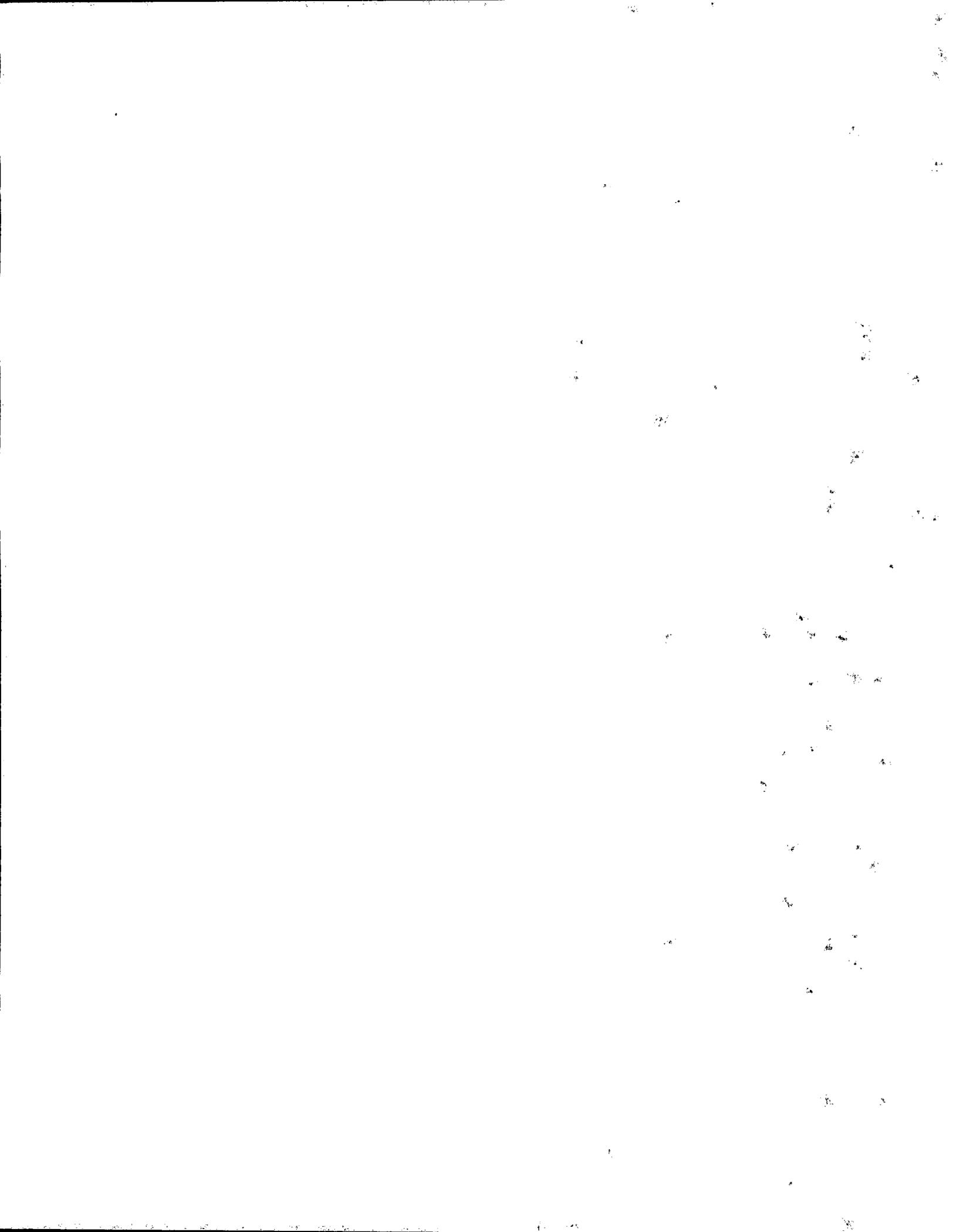
By contrast, Respondents analogize this case to the circumstances in *Neighborhood House Assn.*, 347 NLRB 553 (2006) and argues that, at least as to the April wage increase, a discrete event arose requiring only notification and an opportunity for NUHW to bargain about the April 2010 wage increase. Respondents further argue that it met that it met its notice obligation but the NUHW failed to avail itself of the opportunity to bargain over that wage increase. Alternatively, Respondents argue that it would have violated the Act granting the wage increase to the employees in the HCP, SPC and AFN units based on the Board's decision in *Consolidated Fiberglass Products Co., Inc.*, 242 NLRB 10 (1979).

Finally, Respondents argue that all three items (the April 2010 wage increase, the tuition reimbursement, and the stewards training benefit) are creatures of the National Agreement that ceased to apply when the employees selected a bargaining agent, such as the NUHW, that is not a part of the Coalition of Unions.

I agree with the Acting General Counsel's argument that the outcome here is controlled by *Arizona Portland Cement* and *More Truck Lines*. In *Arizona Portland Cement*, after the unit employees selected a new bargaining representative, the employer unilaterally changed certain specific arrangements established under its agreement with the predecessor union during negotiations with the new union. The unilateral changes included: (1) eliminating the existing grievance procedure and substituting a dispute resolution policy which did not include involvement of the new union, (2) discontinuing the policy of permitting stewards to conduct union business during worktime with compensation, (3) abolishing the union bulletin boards, and (4) disparately prohibiting use of the Respondent's bulletin boards by the new union, while permitting other organizations and employees to use its bulletin boards for nonwork-related purposes. The Board held that the employer failed to bargain in good faith under Section 8(a)(5) by making these particular changes before reaching an overall impasse in negotiations with the new union.

Even though *More Truck Lines* did not arise under Section 8(a)(5), the Board's dicta in that case strongly reaffirmed the key bargaining duty principles applied in *Arizona Portland Cement*, to wit, where employees select a new bargaining agent, an employer cannot unilaterally change their existing terms and conditions of employment while negotiations with the successor representative for a new agreement are underway. The Board affirmed its ALJ's conclusion in *More Truck Lines* that the respondent violated Section 8(a)(1) of the Act by telling its employees otherwise. In its decision, the Board used the occasion to give the following explanation for its use of the phrase "null and void" as applied to a predecessor's agreement in an earlier case that the employer advanced as a defense to the unlawful interference charge:<sup>10</sup>

<sup>10</sup> See *RCA Del Caribe, Inc.*, 262 NLRB 963 (1982), where the Board rejected a claim that the employer rendered unlawful assistance to an incumbent union in violations of Section 8(a)(2) by executing a new collective-bargaining agreement with the incumbent union after it learned another, unfavored labor organization had filed a representation petition with the NLRB seeking to be certified as the bargaining agent for employees in the unit covered by the new agreement. In that case the Board noted that if employees chose a new representative, the recently executed agreement would be "null and void."



5 It is settled law that when employees are represented by a labor organization their employer may not make unilateral changes in their terms and conditions of employment, such as their wages. See *NLRB v. Katz*, 369 U.S. 736, 747 (1962). This duty to maintain the status quo imposes an obligation upon the employer not only to maintain what he has already given his employees, but also to “implement benefits which have become conditions of employment by virtue of prior commitment or practice.” *Alpha Cellulose Corp.*, 265 NLRB 177, 178 fn. 1 (1982), enfd. mem. 718 F.2d 1088 (4th Cir. 1983). Accord: *Illiana Transit Warehouse Corp.*, 323 NLRB 111 (1997) (employer unlawfully told employees “wages and benefits would be frozen at current levels for the period of negotiation” and unlawfully withheld annual wage increases for this reason). As the judge explained, once promised, future nondiscretionary wage increases are such existing terms and conditions of employment. See *Liberty Telephone & Communications*, 204 NLRB 317, 318 (1973) (a promised wage raise that induces employees to accept or continue their employment is an “established” condition of employment); cf. *McDonnell Douglas Aerospace Services Co.*, 326 NLRB 1391 fn. 2 (1998).

20 Applying these principles to the instant case, we find that the Respondent’s reading of *RCA Del Caribe* goes too far. Thus, contrary to the Respondent’s contention, the phrase “null and void” in *RCA Del Caribe* cannot be read literally to mean that an employer may treat the terms and conditions of employment established under an agreement with a defeated incumbent union as if they never existed. To do so would allow, or arguably compel, an employer to reset employees’ then existing conditions of employment to those that were in effect prior to the final employer-incumbent agreement. In agreement with the judge, we are convinced that the Board in *RCA Del Caribe* only intended the phrase “null and void” to mean that a successful intervening union must be afforded an opportunity to negotiate a new contract, rather than be saddled with the one entered into by the defeated incumbent. Thus, if a challenging union is certified, then the contract between the employer and the incumbent becomes void, but, as usual, the employer must abide by the then existing terms and conditions of employment until such time as it reaches an agreement with the new union or a lawful impasse occurs. See *NLRB v. Katz*, supra; *R.E.C. Corp.*, 296 NLRB 1293 (1989).

35 Here, Respondents argue that the employees in these three units effectively forfeited any claim to the terms and conditions set out in the National Agreement when they exercised their fundamental Section 7 right to choose a new bargaining representative. I reject the Respondents’ rationale that the terms of the National Agreement did not apply to the unit employees because their new representative, the NUHW, did not belong to the Coalition of Unions. Instead, I find that the terms of each agreement as a whole – local, cross-regional, and national – make up the terms and conditions of employment encompassed by the statutory duty to bargain under Section 8(a)(5). The statutory duty to bargain does not, and should not, concern itself with the particular bargaining structures and arrangements that the prior representative utilized in concluding its agreements. Rather, the statutory duty to maintain the status quo encompasses only the outcome produced by the prior representative’s bargaining arrangements regardless of what they were. The Respondents’ claim that the three terms at issue – the April 2010 wage increase, the tuition reimbursement program, and steward training benefit – do not constitute terms and conditions applicable to the unit employees because they are derived from the National Agreement negotiated by the Coalition of Unions to which the NUHW does not belong is incompatible with the Respondents’ statutory duty to bargain. To hold otherwise would give primacy to the contractual relationships that existed before the unit employees selected a new representative and would seriously impair, if not virtually eliminate as

a practical matter, the fundamental right of employees under Section 7 to change their bargaining representative.

5           The relevant examination under *Arizona Portland Cement and More Truck Lines* required Respondents to assess their statutory bargaining duty in terms of those matter applicable to the unit employees immediately prior to the date they changed representatives rather than from whence any particular terms came. By doing the latter, Respondents went  
10 astray. The position they took that the terms of the National Agreements ceased to apply to the employees in these three units as of the date their new representative was certified is indefensible. Moreover, I also reject the claim Respondent's make that the NUHW was provided with an opportunity to bargain over the three terms at issue here. Even though some  
15 minor concession occurred with respect to the tuition reimbursement benefit, I agree with the Acting General Counsel's assertion that Respondents presented their response that the benefits at issue were inapplicable to the unit employees as a *fait accompli* at the February 26 meeting.

          The Respondents' claim that the April 2010 wage increase is a discrete event that constitutes an exception to the general rule of no changes until an new agreement or an overall impasse is reached also lacks merit. In the *Neighborhood House* case cited by Respondents, a  
20 Board panel majority reversed the ALJ's conclusion that the employer violated Section 8(a)(5) by withholding a regularly scheduled cost-of-living increase (COLA) from its unit employees. In doing so, the *Neighborhood House* majority applied the principle addressed in *Stone Container Corp.*, 313 NLRB 336 (1993). I find Respondents' reliance on the *Neighborhood House* case is misplaced because the facts here, unlike those in *Neighborhood House*, do not implicate the  
25 *Stone Container* principle.

          As explained in *Neighborhood House*, where the parties are engaged in negotiations for a collective-bargaining agreement, the employer, as a general rule, must maintain the status quo as to all mandatory bargaining subjects absent an overall impasse. 347 NLRB 554. The  
30 *Stone Container* case established an exception to this general principle intended to apply to a so-called "discrete recurring event" affecting the employees terms and conditions of employment that occur during the negotiations for a complete agreement. The *Stone Container* exception sought to accommodate the dynamic of the work place while the often laborious process of bargaining a new agreement (in effect a new shop constitution) is underway.  
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          To simplify and illustrate the purpose of the *Stone Container* principle, one need only imagine for a moment that two recently unionized employers had a long history of paying their employees an anniversary bonus to recognize their continued loyalty. Suppose further, that one  
40 employer's anniversary bonus policy provided for the payment of \$2000 on the employee's anniversary date while the other employer's policy provided for a bonus of "up to 2%" of the employee's annual salary depending on the "profitability of the company."

          In the example of the pre-determined \$2000 anniversary bonus, the *Stone Container* principle does not apply. In this instance, no mandatory subject of bargaining arises. To  
45 maintain the status quo, the employer must continue paying the fixed bonus when an employee's anniversary dates occurs absent an overall impasse in negotiations for a complete agreement. Any change to this policy of paying that fixed amount simply becomes a part of the overall negotiations until a complete agreement is reached or an impasse occurs.

50           But as to the other employer, the Board's *Stone Container* principle triggers side-table negotiations about undetermined matters rationally separable from the overall negotiations for a collective bargaining agreement. As a result, the employer need only notify the bargaining agent and provide it with an opportunity to bargain about the mandatory subjects encompassed

5 in the particular policy. The employer is free to implement if the bargaining agent fails to respond or an impasse is reached as to that individual subject. Hence, if the employer and the union come to an total impasse as to whether the employer had been "profitable" or whether the employee should receive a one or two percent bonus or somewhere between, the Stone Container principle provides the employer with the latitude to reward to the employee without waiting for an overall agreement. *Brannan Sand and Gravel*, 314 NLRB 282 (1994).

10 In this case, Respondents negotiated an agreement in 2008 applicable to three units that required it to provide a fixed two percent wage increase to the employees in the three units involved on or about April 1, 2010. This agreement left no matters to later determination that would trigger side-table discussions in order to comply with the overall duty to maintain the status quo. The statutory duty in this situation did not encompass the question as to whether to grant the increase or not; that would have been a matter for the main-table negotiations. The agreement reached during the 2008 reopener negotiations foreclosed Respondents from  
15 arguing that an April 2008 wage increase should or should not be granted. When that agreement to increase employee wages by a fixed amount on a fixed date, it became a part of the employees' terms of employment that Respondent was obliged to honor as a part of its statutory duty to maintain the status quo for the unit employees.

20 Respondent's arguments about the tuition reimbursement and steward training benefit suffer from a similar miscalculation as these benefits are equally fixed. They are exactly the same as those that continue to be granted to the other unit employees in the units that belong to the Coalition of Unions to which these employees formerly belonged, nothing more, nothing  
25 less. As explained before, the fact that the NUHW does not belong to the Coalition is irrelevant to Respondents' fundamental statutory obligation to maintain the status quo during negotiations.

30 Respondents' justification for their conduct on the ground that they would have violated the Act by granting the disputed wage increase and benefits also lacks merit. Their reliance on the *Consolidated Fiberglass* case to support this contention is misplaced. The outcome in *Consolidated Fiberglass* turns entirely on its very peculiar facts and provides almost no basis for any general conclusion. In that case, the Board found that the employer violated Section 8(a)(5) by granting a pay increase alluded to in a comprehensive strike settlement memorandum it concluded with a predecessor representative two years earlier without providing the current  
35 employee representative notice or an opportunity to bargain about the increase. Clearly, the case is factually distinguishable from the situation here. As the findings by the Board and the administrative law judge in *Consolidated Fiberglass* clearly show, the terms of the strike settlement contemplated further bargaining so that, by inference, the employer never actually reached any agreement with either the predecessor or successor representative about the wage  
40 increase at issue. For these reasons, the *Consolidated Fiberglass* case largely amounts to nothing more than an ordinary unilateral change case.

45 But more importantly, the Board concluded that even if the strike settlement had amounted to a full, binding agreement, the successor representative was not a party to it, so that, based on the *American Seating* doctrine,<sup>11</sup> a complete agreement on all mandatory subjects of bargaining between the employer and the *current* representative would be required in order for the employer to satisfy its bargaining obligation under the Act. It is on this point that this contention by Respondents collapses completely. In the *Consolidated Fiberglass* case, the current representative obviously objected to the employer's unilateral pay increase while  
50 negotiations were underway. In stark contrast, the NUHW not only consented to the

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<sup>11</sup> *American Seating Company*, 106 NLRB 250 (1953).

implementation of the April 2010 fully agreed-upon increase negotiated under the 2008 reopener, it insisted that it be granted even during the ongoing negotiations. By consenting to an employer's change in the terms and conditions of employment of the represented employees, either before or after the fact, a bargaining representative is precluded from claiming logically that the employer is guilty of violating the Act by unilateral action as Respondents argue here.

A subsidiary case cited by Respondents for this claim, *Koenig Iron Works, Inc.*, 276 NLRB 811 (1985) fares even worse. There the employer relied on the terms of a collective bargaining agreement providing for the wage increase it granted that was contained in an agreement with an unlawfully assisted predecessor union as a defense against a claim by the subsequent, lawfully-selected union that the employer violated Section 8(a)(5) when it granted that increase before an overall impasse in negotiations. The Board rejected the employer's defense on the ground that it would require that it resurrect the contract abrogated in a prior unfair labor practice proceeding and would undermine the employees' right to be represented exclusively by the union they lawfully selected. Accordingly, Respondents' contention here that it would have violated the Act by implementing the April 2010 wage increase is without any legal foundation, particularly in view of the NUHW's insistence that it be given to the unit employees.

For the foregoing reasons, I conclude that Respondents violated Section 8(a)(5) and (1) as alleged.

#### Conclusions of Law

1. Respondents are employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and health care institutions within the meaning of Section 2(14) of the Act.

2. The NUHW is a labor organization within the meaning of Section 2(5) of the Act and the exclusive collective bargaining representative under Section 9(a) of the Act of the Respondents employees employed in the Health Care Professionals, Psych-Social, and the AFN units, described above at page 3-4, each of which are appropriate units for collective bargaining purposes under Section 9(a) of the Act.

3. By unilaterally withholding the April 2010 wage increase, tuition reimbursement for continuing education courses, and paid time off for steward training, for employees in the Health Care Professionals, Psych-Social, and the AFN units, Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and 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 and to take certain affirmative action designed to effectuate the policies of the Act.

Having concluded that Respondents unlawfully altered the terms and conditions of employment for its employees in the HCP, PSC, and the AFN units, Respondents will be required restore and maintain, absent the consent of the NUHW or a lawful impasse, the previously existing terms and conditions of employment applicable to those employees while negotiations proceed for a new collective bargaining agreement. Specifically, Respondents must immediately restore and apply the across the board wage increase scheduled for April 1,

2010, the pre-existing tuition reimbursement benefit, and the previous steward training benefit previously applicable to the employees in the three aforementioned units when they were represented by the SEIU-UHW. As provided in *Ogle Protection Service*, 183 NLRB 682 (1970), Respondents must reimburse those who suffered losses because it unlawfully withheld the April 1 wage increase, continuing education tuition reimbursements; and paid time off for steward training from employees in the Health Care Professionals, Psych-Social Unit, and AFN units with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

The Acting General Counsel seeks to have the certification year extended by six months base on the Board's decision in *Mar-Jac, Poultry Co.*, 136 NLRB 785 (1962). His brief cites four reasons for this requested extension. First, the changes diverted the union's attention away from bargaining toward lengthy discussions about the propriety of the changes found unlawful here. Second, this initial dispute caused a bargaining hiatus of nearly three months. Third, the unlawful changes put the Union in a disadvantaged position. And finally, the withholding of the expected wage increase and two standard benefits undermined the Union and caused it to lose support. Clearly, Cornejo's testimony supports the Acting General Counsel's claims about the significant adverse employee reaction to Respondents' withholding of the wage increase in particular. Because Respondents' conduct here, or any similar conduct by others in a similar situation, is so inherently destructive of the basic employee right under Section 7 to freely choose a bargaining representative, this minor, almost absurdly insignificant, relief sought by the Acting General Counsel will be granted.

But frankly, in circumstances such as this, I am at a loss to understand why the certification year should not be tolled entirely until the status quo is completely restored by compliance however long that process may take. The kind of time-period computation suggested by the Acting General Counsel here bears all the elements of an arbitrary computation unrelated to the massive damage done and the potential intransigence of non-compliant respondents who choose to appeal and appeal in order to avoid their duty to bargain under the Act until, finally, support for the employee representative is totally dissipated.

Finally, Respondents will be required post the standard hard copy notice to employees attached here as appendices and post the notices electronically as provided in *J. Picini Flooring*, 356 NLRB No. 9 (2010).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>12</sup>

#### ORDER

Respondents, Southern California Permanente Medical Group and Kaiser Foundation Hospitals, Los Angeles, California, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Changing the terms and conditions of its employees in the following appropriate collective bargaining units by withholding a wage increase scheduled for April 1, 2010,

<sup>12</sup> Absent exceptions 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.

reimbursements for the tuition costs of continuing-education courses, and paid time off for steward training sessions without giving prior notice to their representative, the National Union of Healthcare Workers, and an opportunity to bargain about such changes.

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(1) The Healthcare Professionals Unit: All employees including per diems that had been covered by the Southern California Health Care Professionals collective-bargaining agreement until February 3, 2010, including CDRC III, behavioral health nurse case manager, behavioral health case manager, psychiatric social worker, psychiatric associate, child development specialist, medical social worker III, psychosocial clinician II, psychosocial counselor II, psychosocial clinician III, psychosocial counselor III, psychologist, psychologist – San Diego, CDRC I, social worker associate, medical social worker I, associate psychosocial clinician, CDRC II, psychological assistant, educational therapist, medical social worker II, psychiatric counselor, psychosocial clinician I, psychosocial counselor, psychiatric RN, psychiatric nurse, R.N. – San Diego, clinical nurse specialist, psychiatric nurse counselor, health connect coordinator, psychosocial advice nurse, psychiatric nurse, R.N., and psychosocial counselor I employed by Southern California Permanente Group and Kaiser Foundation Hospitals within the Southern California Region but excluding all office clerical employees, guards, and supervisors as defined in the Act.

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(2) The Psych-Social Chapter Unit: All employees including per diems covered by Kaiser Psych-Social Chapter collective-bargaining agreement until February 3, 2010, including CDRC III, behavioral health nurse case manager, behavioral health case manager, psychiatric social worker, psychiatric associate, child development specialist, medical social worker III, psychosocial clinician II, psychosocial counselor II, psychosocial clinician III, psychosocial counselor III, psychologist, psychologist – San Diego, CDRC I, social worker associate, medical social worker I, associate psychosocial clinician, CDRC II, psychological assistant, educational therapist, medical social worker II, psychiatric counselor, psychosocial clinician I, psychosocial counselor, psychiatric RN, psychiatric nurse, R.N. – San Diego, clinical nurse specialist, psychiatric nurse counselor, health connect coordinator, psychosocial advice nurse, psychiatric nurse, R.N., and psychosocial counselor I employed by Southern California Permanente Group and Kaiser Foundation Hospitals within the Southern California Region, excluding all office clerical employees, guards, and supervisors as defined in the Act.

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

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

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(a) Upon request, bargain collectively in good faith with the National Union of Healthcare Workers as the exclusive collective-bargaining representative of employees in the above units concerning terms and conditions of employment of those employees for an added period specified in the Remedy Section of this decision.

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(b) Restore the terms and conditions of employment applicable to the employees in the Healthcare Professionals Unit and the Psych-Social Chapter Unit that existed at the time those employees selected the National Union of Healthcare Workers as their exclusive

representative, and maintain those terms and conditions in effect until an agrément has been concluded with that labor organization or a lawful impasse in negotiations occurs.

5 (c) Within 14 days from the date of this order, implement the two percent across-the-board wage increase it withheld from the employees in the Healthcare Professionals Unit and the Psych-Social Chapter Unit that had been scheduled for April 1, 2010.

10 (d) Within 14 days from the date of this order, reinstate the reimbursement of employees for continuing education tuition expenses and grant paid time off for qualified steward training.

15 (e) Make employees whole for all losses suffered as a result withholding the April 2010 across-the-board wage increase, the reimbursement of tuition costs for continuing-education courses, any failure to grant paid time off to attend qualified steward training in the manner specified in the Remedy section of this decision.

20 (f) 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, necessary to analyze the amount of backpay due under the terms of this Order.

25 (g) Within 14 days after service by the Region, post at all of its Southern California facilities where employees in the Healthcare Professionals Unit and the Psych-Social Chapter Unit are employed copies of the attached notice marked "Appendix A."<sup>13</sup> Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the  
30 Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if the Respondent  
35 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 any 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  
40 Respondent at any time since February 26, 2010.

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

50 <sup>13</sup> 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."

Additionally, based on the these findings of fact and conclusions of law and on the entire record, I issue this further recommended<sup>14</sup>

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ORDER

Respondent, Kaiser Foundation Hospitals, Los Angeles, California, its officers, agents, successors, and assigns, shall

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1. Cease and desist from

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(a) Changing the terms and conditions of its employees in the following appropriate collective bargaining unit by withholding a wage increase scheduled for April 1, 2010, reimbursements for the tuition costs of continuing-education courses, and paid time off for steward training sessions without giving prior notice to their representative, the National Union of Healthcare Workers, and an opportunity to bargain about such changes.

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(1) The American Federation of Nurses Unit: All employees covered by the American Federation of Nurses collective-bargaining agreement until February 3, 2010, including all in-patient registered nurses, all home health and hospice registered nurses including level II hospital, level II step down, level III specialty unit, level III charge and PHN employed by Kaiser Foundation Hospitals at its facility located at Kaiser Los Angeles Medical Center, 1526 North Edgemont Street, Los Angeles, California, excluding all office clerical employees, guards and supervisors as defined in the Act.

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

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

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(a) Upon request, bargain collectively in good faith with the National Union of Healthcare Workers as the exclusive collective-bargaining representative of employees in the above unit concerning terms and conditions of employment of those employees for an added period specified in the Remedy Section of this decision.

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(b) Restore the terms and conditions of employment applicable to the employees in the American Federation of Nurses Unit that existed at the time those employees selected the National Union of Healthcare Workers as their exclusive representative, and maintain those terms and conditions in effect until an agreement has been concluded with that labor organization or a lawful impasse in negotiations occurs.

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(c) Within 14 days from the date of this order, implement the two percent across-the-board wage increase it withheld from the employees in the American Federation of Nurses Unit that had been scheduled for April 1, 2010.

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<sup>14</sup> Absent exceptions 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.

(d) Within 14 days from the date of this order, reinstate the reimbursement of employees for continuing education tuition expenses and grant paid time off for qualified steward training.

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(e) Make employees whole for all losses suffered as a result withholding the April 2010 across-the-board wage increase, the reimbursement of tuition costs for continuing-education courses, any failure to grant paid time off to attend qualified steward training in the manner specified in the Remedy section of this decision.

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(f) 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, necessary to analyze the amount of backpay due under the terms of this Order.

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(g) Within 14 days after service by the Region, post at its Los Angeles, California, facility copies of the attached notice marked "Appendix B."<sup>15</sup> Copies of the notice, on forms provided by the Regional Director for Region 21, 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 the physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, 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 any 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 February 26, 2010.

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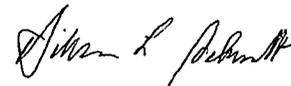
30

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

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Dated, Washington, D.C. December 13, 2010

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WILLIAM L. SCHMIDT  
Administrative Law Judge

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<sup>15</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX A

### NOTICE TO EMPLOYEES

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

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

#### FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT refuse to bargain in good faith with the National Union of Healthcare Workers as the exclusive representative of the employees in the following appropriate collective bargaining units:

(1) The Health Care Professionals (HCP) Unit: All employees including per diems covered by the Southern California Health Care Professionals collective-bargaining agreement until February 3, 2010, including CDRC III, behavioral health nurse case manager, behavioral health case manager, psychiatric social worker, psychiatric associate, child development specialist, medical social worker III, psychosocial clinician II, psychosocial counselor II, psychosocial clinician III, psychosocial counselor III, psychologist, psychologist – San Diego, CDRC I, social worker associate, medical social worker I, associate psychosocial clinician, CDRC II, psychological assistant, educational therapist, medical social worker II, psychiatric counselor, psychosocial clinician I, psychosocial counselor, psychiatric RN, psychiatric nurse, R.N. – San Diego, clinical nurse specialist, psychiatric nurse counselor, health connect coordinator, psychosocial advice nurse, psychiatric nurse, R.N., and psychosocial counselor I employed by Southern California Permanente Group and Kaiser Foundation Hospitals within the Southern California Region but excluding all office clerical employees, guards, and supervisors as defined in the Act.

(2) The Psych-Social Chapter (PSC) Unit: All employees including per diems covered by the Kaiser Psych-Social Chapter collective-bargaining agreement until February 3, 2010, including CDRC III, behavioral health nurse case manager, behavioral health case manager, psychiatric social worker, psychiatric associate, child development specialist, medical social worker III, psychosocial clinician II, psychosocial counselor II, psychosocial clinician III, psychosocial counselor III, psychologist, psychologist – San Diego, CDRC I, social worker associate, medical social worker I, associate psychosocial clinician, CDRC II, psychological assistant, educational therapist, medical social worker II, psychiatric counselor, psychosocial clinician I, psychosocial counselor, psychiatric RN, psychiatric nurse, R.N. – San Diego, clinical nurse specialist, psychiatric nurse counselor, health connect coordinator, psychosocial advice nurse, psychiatric nurse, R.N., and psychosocial counselor I employed by Southern California Permanente Group and Kaiser Foundation Hospitals within the Southern California Region, excluding all office clerical employees, guards, and supervisors as defined in the Act.

WE WILL NOT unilaterally withhold scheduled wage increases, reimbursements for continuing education tuition costs, and paid time off to attend steward training sessions, or otherwise change the terms and conditions of employment for employees in the above units while we engage in negotiations with National Union of Healthcare Workers for new agreements.

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

## APPENDIX B

### NOTICE TO EMPLOYEES

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

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

#### FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT refuse to bargain in good faith with the National Union of Healthcare Workers as the exclusive representative of the employees in the following appropriate collective bargaining units:

The American Federation of Nurses (AFN) Unit: All employees covered by the collective-bargaining agreement until February 3, 2010, including all in-patient registered nurses, all home health and hospice registered nurses including level II hospital, level II step down, level III specialty unit, level III charge and PHN employed by Kaiser Foundation Hospitals at its facility located at Kaiser Los Angeles Medical Center, 1526 North Edgemont Street, Los Angeles, California, excluding all office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT unilaterally withhold scheduled wage increases, reimbursement for continuing education tuition costs, and paid time off for steward training sessions, or otherwise change the terms and conditions of employment for employees in the AFN Unit while we negotiate with National Union of Healthcare Workers for a new agreement.

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

WE WILL, upon request, bargain collectively in good faith with the National Union of Healthcare Workers as the exclusive collective-bargaining representative of employees in the AFN Unit concerning terms and conditions of employment of those employees.

WE WILL restore the terms and conditions of employment applicable to the employees in the AFN Unit that existed at the time those employees selected the National Union of Healthcare Workers as their exclusive representative, and maintain those terms and conditions in effect until an agreement has been concluded with that labor organization or a lawful impasse in negotiations occurs.

WE WILL implement the two percent across-the-board wage increase withheld from the employees in the AFN Unit previously scheduled for on or around April 1, 2010.

WE WILL reinstate the reimbursement of employees for continuing education tuition expenses and grant paid time off for qualified steward training.

WE WILL make employees employed in the AFN Unit whole for all losses suffered by them because we withheld the April 2010 across-the-board wage increase, payments to reimburse employees for continuing-education tuition costs for continuing-education courses, and paid time off for stewards in the AFN unit to attend qualified steward training with interest as required by law.

Kaiser Foundation Hospitals  
(Employer)

Dated \_\_\_\_\_ By: \_\_\_\_\_  
:  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

888 South Figueroa Street, 9th Floor  
Los Angeles, California 90017-5449  
Hours: 8:30 a.m. to 5 p.m.  
213-894-5200.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 213-894-5229.

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SOUTHERN CALIFORNIA PERMANENTE MEDICAL  
GROUP; and KAISER FOUNDATION HOSPITALS

and

NATIONAL UNION OF HEALTHCARE WORKERS

**Case 21-CA-39296**

DATE OF SERVICE 12/13/2010

AFFIDAVIT OF SERVICE OF ALJ Decision

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) upon the persons at the addresses and in the manner indicated below. Persons listed below under "E-Service" have voluntarily consented to receive service electronically, and such service has been effected on the same date indicated above.

**CERTIFIED MAIL**

CHERYL KOPITZKE, ESQ.  
KAISER PERMANENTE  
393 EAST WALNUT STREET  
PASADENA, CA 91188

**CERTIFIED MAIL**

FLORICE HOFFMAN, ESQ.  
LAW OFFICES OF FLORICE HOFFMAN  
8502 EAST CHAPMAN AVENUE  
SUITE 353  
ORANGE, CA 92869

**CERTIFIED MAIL**

MICHAEL LINDSAY  
NIXON PEABODY, LLP  
GAS COMPANY TOWER  
555 WEST FIFTH STREET  
46TH FLOOR  
LOS ANGELES, CA 90013

**CERTIFIED MAIL**

RONALD E. GOLDMAN, SR. COUNSEL  
KAISER FOUNDATION HEALTH PLAN, INC.  
LEGAL DEPARTMENT  
ONE KAISER PLAZA, 21L  
OAKLAND, CA 94612

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

**CERTIFIED MAIL**

SETH NEULIGHT, ESQ.  
NIXON PEABODY LLP  
555 WEST FIFTH STREET  
46TH FLOOR  
LOS ANGELES, CA 90013

**E-SERVICE**

NLRB REGION 21 - LOS ANGELES  
888 SOUTH FIGUEROA STREET  
9TH FLOOR  
LOS ANGELES, CA 90017

**E-SERVICE**

JUDGE WILLIAM L. SCHMIDT, AL J  
901 MARKET STREET  
SUITE 300  
SAN FRANCISCO, CA 94103-1779

**E-SERVICE**

MICHAEL LINDSAY  
NIXON PEABODY, LLP  
GAS COMPANY TOWER  
555 WEST FIFTH STREET  
46TH FLOOR  
LOS ANGELES, CA 90013

**E-SERVICE**

RONALD E. GOLDMAN, SR. COUNSEL  
KAISER FOUNDATION HEALTH PLAN, INC.  
LEGAL DEPARTMENT  
ONE KAISER PLAZA, 21L  
OAKLAND, CA 94612

Subscribed and sworn to before me this _____ day of _____, 20 _____	DESIGNATED AGENT  NATIONAL LABOR RELATIONS BOARD
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## EXCERPTS FROM NATIONAL LABOR RELATIONS BOARD RULES AND REGULATIONS

**Sec. 102.46** *Exceptions, cross-exceptions, briefs, answering brief; time for filing; where to file; service on the parties; extension of time; effect of failure to include matter in exceptions; reply briefs; oral arguments.* -(a) Within 28 days, or within such further period as the Board may allow, from the date of the service of the order transferring the case to the Board, pursuant to Section 102.45, any party may (in accordance with Section 10(c) of the Act and Sections 102.111 and 102.112 of these rules) file with the Board in Washington, D.C., exceptions to the administrative law judge's decision or to any other part of the record or proceedings (including rulings upon all motions or objections), together with a brief in support of said exceptions. Any party may, within the same period, file a brief in support of the administrative law judge's decision. The filing of such exceptions and briefs is subject to the provisions of paragraph (j) of this section. Requests for extension of time to file exceptions or briefs shall be in writing and copies thereof shall be served promptly on the other parties.

(b)(1) Each exception (i) shall set forth specifically the questions of procedure, fact, law, or policy to which exception is taken; (ii) shall identify that part of the administrative law judge's decision to which objection is made; (iii) shall designate by precise citation of page the portions of the record relied on; and (iv) shall concisely state the grounds for the exception. If a supporting brief is filed, the exceptions document shall not contain any argument or citation of authority in support of the exceptions, but such matters shall be set forth only in the brief. If no supporting brief is filed the exceptions document shall also include the citation of authorities and argument in support of the exceptions, in which event the exceptions document shall be subject to the 50-page limit as for briefs set forth in Sec. 102.46(j).

(2) Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.

(c) Any brief in support of exceptions shall contain no matter not included within the scope of the exceptions and shall contain, in the order indicated, the following:

(1) A clear and concise statement of the case containing all that is material to the consideration of the questions presented.

(2) A specification of the questions involved and to be argued, together with a reference to the specific exceptions to which they relate.

(3) The argument presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the record and the legal or other material relied on.

(d)(1) Within 14 days, or such further period as the Board may allow, from the last date on which exceptions and any supporting brief may be filed, a party opposing the exceptions may file an answering brief to the exceptions, in accordance with the provisions of paragraph (j) of this section.

(2) The answering brief to the exceptions shall be limited to the questions raised in the exceptions and in the brief in support thereof. It shall present clearly the points of fact and law relied on in support of the position taken on each question. Where exception has been taken to a factual finding of the administrative law judge and it is proposed to support that finding, the answering brief should specify those pages of the record which, in the view of the party filing the brief, support the administrative law judge's finding.

(3) Requests for extension of time to file an answering brief to the exceptions shall be in writing and copies thereof shall be served promptly on the other parties.

(e) Any party who has not previously filed exceptions may, within 14 days, or such further period as the Board may allow, from the last date on which exceptions and any supporting brief may be filed, file cross-exceptions to any portion of the administrative law judge's decision, together with a supporting brief, in accordance with the provisions of paragraphs (b) and (j) of this section.

(f)(1) Within 14 days, or such further period as the Board may allow, from the last date on which cross-exceptions and any supporting brief may be filed, any other party may file an answering brief to such cross-exceptions in accordance with the provisions of paragraphs (c) and (j) of this section. Such answering brief shall be limited to the questions raised in the cross-exceptions.

(2) Requests for extension of time to file cross-exceptions, or answering brief to cross-exceptions, shall be in writing and copies thereof shall be served promptly on the other parties.

(g) No matter not included in exceptions or cross-exceptions may thereafter be urged before the Board, or in any further proceeding.

(h) Within 14 days from the last date on which an answering brief may be filed pursuant to paragraph (d) or (f) of this section, any party may file a reply brief to any such answering brief. Any reply brief filed pursuant to this subsection shall be limited to matters raised in the brief to which it is replying, and shall not exceed 10 pages. No extensions of time shall be granted for the filing of reply briefs, nor shall permission be granted to exceed the 10 page length limitation. Eight copies of any reply brief shall be filed with the Board, copies shall be served on the other parties, and a statement of such service shall be furnished. No further briefs shall be filed except by special leave of the Board. Requests for such leave shall be in writing and copies thereof shall be served promptly on the other parties.

(i) Should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board simultaneously with the statement of any exceptions or cross-exceptions filed pursuant to the provisions of this section with a statement of service on the other parties. The Board shall notify the parties of the time and place of oral argument, if such permission is granted.

(j) Exceptions to administrative law judges' decisions, or to the record, and briefs shall be printed or otherwise legibly duplicated. Carbon copies of typewritten matter will not be accepted. Eight copies of such documents shall be filed with the Board in Washington, D.C., and copies shall also be served promptly on the other parties. All documents filed pursuant to this section shall be double spaced on 8-1/2 by 11-inch paper. Any brief filed pursuant to this section shall not be combined with any other brief, and except for reply briefs whose length is governed by paragraph (h) of this section, shall not exceed 50 pages in length, exclusive of subject index and table of cases and other authorities cited, unless permission to exceed that limit is obtained from the Board by motion, setting forth the reasons therefor, filed not less than 10 days prior to the date the brief is due. Where any brief filed pursuant to this section exceeds 20 pages, it shall contain a subject index with page references and an alphabetical table of cases and other authorities cited.

**Sec. 102.47 Filing of motion after transfer of case to Board.**--All motions filed after the case has been transferred to the Board pursuant to Section 102.45 shall be filed with the Board in Washington, D.C., by transmitting eight copies thereof to the Board, together with an affidavit of service upon the parties. Such motions shall be printed or otherwise legibly duplicated: *Provided, however,* that carbon copies of typewritten matter shall not be filed and if submitted will not be accepted.

**Sec. 102.48 Action of the Board upon expiration of time to file exceptions to administrative law judge's decision; decisions by the Board; extraordinary postdecisional motions.**-(a) In the event no timely or proper exceptions are filed as herein provided, the findings, conclusions, and recommendations contained in the administrative law judge's decision shall, pursuant to Section 10(c) of the Act, automatically become the decision and order of the Board and become its findings, conclusions, and order, and all objections and exceptions thereto shall be deemed waived for all purposes.

(b) Upon the filing of timely and proper exceptions, and any cross-exceptions, or answering briefs, as provided in Section 102.46, the Board may decide the matter forthwith upon the record, or after oral argument, or may reopen the record and receive further evidence before a member of the Board or other Board agent or agency, or may make other disposition of the case.

(c) Where exception is taken to a factual finding of the administrative law judge, the Board, in determining whether the finding is contrary to a preponderance of the evidence, may limit its consideration to such portions of the record as are specified in the exceptions, the supporting brief, and the answering brief.

(d)(1) A party to a proceeding before the Board may, because of extraordinary circumstances, move for reconsideration, rehearing, or reopening of the record after the Board decision or order. A motion for reconsideration shall state with particularity the material error claimed and with respect to any finding of material fact shall specify the page of the record relied on. A motion for rehearing shall specify the error alleged to require a hearing *de novo* and the prejudice to the movant alleged to result from such error. A motion to reopen the record shall state briefly the additional evidence sought to be adduced, why it was not presented previously, and that, if adduced and credited, it would require a different result. Only newly discovered evidence, evidence which has become available only since the close of the hearing, or evidence which the Board believes should have been taken at the hearing will be taken at any further hearing.

(2) Any motion pursuant to this subsection shall be filed within 28 days, or such further period as the Board may allow, after the service of the Board's decision or order, except that a motion for leave to adduce additional evidence shall be filed promptly on discovery of such evidence. Copies of any request for an extension of time shall be served promptly thereof on the other parties.

(3) The filing and pendency of a motion under this provision shall not operate to stay the effectiveness of the action of the Board unless so ordered. A motion for reconsideration or for rehearing need not be filed to exhaust administrative remedies.

**Sec. 102.111 Time computation.** - (a) In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the official closing time of the receiving office on the next Agency business day. (*The closing time of the Board in Washington, D.C. is 5 p.m. local time*). When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

(b) When the Act or any of these rules require the filing of a motion, brief, exception, or other paper in any proceeding, such document must be received by the Board or the officer or agent designated to receive such matter before the official closing time of the receiving office on the last day of the time limit, if any, for such filing or extension of time that may have been granted. A request for an extension of time to file a document shall be filed no later than the official closing time of the receiving office on the date on which the document is due. Requests for extensions of time filed within three days of the due date must be grounded upon circumstances not reasonably foreseeable in advance. In construing this section of the rules, the Board will accept as timely filed any document which is hand delivered to the Board on or before the official closing time of the receiving office on the due date or postmarked on the day before (or earlier than) the due date; documents which are postmarked on or after the due date are untimely. "Postmarking" shall include timely depositing the document with a delivery service that will provide a record showing that the document was tendered to the delivery service in sufficient time for delivery by the due date, but in no event later than the day before the due date. Provided, however, the following documents must be received on or before the official closing time of the receiving office on the last day for filing:

- (1) Charges filed pursuant to section 10(b) of the Act (see also Sec. 102.14).
- (2) Applications for awards and fees and other expenses under the Equal Access to Justice Act.
- (3) Petitions to revoke subpoenas.
- (4) Requests for extensions of time to file any document for which such an extension may be granted.

(c) The following documents may be filed within a reasonable time after the time prescribed by these rules only upon good cause shown based on excusable neglect and when no undue prejudice would result:

- (1) In unfair labor practice proceeding, motions, exceptions, answers to a complaint or a backpay specification, and briefs; and
- (2) In representation proceedings, exceptions, requests for review, motions, briefs, and any responses to any of these documents. A party seeking to file such documents beyond the time prescribed by these rules shall file, along with the documents, a motion that states the grounds relied on for requesting permission to file untimely. The specific facts relied on to support the motion shall be set forth in affidavit form and sworn to by individuals with personal knowledge of the facts. The time for filing any document responding to the untimely document shall not commence until the date a ruling issues accepting the untimely document. In addition, cross-exceptions shall be due within 14 days, or such further period as the Board may allow, from the date a ruling issues accepting the untimely filed documents.

**Sec 102.112 Date of service; date of filing.** - The date of service shall be the day when the matter served is deposited in the United States mail, or is deposited with a private delivery service that will provide a record showing the date the document was tendered to the delivery service, or is delivered in person, as the case may be. Where service is made by facsimile transmission, the date of service shall be the date on which transmission is received. The date of filing shall be the day when the matter is required to be received by the Board as provided by § 102.111.

**Sec 102.113 Method of service of process and papers by the Agency; proof of service.**

(a) Service of complaints and compliance specifications. Complaints and accompanying notices of hearing, compliance specifications, and amendments to either complaints or to compliance specifications, shall be served upon all parties either personally or by registered or certified mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served.

(b) Service of final orders and decisions. Final orders of the Board in unfair labor practice cases and administrative law judges' decisions shall be served upon all parties either personally or by registered or certified mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served.

(c) Service of subpoenas. Subpoenas shall be served upon the recipient either personally or by registered or certified mail or by registered or certified mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served.

(d) Service of other documents. Other documents may be served by the Agency by any of the foregoing methods as well as regular mail or private delivery service. Such other documents may be served by facsimile transmission with the permission of the person receiving the document.

(e) Proof of service. In the case of personal service, or delivery to a principal office or place of business, the verified return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same. In the case of service by mail or telegraph, the return post office receipt or telegraph receipt therefor when registered or certified and mailed or when telegraphed shall be proof of service of the same. However, these methods of proof of service are not exclusive; any sufficient proof may be relied upon to establish service.

(f) Service upon representatives of parties. Whenever these rules require or permit the service of pleadings or other papers upon a party, a copy shall also be served on any attorney or other representative of the party who has entered a written appearance in the proceeding on behalf of the party. If a party is represented by more than one attorney or representative, service upon any one of such persons in addition to the party shall satisfy this requirement. Service by the Board or its agents of any documents upon any such attorney or other representative may be accomplished by any means of service permitted by these rules, including regular mail.

**Sec. 102.114 Service of papers by parties; form of papers; proof of service; filing and serving documents and papers by facsimile transmission** (a) Service of documents by a party on other parties may be made personally, or by registered mail, certified mail, regular mail, electronic mail (if the document was filed electronically) or private delivery service. Service of documents by a party on other parties by any other means, including facsimile transmission, is permitted only with the consent of the party being served. Unless otherwise specified elsewhere in these rules, service on all parties shall be made in the same manner as that utilized in filing the document with the Board, or in a more expeditious manner; however, when filing with the Board is done by hand, the other parties shall be promptly notified of such action by telephone, followed by service of a copy in a manner designed to insure receipt by them by the close of the next business day. The provisions of this section apply to the General Counsel after a complaint has issued, just as they do to any other party, except to the extent that the provisions of §§ 102.113(a) or 102.113(c) provide otherwise.

(b) When service is made by registered mail, or by certified mail, the return post office receipt shall be proof of service. When service is made by a private delivery service, the receipt from this service showing delivery shall be proof of service. However, these methods of proof of service are not exclusive; any sufficient proof may be relied upon to establish service.

(c) Failure to comply with the requirements of this section relating to timeliness of service on other parties shall be a basis for either:

(1) a rejection of the document; or

(2) Withholding or reconsidering any ruling on the subject matter raised by the document until after service has been made and the served party has had reasonable opportunity to respond.

(d) Papers filed with the Board, General Counsel, Regional Director, Administrative Law Judge, or Hearing Officer shall be typewritten or otherwise legibly duplicated on 8-1/2 by 11-inch plain white paper, shall have margins no less than one inch on each side, shall be in a typeface no smaller than 12 characters-per-inch (elite or the equivalent), and shall be double spaced (except that quotations and footnotes may be single spaced). Carbon copies shall not be filed and will not be accepted. Non-conforming papers may, at the Agency's discretion, be rejected.

(e) The person or party serving the papers or process on other parties in conformance with sections §102.113 and paragraph (a) of this section shall submit a written statement of service thereof to the Board stating the names of the parties served and the date and manner of service. Proof of service as defined in section (a) of this section shall be required by the Board only if subsequent to the receipt of the statement of service a question is raised with respect to proper service. Failure to make proof of service does not affect the validity of the service.

(f) Unfair labor practice charges, petitions in representation proceedings, objections to elections, and requests for extensions of time for filing documents will be accepted by the Agency if transmitted to the facsimile machine of the office. Other documents, except those specifically prohibited in paragraph (g) of this section, will be accepted by the Agency if transmitted to the facsimile machine of the office designated to receive them only with advance permission from the receiving office which may be obtained by telephone. Advance permission must be obtained for each such filing. At the discretion of the receiving office, the person submitting a document by facsimile may be required simultaneously to serve the original and any required copies on the office by overnight delivery service. When filing a charge, a petition in a representation proceeding, or election objections by facsimile transmission pursuant to this section, receipt of the transmitted document by the Agency constitutes filing with the Agency. A failure to timely file or serve a document will be excused on the basis of a claim that transmission could not be accomplished because the receiving machine was off-line or busy or unavailable for any other reason.

(g) Facsimile transmissions of the following documents will not be accepted for filing: Showing of Interest in Support of Representation Petitions, including Decertification Petitions; Answers to complaints; Exceptions or Cross-Exceptions; Briefs; Requests for Review of Regional Director Decisions; Administrative Appeals from Dismissal of Petitions or Unfair Labor Practice Charges; Objections to Settlements; EAJA Applications; Motions for Summary Judgment; Motions to Dismiss; Motions for Reconsideration; Motions to Clarify; Motions to Reopen the Record; Motions to Intervene; Motions to Transfer, Consolidate or Sever; or Petitions for Advisory Opinions. Facsimile transmissions in contravention of this rule will not be filed.

(h) Documents and other papers filed through facsimile transmission shall be served on all parties in the same way as used to serve the office where filed, or in a more expeditious matter, in conformance with paragraph (a) of this section. Thus, facsimile transmission shall be used for this purpose whenever possible. When a party cannot be served by this method, or chooses not to accept service by facsimile as provided for in paragraph (a) of this section, the party shall be notified personally or by telephone of the substance of the transmitted document and a copy of the document shall be served by personal service or overnight delivery service.

(i) The Agency's Web site (<http://www.nlr.gov>) contains certain forms that parties or other persons are permitted to file with the Agency electronically. Parties or other persons choosing to utilize those forms to file documents electronically are permitted to do so by following the instructions described on the Web site, notwithstanding any contrary provisions elsewhere in these rules. In the event the document being filed electronically is required to be served on another party to a proceeding, the other party shall be served by electronic mail (e-mail), if possible. If the other party does not have the ability to receive electronic service, the other party shall be notified by telephone of the substance of the transmitted document and a copy of the document shall be served by personal service no later than the next day, by overnight delivery service, or, with the permission of the party receiving the document, by facsimile transmission.

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 21

In the Matter of:

Case No. 21-CA-39296

Southern California Permanente  
Medical Group; and Kaiser  
Los Angeles Medical Center,

Employer,

and

National Union Of Healthcare  
Workers,

Union.

---

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Place: Los Angeles, California

Dates: October 18, 2010

Pages: 1 through 75

Volume: 1

OFFICIAL REPORTERS

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845 North 3rd Avenue  
Phoenix, AZ 85003  
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**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 21**

	)	
In the Matter of:	)	
	)	
SOUTHERN CALIFORNIA PERMANENTE	)	
MEDICAL GROUP; AND KAISER	)	
LOS ANGELES MEDICAL CENTER,	)	
	)	
Employer,	)	
	)	
and	)	Case No. 21-CA-39296
	)	
NATIONAL UNION OF HEALTHCARE	)	
WORKERS,	)	
	)	
Union.	)	
	)	

The above-entitled matter came on for hearing, pursuant to notice, before **WILLIAM L. SCHMIDT**, Administrative Law Judge, at the National Labor Relations Board, Region 21, 888 South Figueroa Street, Suite 902, Los Angeles, California 90017, on **MONDAY, OCTOBER 18, 2010, at 1:12 p.m.**

**A P P E A R A N C E S****On Behalf of the General Counsel:****ROBERT MACKAY, ESQ.**

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**On Behalf of the Respondents:****JENNIFER L. GOLDBERG, ESQ.**

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**On Behalf of the Employer:****MICHAEL R. LINDSAY, ESQ.**

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A P P E A R A N C E S (continued)

On Behalf of the Union:

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>	<u>CRT EXAM</u>
Ralph Cornejo	27 48	57	73		48	75

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EXHIBITS

<u>EXHIBIT</u>	<u>IDENTIFIED</u>	<u>IN EVIDENCE</u>
<b>Joint</b>		
1	9	10
<b>General Counsel</b>		
1	7	8
2	17	18
3	18	18
4	18	20
5	18	20
6	18	20
7	34	35
8	45	45
9	45	46
10	47	49
11	47	

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P R O C E E D I N G S

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**JUDGE SCHMIDT:** All right. Ready? Let's be on the record. This is a formal hearing before the National Labor Relations Board. My name is William L. Schmidt, and I am the Administrative Law Judge designated by the Board to conduct the hearing on its behalf. At this time, I'd like counsel for the parties to enter their appearances for the record, beginning with the general counsel.

**MR. MACKAY:** Thank you, Your Honor. On behalf of the acting general counsel, Robert Mackay, business address 555 West Beach Street, Room 418, San Diego, California, 92101.

**MS. PARKER:** And on behalf of the acting general counsel, Lindsay Parker, business address 888 South Figueroa Street, 9th Floor, Los Angeles, California, 90017.

**MS. HOFFMAN:** Florice Hoffman for the National Union of Health Care Workers. Do you need my business address also?

**JUDGE SCHMIDT:** Yes.

**MS. HOFFMAN:** It's 8502 East Chapman Avenue, Suite 353, Orange, California, 92869.

**JUDGE SCHMIDT:** Respondent?

**MR. LINDSAY:** Michael Lindsay of Nixon Peabody, on behalf of both respondents. My address is 555 West Fifth Street, 46th Floor, Los Angeles, California.

**MR. NEULIGHT:** Seth Neulight, Nixon Peabody, on behalf of both of the respondents. My business address is One

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1 Embarcadero Center, 18th Floor, San Francisco, California,  
2 94111.

3 MS. GOLDBERG: Jennifer Goldberg, in-house counsel, Kaiser  
4 Foundation Health Plan. Representing KFhap and SCPOG, business  
5 address is 393 East Walnut Street, Pasadena, California, 91108.

6 JUDGE SCHMIDT: You're in-house counsel for whom?

7 MS. GOLDBERG: Yes. For Kaiser Foundation Health Plan.  
8 Also representing Southern California Permanente Medical Group.

9 JUDGE SCHMIDT: All right. My apologies to -- I didn't  
10 mean to call the acting general counsel general counsel. And  
11 -- okay. Very well. At this time, General Counsel, why don't  
12 you proceed with the introduction of the formal papers?

13 MR. MACKAY: Yes, Your Honor.

14 JUDGE SCHMIDT: And then we'll take up any preliminary  
15 matters after that.

16 MR. MACKAY: At this time, Your Honor, I'd like to offer  
17 the formal papers marked as General Counsel's Exhibit 1-A  
18 through 1-J. 1-J being an index and description of the  
19 documents. The formal papers have been shown to all parties.  
20 At this time, I move for the introduction of General Counsel's  
21 Exhibit 1.

22 JUDGE SCHMIDT: Any objection?

23 MR. LINDSAY: No, Your Honor.

24 JUDGE SCHMIDT: Being no objection, they're received.

25 **(General Counsel Exhibit 1 received into evidence.)**

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1 JUDGE SCHMIDT: Anything else, General Counsel, by way of  
2 preliminary matters?

3 MR. MACKAY: I do have some preliminary matters, Your  
4 Honor.

5 JUDGE SCHMIDT: Very well. Proceed.

6 MR. MACKAY: First, just to note on the record, by letter  
7 dated October 1st, 2010, I informed counsel for the Respondents  
8 of some current cases that are pending in Region 21 right now  
9 and of our intent to proceed here today notwithstanding the  
10 fact that there are other pending cases before Region 21, and  
11 obviously that's still our same position as of today.

12 JUDGE SCHMIDT: All right.

13 MR. MACKAY: If I may, Your Honor, a few more preliminary  
14 matters?

15 JUDGE SCHMIDT: Well -- be my guest.

16 MR. MACKAY: Okay. First, I just want to say for the  
17 record that contemporaneous with this, the Board is currently  
18 pursuing Section 10-J injunctive relief in federal court at the  
19 same time. As a result of that, we respectfully request that  
20 Your Honor reach a decision in this case as expeditiously as  
21 possible. In addition to that, I would like to offer into  
22 evidence a stipulation that was entered into between the Acting  
23 General Counsel and Respondent's counsel. This stipulation has  
24 been lodged with the Federal District Court, and we are  
25 awaiting the court order on that. I'd like to introduce it

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1 because it makes references to events that may occur during  
2 this hearing, and so I would like to have this into evidence  
3 just in case the -- any issues come up related to them. And I  
4 think I would want to mark this as joint exhibit --

5 MS. PARKER: Two or one?

6 MR. MACKAY: -- Joint Exhibit 1. The last point of  
7 clarification as I show this to the parties. This is an  
8 unsigned copy 1. As soon as I get copies of one containing our  
9 signatures, I will request on the record to replace this one  
10 with that one. And also, while we're awaiting the court's  
11 order, if the Court signs off on this stipulation while we're  
12 still on the record, I'll introduce that one.

13 JUDGE SCHMIDT: All right.

14 **(Joint Exhibit 1 marked for identification.)**

15 MR. MACKAY: I'm going to show this to the parties. And  
16 Your Honor, may I present you with a copy of the stipulation?

17 JUDGE SCHMIDT: Yes.

18 MR. MACKAY: And so I would move for the introduction of  
19 Joint Exhibit 1.

20 MR. LINDSAY: No objection.

21 JUDGE SCHMIDT: Okay, there being no objection, Joint  
22 Exhibit 1 is received.

23 **(Joint Exhibit 1 received into evidence.)**

24 MR. MACKAY: And then, I guess as far as preliminary  
25 matters --

1 JUDGE SCHMIDT: What -- wait.

2 MR. MACKAY: Yes, sir.

3 JUDGE SCHMIDT: What am I supposed to discern from this?

4 MR. MACKAY: I think the most relevant point is the fact  
5 that there are witnesses that either the General Counsel may  
6 call, or witnesses that Respondents may call.

7 JUDGE SCHMIDT: Right.

8 MR. MACKAY: And some of the questions they ask may cross  
9 into not only issues that both you and the District Court would  
10 be deciding in terms of whether an unfair labor practice was  
11 committed --

12 JUDGE SCHMIDT: Yeah?

13 MR. MACKAY: -- but some questions may bear on issues more  
14 pertinent to what the District Court is deciding, and it's a  
15 promise from us that we'll respectfully ask that Your Honor  
16 bear with us and allow a few of those questions to come in. We  
17 know that's subject to your --

18 JUDGE SCHMIDT: This is because the plan is to use this  
19 transcript in the Federal District Court?

20 MR. LINDSAY: In lieu of discovery, Your Honor.

21 JUDGE SCHMIDT: All right. Okay, that's not a problem  
22 with me. I mean, you -- there should be no problem with me, I  
23 don't think.

24 MR. MACKAY: Okay. So then I think the only other  
25 preliminary matter I have is to ask then for a sequestration

1 order for the hearing and -- one more thing. Can we go off the  
2 record for a second, Your Honor?

3 JUDGE SCHMIDT: Yes, let's be off the record?

4 (Off the record)

5 JUDGE SCHMIDT: Let's be on the record.

6 Counsel for the Acting General Counsel, you may proceed.

7 MR. MACKAY: Okay, and Your Honor, before I request to  
8 make an opening statement, if we could -- I'd make a motion to  
9 sequester witnesses.

10 JUDGE SCHMIDT: All right. Any objection?

11 MR. LINDSAY: No, Your Honor.

12 MS. HOFFMAN: No objection.

13 JUDGE SCHMIDT: There being no objection, I'm going to  
14 grant the request to sequester witnesses. What that means is,  
15 is that all persons other than a person designated as essential  
16 to the presentation to a party's case who expect to be called  
17 as witnesses in this proceeding will be required to remain  
18 outside the courtroom whenever testimony or other proceedings  
19 are taking place. In addition, during the course of the  
20 hearing they may not discuss with any other witness or any  
21 possible witness the testimony already given or to be given.  
22 The exception to this involves discriminatees and there are  
23 none in this matter, so that that particular exception is  
24 inapplicable here. Also, counsel for a party may not disclose  
25 to any witness the testimony of another witness. The counsel

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1 may, however, inform counsel's own witness of the content of  
2 testimony given by an opposing party's witness to prepare to  
3 rebut that witness's testimony. It's the responsibility of  
4 counsel to see that witnesses comply with this rule, separating  
5 the witnesses during the hearing, all right?

6 Now, are you ready for your opening statement?

7 MR. MACKAY: Yes, Your Honor, although I would like to  
8 tell you who I'm designating as my representative.

9 JUDGE SCHMIDT: Oh, I'm sorry. Yes.

10 MR. MACKAY: Ralph Cornejo, the gentleman seated to the  
11 next of -- to the right of Ms. Parker here, will be the  
12 representative.

13 JUDGE SCHMIDT: And does charging party have someone?

14 MS. HOFFMAN: Yes, Gabriel Kristal will be NUHW's reps.

15 JUDGE SCHMIDT: Okay, and Respondent?

16 MR. LINDSAY: Yes, we're designating Maryanne Miller, who  
17 is sitting on the second row back there.

18 JUDGE SCHMIDT: Okay, very good. Are -- would you like  
19 for her to be up at the table, or --

20 (Unrelated matters discussed)

21 JUDGE SCHMIDT: Let's be off the record while that's taken  
22 care of.

23 (Off the record)

24 JUDGE SCHMIDT: Let's be on the record. I take it that  
25 all the witnesses have -- all the individuals who will be

1   testifying in this case except for those designated as  
2   essential by counsel will be -- are now out of the room.

3           MR. MACKAY:  Yes, Your Honor.

4           JUDGE SCHMIDT:  All right.  Counsel for Acting General  
5   Counsel, you may proceed with your opening statement if we're  
6   at that point.

7           MR. MACKAY:  Thank Your Honor.  Just briefly, most  
8   contractually established terms and conditions of employment  
9   are mandatory subjects of bargaining, and they survive the  
10  nullification of a contract as a result of a change in the  
11  bargaining representative.

12           In this case, the contractually established terms and  
13  conditions of employment involved across-the-board wage  
14  increases, tuition reimbursement for continuing education  
15  courses to obtain or maintain licensure, and regular shop  
16  steward training.  Following the NUHW's certification on  
17  February 3rd of 2010, in three separate bargaining units,  
18  Respondents eliminated these wages and benefits unilaterally.  
19  And Counsel for the Acting General Counsel submits that that  
20  violates Section 8A1 and 5 as an impermissible unilateral  
21  change.  Also, as you'll note, that in addition to the  
22  traditional makeful (phonetic) remedies, we are also seeking an  
23  extension of the certification year, and in support of that,  
24  we'll be presenting some evidence regarding the impact that  
25  this change had on the bargaining unit.

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1 JUDGE SCHMIDT: All right. Charging Party, do you have  
2 anything by way of an opening statement?

3 MS. HOFFMAN: No, Your Honor.

4 JUDGE SCHMIDT: All right. Respondent?

5 MR. LINDSAY: We'll reserve.

6 JUDGE SCHMIDT: All right. General counsel, you may  
7 proceed.

8 MR. MACKAY: Okay, first I'd like to offer into evidence,  
9 marked as General Counsel's Exhibit 2, the relevant portions of  
10 the transcript in the underlying representation case in the  
11 matters. The relevant pages reflect a factual stipulation that  
12 was reached by the parties. At this time I move for the  
13 introduction of General Counsel's Exhibit 2.

14 MR. LINDSAY: No objection.

15 JUDGE SCHMIDT: Received.

16 **(General Counsel Exhibit 2 received into evidence.)**

17 MR. MACKAY: I'd marked as General Counsel's Exhibit 3 a  
18 copy of the decision and direction of election that issued in  
19 connection with the same matters. At this time I move for the  
20 introduction of General Counsel's Exhibit 3.

21 MR. LINDSAY: No objection.

22 MS. HOFFMAN: No objection.

23 JUDGE SCHMIDT: Received.

24 **(General Counsel Exhibit 3 received into evidence.)**

25 MR. MACKAY: As General Counsel's Exhibit 4, 5, and 6, I'd

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1 like to introduce copies of the contracts that are referenced  
2 by the factual stipulation and decision and direction of  
3 election. General Counsel's Exhibit 4 will be the contract  
4 involving the Health Care Professionals Unit. General  
5 Counsel's Exhibit 5 will be the contract involving the AFN or  
6 Nurses' Unit. And General Counsel's Exhibit 6 will be the  
7 contract involving the Psych/Social Unit.

8 JUDGE SCHMIDT: If --

9 MR. MACKAY: This -- so at this time I would move for the  
10 introduction of 4, 5, and 6, and I do have copies of these  
11 contracts, which if we need to go off the record, so I can  
12 distribute the copies to the parties, we can do that.

13 JUDGE SCHMIDT: All right, well, we'll be off the record.  
14 (Off the record)

15 JUDGE SCHMIDT: On the record. You may proceed, General  
16 Counsel.

17 MR. MACKAY: At this time I move for the introduction of  
18 General Counsel's Exhibits 4, 5, and 6.

19 JUDGE SCHMIDT: Any objection?

20 MR. LINDSAY: No objection to their admission. I have an  
21 objection to the way that they were characterized.

22 JUDGE SCHMIDT: Let me hear it.

23 MR. LINDSAY: All right. They were -- there were two.  
24 There was a characterization that these were the ones referred  
25 to in a stipulated statement of facts. There is no stipulated

1 statement of facts. I presume I was just misspoken. Secondly,  
2 these were the contracts in effect prior to the certification  
3 of NUHW.

4 JUDGE SCHMIDT: Right.

5 MR. LINDSAY: All right.

6 JUDGE SCHMIDT: They were the last agreements in effect  
7 prior to the certification, as I understand it, if we can all  
8 agree on that.

9 MR. MACKAY: Yes, Your Honor.

10 JUDGE SCHMIDT: Go ahead.

11 MR. MACKAY: So I moved for the introduction of 4, 5, and  
12 6.

13 JUDGE SCHMIDT: Oh, you did, didn't you? Noting  
14 Respondent's objection, they're received.

15 **(General Counsel Exhibits 4 through 6 received into**  
16 **evidence.)**

17 MR. MACKAY: At this time Your Honor, I'd respectfully  
18 request if we could go off the record and I could have maybe 15  
19 to 20 minutes to review subpoenaed documents.

20 JUDGE SCHMIDT: All right. We'll be off the record.  
21 (Off the record)

22 JUDGE SCHMIDT: Let's be on the record then. Before you  
23 begin, General Counsel, I was just reading what you've labeled  
24 a stipulation in General Counsel's Exhibit 2, which is a  
25 portion of the transcript from the underlying representation

1 case hearing.

2 And referring to page 26 it says at the conclusion of the  
3 bargaining process what was ratified was both the local  
4 agreement and the national agreement as an addendum to those  
5 local agreements. And I'm looking through or I just picked one  
6 -- randomly picked one. The Kaiser Psych Social chapter, okay  
7 -- agreement.

8 And I went through the table of contents and I was trying  
9 to locate in there where in here the national agreement starts.

10 MR. MACKAY: Okay. And can I do that with each one for  
11 you? Can I just pull my copies here?

12 JUDGE SCHMIDT: If you don't mind.

13 MR. MACKAY: Sure.

14 JUDGE SCHMIDT: You know, just to help me deal with the  
15 mass of this.

16 MR. MACKAY: And I'm sorry, you have in front of you,  
17 you're holding the Psych Social Chapter one?

18 JUDGE SCHMIDT: Yes.

19 MR. MACKAY: Okay. That's General Counsel's Exhibit 6?

20 JUDGE SCHMIDT: Yes.

21 MR. MACKAY: Okay. So and you will find for each of these  
22 three contracts that the national agreement is essentially the  
23 last part of each of these three contracts. It'll have a title  
24 page saying "National Agreement" and it'll be numbered --

25 JUDGE SCHMIDT: Well --

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1 MR. MACKAY: -- consecutively 1 --

2 JUDGE SCHMIDT: Okay.

3 MR. MACKAY: -- et cetera from that point forward.

4 JUDGE SCHMIDT: Oh. I'm sorry. I -- well I guess that's  
5 what I was looking for in this one. I went to the table of  
6 contents in hopes I could find it quickly, but --

7 MR. MACKAY: So if you -- the first 82 pages, right after  
8 that 82 page --

9 JUDGE SCHMIDT: Is --

10 MR. MACKAY: You'll see --

11 JUDGE SCHMIDT: Okay. What's --

12 MR. MACKAY: -- what appears to be --

13 JUDGE SCHMIDT: Oh.

14 MS. PARKER: Just a couple pages following page 82 of  
15 the --

16 JUDGE SCHMIDT: Well a couple pages --

17 MR. MACKAY: After 82.

18 JUDGE SCHMIDT: -- following 82.

19 MS. PARKER: Right.

20 JUDGE SCHMIDT: Memorandum on understanding regarding  
21 subcontracting --

22 MR. MACKAY: You've got to keep going.

23 JUDGE SCHMIDT: So there is a -- there is going to be some  
24 kind of a title page?

25 MR. MACKAY: Yes.

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1 MS. PARKER: Yes.

2 MR. MACKAY: It'll look like this.

3 JUDGE SCHMIDT: And I'm going to get one of these booklets  
4 in the end.

5 MR. MACKAY: Okay.

6 JUDGE SCHMIDT: But you don't need to do that now. That  
7 same will be in there, too. Right?

8 MR. MACKAY: Yes. And the booklets are there.

9 JUDGE SCHMIDT: Okay.

10 MR. MACKAY: If it would be more help, Your Honor, I think  
11 we have three extra copies of the booklets, if you'd like to  
12 have the booklets in front of you during the hearing.

13 JUDGE SCHMIDT: Okay. If you do, I would appreciate that.  
14 And I'm sorry that you've xeroxed all of this and I -- but I'm  
15 having difficulty locating where the national agreement begins.

16 Your co-counsel seems to have a title page there that I  
17 just cannot find in my material.

18 MR. MACKAY: So may I approach, Your Honor?

19 JUDGE SCHMIDT: Sure.

20 MR. MACKAY: So then for example if this booklet --

21 JUDGE SCHMIDT: Perfect. That's exactly what I'm looking  
22 for.

23 MR. MACKAY: And then you'll find that.

24 JUDGE SCHMIDT: There's a dividing line between -- yeah.  
25 Okay. All right. Now I can deal with this. Thank you.

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1 MR. MACKAY: So these are courtesy copies you can use  
2 during the hearing.

3 JUDGE SCHMIDT: Yeah. All right.

4 And for purposes of this complaint are these terms and  
5 conditions that we're talking about terms and conditions that  
6 were negotiated locally or nationally?

7 MR. MACKAY: Well you'll find that the relevant  
8 contractual provisions that establish the terms and conditions  
9 are set forth in the national agreement.

10 JUDGE SCHMIDT: Okay.

11 MR. MACKAY: Although we do take the position that this is  
12 a single integrated contract. It's got the national agreement,  
13 we've got the local agree. I don't think the case turns on  
14 that, whether it's three contracts, two contracts or one  
15 contract within the same one. But it is our position that this  
16 is a single integrated contract that the employees signed.

17 JUDGE SCHMIDT: Well, all right. Then I'll be interested  
18 in reading the regional director's decision. So in determining  
19 how we come up with, what was it, three separate elections?

20 MR. MACKAY: Well we have three bargaining units. And --

21 JUDGE SCHMIDT: Yeah.

22 MR. MACKAY: -- the NUHW was certified as the 9A rep in  
23 the three separate units. And --

24 JUDGE SCHMIDT: Well all right.

25 MR. MACKAY: -- these are the three contracts that were in

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1 place for the three units prior. I know the number three comes  
2 up twice, making things confusing. But there's one contract  
3 for each of the three units. And in front of you, you see the  
4 contract for one unit, the contract for another and the  
5 contract for another.

6 If you look at one of those contracts, the parties use  
7 terms like "local agreement" "master agreement" and "national  
8 agreement." Each of those are within each of the contracts.

9 JUDGE SCHMIDT: Okay. As you can tell I'm just beginning  
10 to get enlightened a little bit about this, but you know the  
11 way this -- this takes on something that sounds to me like it  
12 might be parallel to what you would expect to find in the  
13 automobile industry where they have local agreements and then  
14 they have a national agreement. All right. But we're not --  
15 we're apparently dealing with some different duck here, because  
16 I wouldn't expect that if somebody in a Ford Plant in Chicago,  
17 Illinois or St. Paul, Minnesota wanted to supplement the UAW as  
18 a bargaining representative that they would have a -- any kind  
19 of a chance at all of carving out a single unit like that, and  
20 having an election to replace the bargaining representative.

21 So I will get enlightened when I read the regional  
22 director's decision about why that is so, I assume.

23 MR. MACKAY: Although I may be -- I'm sorry. I may be  
24 confused on the question but the unit that was represented  
25 before NUHW was certified --

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1 JUDGE SCHMIDT: Right.

2 MR. MACKAY: -- is the same. So there's been no change in  
3 the unit. And that's the contract that applied to the unit.  
4 The national part, the master, the local.

5 JUDGE SCHMIDT: So you know, I -- nobody ever made a claim  
6 here that these units somehow got merged into any kind of a  
7 larger body.

8 MR. MACKAY: No. There's no merger issues. The unit's  
9 pre-February 3rd, 2010, post February 3rd, 2010 are the same.  
10 It's just there's a new union that was voted in. And what  
11 we're saying is, when that happens the contract between the  
12 employer and the predecessor union it is null and void. But  
13 the question is, what are the status quo working conditions  
14 following that change.

15 JUDGE SCHMIDT: Yeah. All right. I -- that part I get.  
16 I just don't know -- I've got -- I need to read more in order  
17 to get up to speed about how we got to that point. So, go  
18 ahead.

19 MR. MACKAY: Okay.

20 JUDGE SCHMIDT: I'll make it -- fumble through it somehow.

21 MR. MACKAY: Okay. Maybe -- okay. Maybe what I can do --  
22 I think to some extent it might be duplicative of what we've  
23 introduced, but with my first witness I think I may introduce  
24 some of that history then. Just to help move things along. If  
25 that's okay with Your Honor.

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1 JUDGE SCHMIDT: Well, you know, if it's necessary.

2 MR. MACKAY: Okay. Well at this time Your Honor, then  
3 General Counsel calls Ralph Cornejo.

4 JUDGE SCHMIDT: Please step forward.

5 (Whereupon,

6 **RALPH CORNEJO**

7 having been first duly sworn, was called as a witness herein  
8 and was examined and testified as follows:)

9 JUDGE SCHMIDT: Be seated.

10 **DIRECT EXAMINATION**

11 Q BY MR. MACKAY: Okay. Who are you employed by?

12 A National Union of Healthcare Workers. NUHW.

13 Q And how long have you worked for NUHW?

14 A A little over a year and a half.

15 Q And what is your job title with NUHW?

16 A I'm the director of the Kaiser division.

17 Q And when you refer to Kaiser or use that term, does that  
18 encompass both of the two Respondents involved in this case?

19 A Yes.

20 Q And briefly what are your job duties as NUHW director of  
21 the Kaiser division?

22 A Basically I oversee staff as well as bargain contracts.

23 Q And as part of your responsibilities with NUHW do you  
24 oversee the three bargaining units involved in this case?

25 A I do.

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1 Q For purposes of my questions I'm going to refer to them as  
2 the AFN Unit, the Healthcare Professionals Unit, and the Psych  
3 Social Unit. Have you had responsibility since the NUHW was  
4 certified on February 3rd, 2010 the same responsibilities over  
5 these units?

6 A Yes.

7 Q Prior to February 3rd, 2010 was the SEIU UHW the  
8 collective bargaining representative for each of these three  
9 units?

10 A Yes.

11 Q Okay. Okay. I'd like to ask you some brief questions  
12 about your previous employment with SEIU UHW. Who did you work  
13 for before NUHW?

14 A SEIU UHW.

15 Q Okay. And for my questions in referring to that  
16 organization I'll try to use SEIU. If you think in any of my  
17 questions I may have inadvertently said the wrong label  
18 organization name, please correct me.

19 What time period did you work for the SEIU?

20 A About 37 years.

21 Q And from approximately 2004 until 2009 what was your job  
22 title with SEIU?

23 A Director of the Kaiser division.

24 Q Did your duties as the SEIU director of the Kaiser  
25 division include overseeing the same three bargaining units

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1 that are involved in this case?

2 A Yes.

3 Q In 2005 did you participate in national bargaining on  
4 behalf of SEIU with the respondents?

5 A Yes.

6 Q Okay. And when did that bargaining take place?

7 A Over the course of 2005 between around March through  
8 October. I'm sorry, September.

9 Q Did that bargaining encompass among others the three  
10 bargaining units that are involved in this case?

11 A Yes.

12 Q Did other unions representing other bargaining units also  
13 engage in that bargaining?

14 A Yes.

15 Q Did this group of unions have a name?

16 A It was the coalition of unions.

17 Q Okay. And also -- is it also referred to as the coalition  
18 of Kaiser unions?

19 A Yes.

20 Q Okay. Did that bargaining end in an agreement?

21 A It did.

22 Q What is that agreement referred to?

23 A That national agreement.

24 Q After those negotiations took place, did you participate  
25 in any other bargaining on behalf of, among other units, the

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1 three units involved in this case?

2 A Yes.

3 Q And what was that bargaining called?

4 A The cross regional bargaining.

5 Q Okay. And when did that bargaining take place?

6 A Right after national bargaining.

7 Q And can you explain what cross regional bargaining is or  
8 was at that time?

9 A All of the SEIU locals in the coalition, Local 49, Local  
10 105, 535 and UHW bargained a master agreement which allowed  
11 them to have the same language and certain provisions of the  
12 each of the agreements covering each of those bargaining units.

13 Q Okay. So the national bargaining resulted in a national  
14 agreement, cross regional resulted in what's called the master  
15 agreement.

16 A Correct.

17 Q In 2005 who was the section 9A exclusive collective  
18 bargaining representative for the three units involved in this  
19 case?

20 A SEIU.

21 Q Which local?

22 A UHW.

23 Q In 2005?

24 A Oh in 2005, UHW.

25 Q Okay. Well let me ask you was there another local that

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1 later merged with SEIU UHW?

2 A Yes.

3 Q Okay. What is that local?

4 A 535.

5 Q Okay. So let me ask you in 2005, who was the 9A  
6 representative of these three bargaining units?

7 A 535.

8 Q Okay. 535. In what year did they merge with SEIU UHW?

9 A 2007.

10 Q Okay. In 2005 after the cross regional bargaining did  
11 SEIU local 535 engage in local bargaining with the Respondents  
12 for these three bargaining units?

13 A They did.

14 Q Did that result in an agreement?

15 A Yes.

16 Q What is that agreement referred to?

17 A The local agreement.

18 Q Okay. Now did employees in each of these three bargaining  
19 units vote to ratify these agreements?

20 A Yes.

21 Q If you could for us taking a look at -- let me take one  
22 contract as an example. I'm showing the witness General  
23 Counsel's Exhibit 6. Can you help illustrate for the  
24 Administrative Law Judge where within this document he might be  
25 able to find what you described as the local agreement, the

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1 cross regional agreement and the national agreement?

2 A Okay. So the local agreement will be the first document.

3 That would be from the small Roman numeral i through page 82.

4 That would be the local agreement. The master agreement, which  
5 was part of the cross regional bargaining, which would be any  
6 of the areas that are shaded in gray in the local agreement.

7 Q Can you point one out as an example to the Judge?

8 A Sure. I'd just point out page 1.

9 Q Thank you.

10 A And then the following document, after page 82 of the  
11 local agreement is the national agreement.

12 Q And you have in front of you General Counsel's Exhibit 6.  
13 Right?

14 A I do.

15 Q So let me ask you, each of the provisions that you've  
16 described here within this contract they all apply to the psych  
17 social chapter unit. Correct?

18 A That is correct.

19 Q Involved in this case. And similarly if I were to show  
20 you the other contracts all the terms within the document  
21 you're looking at applied to -- for one of them it would be the  
22 AFN unit, and for the other it would be for the Healthcare  
23 unit. Correct?

24 A That's correct.

25 Q I'd like to ask you some questions now about some of the

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1 wages and benefits contained in the national agreement section  
2 of each of --

3 A Sure.

4 Q -- these three contracts.

5 A Sure.

6 Q Let's start with across the board wage increases. Does  
7 the national agreement section of these contracts provide for a  
8 across the board wage increases?

9 A Yes.

10 Q Okay. In what section could we find that?

11 A Section 2, Wages and Benefits, A Compensation.

12 Q Okay. When you say section 2A it would be section 2A in  
13 each of the three contracts. Correct?

14 A Right.

15 Q Okay. Is there a reopener provision in the national  
16 agreement section of each of these contracts?

17 A Yes.

18 Q That would encompass across the board wage increases?

19 A yes.

20 Q Okay. Can you tell us what section that is in?

21 A It would be section 3, Scope of the Agreement. And it  
22 would be under D, Duration, Renewal and Reopening.

23 Q In 2008 while you were employed by SEIU, did you  
24 participate in any negotiations pursuant to the reopener  
25 language in these contracts that involved across the board wage

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1 increase for among others, the three bargaining units involved  
2 in this case?

3 A I did.

4 Q Did those negotiations result in the reaching of an  
5 agreement?

6 A Yes.

7 Q I'm showing you what's been marked as General Counsel's  
8 Exhibit 7. Do you recognize this document?

9 A I do.

10 Q Can you tell me what it is?

11 A It's the agreement we reached in the reopening of the  
12 contract in 2008.

13 Q And this agreement covered the three bargaining units  
14 involved in this case. Correct?

15 A Yes.

16 MR. MACKAY: Okay. I move for the introduction of General  
17 Counsel's Exhibit 7.

18 MR. LINDSAY: Do you have an executed copy?

19 MR. MACKAY: No. I don't. Oh, let me check something  
20 here, Your Honor.

21 JUDGE SCHMIDT: This will be off the record.

22 (Off the record)

23 JUDGE SCHMIDT: Let's be on the record.

24 Go ahead, counsel.

25 MR. MACKAY: Okay.

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1 Q BY MR. MACKAY: I'm showing you what's going to be marked  
2 as General Counsel's Exhibit 7.

3 A I do.

4 Q And what is it?

5 A It's the agreement we reached as a result of the reopening  
6 for the national agreement.

7 Q And is this an executed copy of that agreement?

8 A It is.

9 Q Okay.

10 MR. MACKAY: I move for the introduction of General  
11 Counsel's Exhibit 7.

12 MR. LINDSAY: No objection.

13 MS. HOFFMAN: No objection.

14 JUDGE SCHMIDT: Received.

15 **(General Counsel Exhibit 7 received into evidence.)**

16 Q BY MR. MACKAY: And can you just point to us briefly where  
17 on the first page of this document there's certain groupings  
18 here and just -- I think it's clear from the document, but I  
19 think it will just assist. Can you tell us where in this  
20 document each of the units would fall and the units involved in  
21 this case. So for example the AFN unit?

22 A The AFN unit would be under Roman numeral number II, the  
23 first paragraph.

24 Q And that's first paragraph because it encompasses  
25 California?

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- 1 A Correct.
- 2 Q Okay. How about the Healthcare Professionals Unit?
- 3 A Roman Numeral Number I, the first paragraph.
- 4 Q And the Psych Social unit.
- 5 A Roman Numeral Number I, first paragraph.
- 6 Q Okay. So --
- 7 JUDGE SCHMIDT: Which paragraph?
- 8 THE WITNESS: The first paragraph. It reads "Wages for  
9 all non-RN partnership employees in California."
- 10 JUDGE SCHMIDT: Okay.
- 11 Q BY MR. MACKAY: Okay. Looking at that paragraph Roman  
12 numeral I, the first paragraph, did the Healthcare  
13 Professionals unit receive a three percent across the board  
14 wage increase on October 1st, 2008?
- 15 A Yes.
- 16 Q Did they receive a three percent wage increase on October  
17 1st 2009?
- 18 A Yes.
- 19 Q Okay. Still looking at that same paragraph, okay. Now  
20 for Psych Social, did the Psych Social unit employees involved  
21 in this case receive a three percent wage increase on October  
22 1st, 2008?
- 23 A Yes.
- 24 Q Did they receive a three percent wage increase on October  
25 1st, 2009?

1 A Yes.

2 Q Okay. Scrolling down to Roman Numeral II, the first  
3 paragraph, did the AFN unit employees involved in this case  
4 receive a four percent wage increase on October 1st, 2008?

5 A Yes.

6 Q Did they receive a four percent wage increase on October  
7 1st, 2009?

8 A Yes.

9 JUDGE SCHMIDT: Did you still work for SEIU for 2009?

10 THE WITNESS: January.

11 JUDGE SCHMIDT: January of 2009.

12 THE WITNESS: Only.

13 JUDGE SCHMIDT: Yeah. You worked for SEIU through January  
14 of 2009?

15 THE WITNESS: Correct.

16 JUDGE SCHMIDT: Go ahead, counsel.

17 Q BY MR. MACKAY: Okay. Now let me ask you about the  
18 subject of tuition reimbursement for continuing education  
19 courses to obtain or maintain licensure. Does the national  
20 agreement section in each of these contracts provide for  
21 tuition reimbursement for such things?

22 A Yes.

23 Q Can you tell us in what section within the national  
24 agreement section we would find that?

25 A Section 1. 1D 3C.

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1 Q So section 1.D.3.C? And that would be the same section  
2 number in each of the three contracts. Correct?

3 A Correct.

4 Q Pursuant to that section can you describe -- well --

5 JUDGE SCHMIDT: What page are we on?

6 THE WITNESS: Well it would have been on page 29.

7 JUDGE SCHMIDT: All right.

8 THE WITNESS: And it's the last paragraph of that section.

9 It refers to tuition reimbursement. Okay?

10 JUDGE SCHMIDT: Yes. Okay. Got you. It's on page 29 of  
11 the national agreement. All right. Go ahead.

12 Q BY MR. MACKAY: I would propose a stipulation that up and  
13 until February 3rd, 2010 Respondent provided for tuition  
14 reimbursement for continuing education courses pursuant to  
15 those sections -- pursuant to that section of the contract to  
16 each of the three bargaining units?

17 A And continued to do so through March 31st of that year as  
18 well.

19 MR. MACKAY: The stipulation is through February. I think  
20 you'll see the events that he's talking about, about the  
21 additional month coming in shortly through an email. I'd like  
22 to describe why it continued for just a few more weeks.

23 JUDGE SCHMIDT: All right. Well I'll accept the  
24 stipulation as proposed. All right. And I note counsel's  
25 added comments with respect to what happened thereafter.

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1 Q BY MR. MACKAY: Okay. Let me ask you now about steward  
2 training, education and development. Does the national  
3 agreement section in each of these contracts provide for  
4 steward training, education and development?

5 A Yes.

6 Q In what section is that located?

7 A It's in Section 1E Number 3. It's on page 31.

8 Q Can you provide for us a brief description of what steward  
9 training would be -- what would be encompassed under this  
10 section in terms of what was provided for the three units  
11 involved in this case under the terms of section?

12 A Grievance handling, contract interpretation, trainings on  
13 labor management partnership initiatives, like attendance, work  
14 place safety, reports on those. Those types of things.

15 Q Okay. And would employees receive paid time off to do  
16 training?

17 A Yes.

18 Q Okay. I'd like to ask you some questions now about events  
19 that took place following the NUHW certification on February  
20 3rd, 2010. First, when was NUHW formed?

21 A In late January early February of 2009.

22 Q Oh. And I'm sorry. Before we move on.

23 MR. MACKAY: I would propose a stipulation that up and  
24 until February 3rd of 2010 Respondents provided for regular  
25 steward training as described to each of the three units.

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1 MR. LINDSAY: So stipulated.

2 JUDGE SCHMIDT: Received.

3 Q BY MR. MACKAY: Okay. Now returning back, you said NUHW  
4 formed, I'm sorry, in what year?

5 A In early February 2009.

6 Q Are these the first Kaiser bargaining units that NUHW has  
7 ever represented?

8 A Yes.

9 Q Has NUHW ever been a member of the coalition of Kaiser  
10 Unions?

11 A No.

12 Q After the NUHW was certified did the union meet with  
13 representative of Respondents as sort of a meet and greet for  
14 these three bargaining units?

15 MR. LINDSAY: Objection, leading.

16 JUDGE SCHMIDT: I'll treat it as a preliminary question.  
17 Go ahead and answer.

18 THE WITNESS: Actually we called it a ground rules setting  
19 meeting. And yes.

20 Q BY MR. MACKAY: And when was the date of that first  
21 meeting?

22 A It was February 12th.

23 Q And where was the meeting held at?

24 A At the Walnut Center which is the headquarters for  
25 Southern California Kaiser.

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1 Q And what city is that in?

2 A Pasadena.

3 Q Who was present at this meeting on behalf of the  
4 Respondents?

5 A Maryanne Malzone, Arlene Peasnall, Richard Rosas.

6 Q To the extent you know their job titles, can you tell us  
7 their job titles, too?

8 A Yes. Arlene Peasnall is the vice president of human  
9 resources for Southern California. Maryanne Malzone is the  
10 director of labor relations. And Richard Rosas is the senior  
11 representative in labor relations.

12 Q Who was present on behalf of the union?

13 A I was present. Gabe Kristal was present, Jason Campbell.  
14 And quite a large committee of workers.

15 Q Okay. And the two names you mentioned Jason and Gabe;  
16 they are representatives of the union?

17 A Yes.

18 Q Did the union make any proposals at this meeting?

19 JUDGE SCHMIDT: Wait. Can -- something I missed along the  
20 line. This first meeting you said was held on February 12th,  
21 that would be of 2010.

22 THE WITNESS: Yes.

23 JUDGE SCHMIDT: Go ahead.

24 Q BY MR. MACKAY: Did the union make any proposals at this  
25 meeting?

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1 A Yes.

2 Q Okay. And what was that?

3 A We asked the employer to extent the current collective  
4 bargain agreements through October 1st of 2010. We also  
5 proposed that the employer continue tuition reimbursement and  
6 the steward training. We asked for the employer to give our  
7 union representatives badges that they normally give to union  
8 representatives and other things.

9 Q Okay. I'm sorry, you said, proposed. What do you mean by  
10 that?

11 MR. LINDSAY: Objection, vague.

12 JUDGE SCHMIDT: Sustained.

13 THE WITNESS: We said to the employer --

14 JUDGE SCHMIDT: Wait.

15 THE WITNESS: Oh, I'm sorry.

16 JUDGE SCHMIDT: Go ahead. Rephrase your question.

17 Q BY MR. MACKAY: Did you talk about the continuing  
18 education courses?

19 A Yes.

20 Q Okay. What specifically did you say at this meeting on  
21 that issue?

22 A That we wanted the employer to continue that benefit. The  
23 reason for it, if I could add.

24 JUDGE SCHMIDT: I don't hear an objection. Go ahead.

25 THE WITNESS: Was that we were getting reports from our

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1 members that managers were telling them that they were no  
2 longer eligible for that benefit.

3 Q BY MR. MACKAY: Did the subject of the regular steward  
4 training come up at this meeting?

5 A Yes.

6 Q Did you say anything with respect to that issue?

7 A Yes. We wanted the employer to continue that as well.

8 Q Did you say that to the employer at this meeting?

9 A Yes.

10 Q Prior to that day had anybody from Kaiser; either of the  
11 respondents indicates to you that those things were going to be  
12 eliminated?

13 A Not at -- no.

14 Q Did you have a second meeting after this first one?

15 A Yes.

16 Q Let me ask you, in response to your statements to them  
17 about the tuition reimbursement and steward training, did  
18 Respondents respond to that?

19 A No. They said they would get back to us.

20 Q Okay. The second meeting, on what date was the second  
21 meeting?

22 A It was February 26th.

23 Q And was that meeting at the same location?

24 A Yes.

25 Q Okay. Were the same representatives for Respondent

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1 present?

2 A Yes.

3 Q Same representatives for the union?

4 A Yes, except some of our committee, of the workers would  
5 have changed a little bit.

6 Q All right. At this meeting did the Respondents provide  
7 any kind of response to you on the issues that you just  
8 testified about occurring at the previous meeting?

9 A Yes.

10 Q And first, do you recall who from the Respondents spoke?  
11 Before I ask you what was said.

12 A Arlene Peasnall and Richard Rosas were the main  
13 spokespeople. Specifically remembering which one addressed  
14 each issue, I wouldn't be able to tell you.

15 Q Okay. What was the response that you got?

16 A They said no to the contract extension. That they would  
17 not be giving the two percent increase to our members. They  
18 would not continue the tuition reimbursement, or the stewards  
19 training, or any of the benefits of the national agreement.

20 Q When you say the two percent increase, are you referring  
21 to the one described in General Counsel's Exhibit 7 that was  
22 due on April 1st, 2010?

23 A Yes.

24 Q Did they tell you why?

25 A Yes. They said because we are no longer part of the

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1 coalition of unions.

2 Q Did you say anything in response to that?

3 A Yes. I said, "It seems somewhat inconsistent their  
4 approach." Because the RNs were continuing to receive their  
5 front loaded sick leave. That the -- it appeared that all of  
6 the three units were receiving the health reimbursement  
7 account, which was a product of the 2008 agreement.

8 And the employer was encouraging our members to  
9 participate in what they call unit based teams. Which is also  
10 a product of the national agreement.

11 Q When you said those things, what did they say in response?

12 A They said they needed to do more -- and I remember Richard  
13 Rosas said they needed to do more research.

14 Q After this meeting did the union and Respondents exchange  
15 some emails?

16 A Yes.

17 Q I'm showing you what's been marked as General Counsel's  
18 Exhibit 8. Do you recognize this?

19 A Yes.

20 Q Can you tell me what it is?

21 A It's an email from me to Maryanne Malzone. Which is  
22 preceded by an email from her to me.

23 Q Okay.

24 MR. MACKAY: I move for the admission of General Counsel's  
25 Exhibit 8.

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1 MR. LINDSAY: No objection.

2 JUDGE SCHMIDT: Received.

3 **(General Counsel Exhibit 8 received into evidence.)**

4 Q BY MR. MACKAY: I'm showing you what's been marked as  
5 General Counsel's Exhibit 9. Do you recognize this document?

6 A Yes.

7 Q Can you tell me what it is?

8 A It's an email to Maryanne Malzone, Arlene Peasnall and  
9 Richard Rosas from me.

10 MR. MACKAY: I move for the introduction of General  
11 Counsel's Exhibit 9.

12 MR. LINDSAY: No objection.

13 JUDGE SCHMIDT: Received.

14 **(General Counsel Exhibit 9 received into evidence.)**

15 JUDGE SCHMIDT: Did you offer 8, by the way?

16 MR. MACKAY: I thought I did. Is 8 in?

17 MR. LINDSAY: It is.

18 JUDGE SCHMIDT: Okay. 8's received also, I mean.

19 MR. MACKAY: Thank you, Your Honor.

20 JUDGE SCHMIDT: I don't recall speaking to that.

21 Q BY MR. MACKAY: When was the next meeting that you had  
22 with Respondents?

23 A March 18th.

24 Q And this is still 2010. Correct?

25 A Yes.

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- 1 Q Where was this meeting held?
- 2 A The same location as the other two meetings.
- 3 Q Were the same representatives of the Respondents there?
- 4 A Yes.
- 5 Q Same representatives of the union?
- 6 A With the same differentiation of the committee, yes.
- 7 Q Were you given any documents at this meeting?
- 8 A Yes.
- 9 Q I'm showing you what's been marked as General Counsel's  
10 Exhibits 10 and 11. Can you take a look at these documents?  
11 Do you recognize these documents?
- 12 A I do.
- 13 Q Can you tell me what they are?
- 14 A Exhibit 10 is a -- should be three separate documents that  
15 were given to me by Richard Rosas, which I would characterize  
16 as a checklist where the employer stated that --
- 17 Q Well let me do this -- I'm sorry to interrupt.
- 18 A Sure.
- 19 Q First I just want to identify whether these are documents  
20 you were given at this --
- 21 A Yes.
- 22 Q -- meeting or not. So let me ask you. General Counsel's  
23 Exhibit 10, were you given this document at that meeting?
- 24 A Yes.
- 25 Q And who gave you that document?

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1 A Richard Rosas.

2 Q Okay. Do you see Exhibit 11? Were you given this  
3 document at the meeting?

4 A Yes.

5 Q Okay. Who gave you that document?

6 A Arlene Peasnall.

7 Q All right.

8 MR. MACKAY: I move for the introduction of General  
9 Counsel's Exhibits 10 and 11.

10 MR. LINDSAY: Voir dire on 10 for a moment. I just want  
11 to --

12 JUDGE SCHMIDT: Go ahead.

13 **VOIR DIRE EXAMINATION**

14 Q BY MS. LINDSAY: When Exhibit -- when General Counsel's  
15 Exhibit -- or proposed Exhibit 10 was given to you it was three  
16 separate documents. Is that correct?

17 A Yes.

18 MR. LINDSAY: With that understanding, Your Honor.

19 **DIRECT EXAMINATION CONINUED**

20 Q BY MR. MACKAY: And to further clarify it, one was the AFN  
21 pages for the AFN union, one was the Psych Social pages for the  
22 Psych Social union, and one was for the Healthcare  
23 Professionals union?

24 A That is correct.

25 JUDGE SCHMIDT: Okay. With that clarification, 10 is

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1 received.

2 (General Counsel Exhibit 10 received into evidence.)

3 MR. MACKAY: Okay. Did you --

4 JUDGE SCHMIDT: It's the government trying to save money  
5 with staples.

6 Q BY MR. MACKAY: All right. Okay. When you were given  
7 General Counsel's Exhibit 11 did you read that document when  
8 you were given it?

9 A Yes.

10 Q Let me ask you, looking now at General Counsel's Exhibit  
11 10 did they provide any type of explanation or description of  
12 what this was, just so you understood what you were being  
13 handed?

14 A Yes. Briefly. They explained that the --

15 JUDGE SCHMIDT: Wait. Wait. You said they. Is there a  
16 person who --

17 THE WITNESS: Oh yes.

18 JUDGE SCHMIDT: -- went about explaining this to you?

19 THE WITNESS: Yes. Richard Rosas explained that --

20 JUDGE SCHMIDT: Okay.

21 THE WITNESS: That the terms and conditions column  
22 indicated those terms and conditions that would remain in  
23 effect while we bargained a new agreement. And the column that  
24 says "Creation of the Collective Bargaining Agreement" CBA,  
25 were those that were not.

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1 Q BY MS. MACKAY: And did --

2 JUDGE SCHMIDT: Now wait. Is that all he said about it?

3 THE WITNESS: Basically.

4 JUDGE SCHMIDT: Well -- was there any explanation given to  
5 you as to how this break out was determined?

6 THE WITNESS: There was very little conversation about it.  
7 It -- basically what I said. And that's what they gave us.

8 JUDGE SCHMIDT: Go ahead, General Counsel.

9 MR. MACKAY: Okay. And if we can, Your Honor, I know I'm  
10 sort of peppering you here with papers. Could we take just  
11 maybe two minutes to let you read the document marked General  
12 Counsel's Exhibit 11, March 18th.

13 JUDGE SCHMIDT: Well --

14 MR. MACKAY: It just may help in moving things along.

15 JUDGE SCHMIDT: All right. All right, let's be off the  
16 record for a minute.

17 (Off the record)

18 JUDGE SCHMIDT: Okay. On the record.

19 MR. MACKAY: Thank you, Your Honor.

20 JUDGE SCHMIDT: But this letter poses a question that I  
21 have trouble -- has there been a charge against any of the  
22 coalition unions?

23 MR. MACKAY: On the issue of --

24 JUDGE SCHMIDT: On the issue of the -- well, the -- I  
25 gather there hasn't been.

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1 MR. MACKAY: Well I --

2 JUDGE SCHMIDT: This letter, for example says, you know,  
3 the gist of it is, is that the coalition has the right to  
4 decide who belongs and who doesn't belong. And we -- there's  
5 nothing that we can do about that. Kaiser seems to be saying  
6 that. And therefore, since you're not a part of the coalition,  
7 then nothing that's in the national agreement is going to apply  
8 to the people that you represent. This seems to be saying that  
9 this -- what's happened here as a result of the coalition  
10 deciding these -- the NUHW can't belong.

11 MR. MACKAY: Right. But the issue of membership in the  
12 coalition is just membership in an organization. What Kaiser's  
13 responsibility is when there's a change in bargaining  
14 representative they have to --

15 JUDGE SCHMIDT: Well okay. I --

16 MR. MACKAY: -- honor the status quo --

17 JUDGE SCHMIDT: All right.

18 MR. MACKAY: -- working conditions.

19 JUDGE SCHMIDT: But the -- there's been no type of claim  
20 made that the coalition of unions violated the act by in -- for  
21 example insisting that Kaiser not grant these benefits to  
22 anyone. And counsel for the charging party has been coming out  
23 her chair over there. You want to speak to this issue?

24 MS. HOFFMAN: Well I do want to speak to it, because there  
25 was a charged filed against SEIU UHW by the union during the

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1 course of the organizing campaign when they said that we would  
2 lose certain benefits, including the raise. And there was a  
3 charge filed in 21CV14867. But the region and the General  
4 Counsel, and the office of appeals said that that was not a  
5 threat. Even though it did come to be true. Which we argue  
6 that that there was -- it was coordinated activity and it  
7 should have been part of this case. But the -- it was  
8 dismissed by the office of appeals.

9 MR. MACKAY: Okay. Can I just add, it was dismissed  
10 because it was not considered a threat, even though it was a  
11 misstatement of the law that these terms would not continue.  
12 And you're not going to have a comparable unilateral change  
13 charge to bring against these other unions --

14 JUDGE SCHMIDT: Well I recognize that, but -- well I'm not  
15 here. I'm here as the Administrative Law Judge, not to think  
16 up theories to propound, but, you know, I'm -- I just posed the  
17 question. There's -- there was a charge filed, apparently, in  
18 which the NUHW made a claim against the SEIU UHW with respect  
19 to what's happened here.

20 MS. HOFFMAN: Well it was respect to that actual threat  
21 that if NUHW was --

22 JUDGE SCHMIDT: All right. That's --

23 MS. HOFFMAN: -- certified that they would --

24 JUDGE SCHMIDT: There --

25 MS. HOFFMAN: -- lose certain benefits, including this

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1 raise.

2 JUDGE SCHMIDT: Okay.

3 MS. HOFFMAN: And --

4 MR. LINDSAY: And to be clear that charge was in  
5 connection with the campaign.

6 MS. HOFFMAN: It was in connection with the campaign, but  
7 we argued to --

8 JUDGE SCHMIDT: Well --

9 MS. HOFFMAN: -- the officer of appeals. And to the --  
10 that they should -- that it should not be dismissed and it  
11 should have been consolidated with this case, because it was  
12 actual collusion.

13 JUDGE SCHMIDT: This so --

14 MS. HOFFMAN: Because it became a reality.

15 MS. HOFFMAN: This so called threat that you're talking  
16 about, and what Respondent's counsel just said, simply means  
17 that it occurred during the campaign after it became determined  
18 there was going to be an election.

19 MS. HOFFMAN: Yes. But it's actually continuing conduct  
20 in other elections. That's why we -- that's --

21 JUDGE SCHMIDT: Yeah. You --

22 MS. HOFFMAN: That's -- it's --

23 MS. LINDSAY: But to answer Your Honor's question, there  
24 is -- there was no charge filed against the coalition apart  
25 from the charge that Ms. Hoffman has just described.

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1 JUDGE SCHMIDT: All right.

2 MR. LINDSAY: Which was against SEIU only.

3 MS. HOFFMAN: That's correct.

4 MR. LINDSAY: And has been dismissed.

5 JUDGE SCHMIDT: Yeah. Okay. Go ahead. Pardon the  
6 interruption.

7 Q BY MR. MACKAY: All right. So for clarification, when  
8 you're looking at General Counsel's Exhibit 10, the contract  
9 sections that you see on the left side for each of the three  
10 bargaining units, those are the contract sections that appear  
11 in what would -- we would be referring to as the local and the  
12 mater agreement. Correct?

13 A That is correct.

14 Q There are no -- none of the national agreement sections  
15 listed on the left side of any of these pages. Correct?

16 A That is correct.

17 Q Okay. So this was -- okay. Okay. So after reading this  
18 letter and then they describe for you what this document is,  
19 did you say anything to them?

20 A That there was a lot of passionate response on the -- many  
21 of the committee members spoke very angrily about the position  
22 that Arlene Peasnell was taking in presenting this letter to  
23 us. The -- it was presented in a way where -- she presented it  
24 as a decision has been made and there was really no discussion.

25 Q Did you take any position at this meeting about whether

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1 the terms from the national agreement should still continue in  
2 effect?

3 A Oh absolutely. In the previous meeting as well as in this  
4 meeting, we absolutely said that all of the agreements in the  
5 national agreement should apply. Yes.

6 Q Okay. Then either prior to this meeting -- let me ask you  
7 this, did Respondents' pay unit employees the April 1st, 2010  
8 wage increase that's called for under the memorandum of  
9 agreement introduced as General Counsel's Exhibit 7?

10 A No.

11 Q In any of the three units?

12 A No.

13 Q Has the elimination of the wage increase and the benefits  
14 involved in this case had any impact on the contract  
15 negotiations?

16 A Yes.

17 Q Can you just briefly describe the impact it's had?

18 A Well, following the meeting that we had on March 18th we -  
19 - I was really forced into having the field reps have special  
20 meetings with our members throughout the region, including at  
21 AFN. Because it created a huge problem for us. Our members  
22 anticipated receiving the -- that they would receive the two  
23 percent increase. They did not. So it cost us to really have  
24 a hiatus in bargaining, so that we could do this and meet with  
25 our members try to explain to them what we though was Kaiser's

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1 position, incorrect position. And what we needed to do to res  
2 -- to deal with that issue.

3 Q Was there any hiatus in the bargaining?

4 A Yes.

5 Q Of approximately how long?

6 A About two and a half months?

7 Q And why was there a hiatus?

8 A For the reasons I just explained. It really -- it called  
9 for us to meet with our members. They were pretty much  
10 devastated by Kaiser's position.

11 MR. MACKAY: Just one -- I know we have this witness up  
12 here, but I'd like to do this now just so I don't forget. The  
13 witness testified about the wage increases that were given in  
14 2008 and 2009 to the bargaining unit employees in each of the  
15 three units. I would propose a stipulation that they were  
16 given the wage increases called for in this document and as he  
17 described.

18 MR. LINDSAY: So stipulated.

19 JUDGE SCHMIDT: Received.

20 MR. MACKAY: Okay. I have no further questions, Your  
21 Honor.

22 JUDGE SCHMIDT: Charging party have questions of the  
23 witness?

24 MS. HOFFMAN: No, Your Honor.

25 JUDGE SCHMIDT: All right. Respondent, Cross.

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1 MR. LINDSAY: Do you have a declaration from this witness  
2 other than the one that was produced as an attachment to the  
3 pending motion?

4 MR. MACKAY: I do. This is the one that was attached.  
5 This is the declaration he gave me from the underlying case.

6 MS. LINDSAY: Okay. If I can have a few minutes to look  
7 at this second declaration?

8 JUDGE SCHMIDT: Yeah. Let's be off the record.  
9 (Off the record)

10 JUDGE SCHMIDT: On the record. We'll take about five  
11 minutes. If you need additional time it'll be provided.

12 MR. LINDSAY: Thank you, Your Honor.

13 JUDGE SCHMIDT: Off the record.  
14 (Off the record)

15 JUDGE SCHMIDT: Proceed.

16 **CROSS-EXAMINATION**

17 Q BY MR. LINDSAY: Mr. Cornejo, can you -- I'd like to  
18 direct your attention to General Counsel's Exhibit No. 10 if I  
19 can.

20 A Yes.

21 Q And I believe counsel for the general -- or general  
22 counsel asked you if there was any of the boxes on the  
23 left-hand side that were checked that came from the national  
24 agreement, and I believe your answer was that there were none  
25 on the left side of the agreement, is that -- of the document,

1 is that correct?

2 A That is correct.

3 Q Is there anything on the right side of the agreement that  
4 comes from the national agreement in any of these documents?

5 A I don't believe so.

6 Q Thank you. What were the -- did you -- you were a witness  
7 at the election, is that correct, in the -- for the -- for the  
8 election of these three units?

9 A A witness?

10 Q Strike that. Were you an observer?

11 A Yeah.

12 Q Okay. Do you recall the margins in the elections in these  
13 -- for these three units?

14 A More or less.

15 Q Okay. What was the margin in the AFN unit?

16 A It was about 95 percent.

17 Q Okay. What was the margin in the psych/social worker  
18 unit?

19 A About 84, 85 percent.

20 Q And what was the margin in the healthcare professional  
21 field?

22 A I believe I was 86 percent.

23 Q Thank you. And just so that the record is clear, NUHW is  
24 not a member of the partnership or the coalition of Kaiser  
25 unions, is that correct?

1 A That's correct.

2 Q And did you at one of the meetings that you had with the  
3 Kaiser individuals, the three meetings you've described here,  
4 state that the NUHW had no desire to become part of that  
5 coalition?

6 A I don't recall saying that.

7 Q Do you recall saying words to that effect?

8 A No.

9 Q Do you recall saying that you were not interested in  
10 bargaining whether or not NUHW would become part of the  
11 coalition?

12 A I don't understand that question.

13 Q Okay. Do you recall saying that you did not have any  
14 proposals to make in connection with whether NUHW would become  
15 part of the coalition of Kaiser unions?

16 A Proposals to whom?

17 Q Proposals to the representatives of management who were  
18 there present at the time.

19 A I'm sorry, I'm not understanding your question.

20 Q My question is, is at any of the three meetings that you  
21 had with the Kaiser individuals -- and we are talking about the  
22 February 12th, February 26th and March 18th meetings to be  
23 clear -- did you make any statements to them about any position  
24 that NUHW had has to whether or not it would become or not  
25 become a member of the Kaiser partnership of unions?

1 A No.

2 Q Okay. You testified that you made an initial proposal to  
3 Kaiser at the ground rules meeting I think is the way you  
4 termed it, that Kaiser would continue -- Kaiser should continue  
5 the contract, the collective bargaining agreements, through  
6 October of 2010. Was that correct?

7 A That's correct.

8 Q And then you also addressed the specific issues the  
9 counsel for the general counsel raised with you, is that  
10 correct?

11 A That's correct.

12 Q Okay. Can I direct your attention to any one of the three  
13 contracts that have been marked as General Counsel's either 4,  
14 5 or 6?

15 A I have --

16 Q That's fine.

17 A -- the psych/social.

18 Q That's fine. Can I direct your attention to the national  
19 agreement portion of that agreement.

20 A Yes.

21 Q Is there any provision in there that contains a  
22 recognition clause?

23 A The normal recognition clause that we would see in a local  
24 agreement, nothing like that.

25 Q All right. So is there anything in the national agreement

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1 that would apply to a specific group of workers outside of the  
2 coalition of unions?

3 MR. MACKAY: Objection. I think that is going to be the  
4 legal issue that you're going to be decided. It doesn't matter  
5 -- one, I'd say the document is going to speak for itself in  
6 terms of provisions, but I do have a relevancy objection. It  
7 doesn't matter what the parties put or write into a contract  
8 about whether these things will remain the employee's status  
9 quo working conditions. Whether conditions survive or not  
10 depend on if they're a mandatory subject of bargaining, if they  
11 had been applied to the unit up and until then. So I don't --

12 JUDGE SCHMIDT: Is there any objection or a speech?

13 MR. MACKAY: Well, I think that this is going to come up  
14 quite a bit, and my only concern is I just don't want to have  
15 foregone raising this argument.

16 MS. HOFFMAN: My objection is that it calls for a legal  
17 conclusion from the witness if he's asking -- the way his  
18 question was asked.

19 JUDGE SCHMIDT: I'm going to overrule the objection at  
20 this time.

21 You may answer.

22 THE WITNESS: Ask the question again.

23 UNIDENTIFIED SPEAKER: Can I have it read back?

24 THE REPORTER: Would you prefer to play it back so you can  
25 hear it or you'll try to -- just to read the question back?

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1 JUDGE SCHMIDT: Do you have the question?

2 THE REPORTER: I do.

3 JUDGE SCHMIDT: Go ahead.

4 THE REPORTER: I'm sorry, I'm just right at the objection.  
5 Give me one second.

6 JUDGE SCHMIDT: All right.

7 (Reporter reads back previous question)

8 THE REPORTER: And then there's the objection.

9 THE WITNESS: It neither says outside or inside of the  
10 coalition.

11 JUDGE SCHMIDT: Okay. Well, then if I can -- let me  
12 pursue that just a little bit. This coalition, to your  
13 knowledge, was there any representative of any Kaiser employees  
14 that was not in this coalition?

15 THE WITNESS: No.

16 JUDGE SCHMIDT: Go ahead.

17 Q BY MR. LINDSAY: Are the -- is the pharmacist field in  
18 the coalition?

19 A No.

20 Q Do they represent Kaiser employees?

21 A Yes.

22 Q Is that a union that is not part of the coalition but does  
23 represent Kaiser employees?

24 A That is correct.

25 Q Is operating engineers 501 under -- covered by the

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1 coalition?

2 A No.

3 Q Does operating engineers 501 cover Kaiser employee --  
4 represent Kaiser employees?

5 A Yes.

6 Q Then there are unions outside the coalition that represent  
7 Kaiser employees, is that correct?

8 A Yes.

9 Q Let me -- you were involved in the negotiations of both  
10 the national agreement and the local as well as the cross-  
11 regional agreements, correct?

12 A Yes.

13 Q Was there a separate vote held on the national agreement  
14 by those employees covered by it?

15 A No.

16 Q Was there a separate vote held on the local agreements by  
17 each of the employees held -- covered by it?

18 A No.

19 Q Was there a single vote for everything?

20 A Yes.

21 Q And who conducted that vote?

22 A It was done by locals.

23 Q So each of the three locals involved in this case  
24 conducted a separate vote for each of the individual contracts,  
25 is that correct?

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1 A That is correct.

2 Q At the first meeting that you had with Kaiser, I believe  
3 it was February 12th, was there a discussion about the PSPs?

4 A There may have been. I don't recall specifically.

5 Q Do you recall a discussion as to whether or not the  
6 employees would be paid the PSP sums in 2010 for the 2009  
7 performance?

8 A There may have been.

9 Q Do you recall?

10 A I don't recall.

11 Q Do you recall in that meeting asking for access for the  
12 union to the Kaiser facilities?

13 A What we asked for was badges for the union reps.

14 Q And did you ask for access for the stewards to supervise  
15 the performance for the operations as well?

16 A I don't recall.

17 Q At the second meeting when Ms. Peasnell informed you that  
18 Kaiser would not agree to extend the three agreements, do you  
19 recall what you said in response?

20 A No.

21 Q Did you discuss the time -- any mechanism for paying union  
22 stewards for -- in this second meeting for the time that they  
23 would spend engaged in representational activities?

24 A No.

25 Q For my own benefit, the psych/social workers are salaried

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1 employees, is that correct?

2 A That is correct.

3 Q And the healthcare professionals are salaried employees as  
4 well?

5 A They are.

6 Q And the AFN unit is -- are hourly?

7 A Right.

8 Q So for the salaried employees, whatever time they spend  
9 during the day they're paid for, is that correct?

10 A That is correct.

11 Q And it is -- has -- for -- strike that.

12 Do you have any knowledge as to how the registered nurses  
13 have been paid for time spent serving as union stewards at  
14 Kaiser after your February and March meetings with Kaiser?

15 A As stewards?

16 Q As stewards.

17 A Not steward training?

18 Q As stewards.

19 A No, I'm not familiar.

20 Q Okay. So you're unaware as to whether or not Kaiser pays  
21 the registered nurses -- or the AFN nurses for the time they're  
22 spending as stewards?

23 A No, I'm not aware.

24 Q At this second meeting, and I believe counsel for the  
25 general counsel -- on behalf of the general counsel -- I'm

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1 doing that too -- had raised -- the issue of payment for the  
2 continuing education benefits came up at the second meeting, is  
3 that correct?

4 A That's correct.

5 Q And these are the continuing education benefits that are  
6 the subject of the charge, is that correct?

7 A Yes.

8 Q And an -- and Kaiser has announced its position that those  
9 benefits were gone as of the certification, is that correct?

10 A That is correct.

11 Q And I believe an employee by the name of -- I'm going to  
12 get this wrong -- Turusew Wilson, is that correct -- raised the  
13 issue in the second meeting?

14 A Turusew Gebedu-Wilson --

15 Q Thank you.

16 A -- spoke on that subject, yes.

17 Q And she requested that Kaiser extend those benefits to a  
18 date in the future, is that correct?

19 A As I recall, she said, if folks have already submitted  
20 requests will you honor those requests.

21 Q And what did Kaiser say at that point?

22 A I think they were going to take that under advisement.

23 Q And then that is what led to the later correspondence in  
24 General Counsel's Exhibit 8, is that correct?

25 A Yes.

1 Q So Kaiser changed its position based on the request of the  
2 worker at this meeting then, correct?

3 MR. MACKAY: Objection, vague as to "changed its  
4 position."

5 JUDGE SCHMIDT: Well, as I -- yeah. As I understood the  
6 position they took when the question was asked was they'd take  
7 it under advisement.

8 MR. LINDSAY: Okay. Let me -- let me fix that then.

9 JUDGE SCHMIDT: All right.

10 Q BY MR. LINDSAY: When Kaiser first met with you at the  
11 meeting on February 26, did it announce -- did Kaiser  
12 representatives announce a position that they were gong to take  
13 with respect to the educational benefits?

14 A No -- they said the position that they are taking. That  
15 is --

16 Q And what was the --

17 A -- folks would not get tuition reimbursement, stewards  
18 would not be paid for training, and none of the national  
19 agreement applied to our members.

20 Q Okay. I was only asking about the continuing education  
21 benefits. And what did they say with respect to their position  
22 at the beginning of that meeting on February 26, 2010 with  
23 respect to the continuing education benefits?

24 A The continuing education benefits would no longer apply to  
25 our members.

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1 Q All right. And then after the issue that was raised by  
2 Ms. Wilson, Kaiser said they would take it under submission, is  
3 that correct?

4 A That is correct.

5 Q And then Kaiser responded to you by email dated March 4,  
6 2010, is that correct?

7 A That's correct.

8 Q And showing General Counsel's Exhibit No. 8. Is that  
9 correct?

10 A That's correct.

11 Q All right. With respect to the healthcare reimbursement  
12 accounts, did Kaiser tell you what -- at any meeting what it  
13 was going to do with respect to those accounts?

14 A They said none of the national benefits applied to our  
15 members.

16 Q Did they tell -- did you ask them what they were going to  
17 do with respect to the healthcare reimbursement accounts?

18 A At those initial three meetings?

19 Q At any of those three meetings.

20 A No.

21 Q Did Kaiser tell you what it was going to do with respect  
22 to the healthcare reimbursement accounts at any of those three  
23 meetings?

24 A They did not.

25 Q Do you have an understanding as to what Kaiser did with

1 respect to the healthcare reimbursement accounts at any of  
2 those three meetings?

3 A They did not.

4 Q Do you have an understanding as to what Kaiser did with  
5 respect to the healthcare reimbursement accounts?

6 A At least in two of the units, yes.

7 Q And what is that understanding?

8 A Last Thursday I learned that they're going to apply the  
9 healthcare reimbursement account to the healthcare  
10 professionals and in an earlier meeting -- don't remember the  
11 date -- to the psych/social workers as well.

12 Q Have you ever learned what Kaiser was going to do with  
13 respect to the AFN employees and the healthcare reimbursement  
14 accounts?

15 A No.

16 Q To your recollection, there was no discussion of the  
17 healthcare reimbursement accounts at any of those three  
18 meetings in February or March, 2010?

19 A There were discussions.

20 Q As to what Kaiser was going to do?

21 A No.

22 Q Based on your understanding of the national agreement, is  
23 Kaiser obligated to pay union stewards for the time they spend  
24 representing employees in corrective action under the national  
25 agreement?

1 A I don't know.

2 Q Do you know what the source of that -- do you know whether  
3 Kaiser is obligated to make such payments?

4 A I do not know.

5 Q Okay.

6 MR. LINDSAY: I'm going to ask that the witness -- well,  
7 strike that.

8 Q BY MR. LINDSAY: Earlier in this matter you provided a  
9 declaration to the National Labor Relations Board in connection  
10 with this charge, not with -- in connection with the -- I'm  
11 sorry -- election with --

12 MR. LINDSAY: What's the word I'm thinking of, Counsel?

13 MR. MCKAY: Representation case.

14 MR. LINDSAY: The representation case. Thank you. Thank  
15 you.

16 Q BY MR. LINDSAY: In connection with the charge, is that  
17 correct?

18 A Yes.

19 Q The last --

20 MR. LINDSAY: I ask that he be shown a copy of his  
21 declaration. The --

22 MS. HOFFMAN: The affidavit from the case, right?

23 MR. LINDSAY: The affidavit for this case.

24 MS. HOFFMAN: Just want to make sure there's nothing  
25 written on it.

1 MR. LINDSAY: This is just as --

2 MS. HOFFMAN: Yeah.

3 MR. LINDSAY: Okay. That's fine.

4 MS. HOFFMAN: That's the original.

5 MR. LINDSAY: Thank you.

6 Q BY MR. LINDSAY: May I take -- may I ask you to take a  
7 moment to look at that declaration just -- specifically I want  
8 to direct your attention to page 7 of that declaration. I  
9 would specifically direct your attention to 8, 9 and -- 8  
10 through 10 of that declaration. Can you read that statement in  
11 your declaration.

12 A Starting with line 8?

13 Q Starting with, "This checklist is attached."^^

14 JUDGE SCHMIDT: Wait.

15 THE WITNESS: "This checklist" --

16 JUDGE SCHMIDT: Wait. Wait. What are we doing? Is this  
17 -- are you attempting to show you an inconsistent statement,  
18 refresh his recollection of what?

19 MR. LINDSAY: I'm going to show an inconsistent statement  
20 when he reads this and that will be it. All right?

21 JUDGE SCHMIDT: Go ahead.

22 THE WITNESS: "So this checklist is attached as Exhibit 7.  
23 Once the employer handed me the letter and the checklist the  
24 parties did not discuss the letter or the checklist, but I did  
25 point out a few inconsistencies. It seemed that these

1 documents were the employer's position and the matter was not  
2 up for discussion."

3 Q BY MR. LINDSAY: Let me direct your attention to page 5 of  
4 this declaration, lines 1 through 5 on page 5.

5 A Uh-huh.

6 Q Would you read those lines, please, beginning with "I  
7 pointed out".

8 A "I pointed out to the employer representatives that they  
9 were being inconsistent as far as the terms of the national  
10 agreement they were continuing to apply and those they were  
11 choosing not to apply. I pointed out to them that the RN unit  
12 was still getting frontloaded sick leave as provided for by the  
13 national and that all employees were still receiving the  
14 healthcare reimbursement account as provided for by the  
15 national."

16 Q And this was -- time period turn back to the previous  
17 page, this was at the February 26, 2010 meeting, is that  
18 correct?

19 A Yes.

20 Q So at that time you knew that the employer was providing  
21 the healthcare reimbursement --

22 A No. What we --

23 Q -- account --

24 A What we --

25 Q -- as provided to the national?

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1 A No. What we said in the meeting was that on the check  
2 stubs of the workers it separated the sick leave into two  
3 separate accounts, one that would apply for the HRA and one  
4 that would not. All we could guess was that it did -- that  
5 they were applying the healthcare reimbursement account at that  
6 time, but Kaiser never said yes, we are doing it or no, we're  
7 not doing it. They just never answered the question.

8 Q I guess my question is, is this -- so you believe your  
9 testimony is consistent with what you've said today, that you  
10 only just learned of that with respect to the units in the past  
11 week?

12 A For sure.

13 Q All right. Thank you.

14 What was the date on which Kaiser representatives told you  
15 that the employees would not be receiving the 2 percent pay  
16 increase?

17 A It was the second meeting.

18 Q February 26, 2010?

19 A Yes.

20 Q And the effective date of that across-the-board pay  
21 increase was April 1, 2010?

22 A One of the pay periods close to April 1, yes.

23 MR. LINDSAY: Nothing further.

24 JUDGE SCHMIDT: Redirect, General Counsel?

25 MR. MACKAY: Briefly. May I have just two minutes?

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1 JUDGE SCHMIDT: Yes. Let's be off the record.

2 (Off the record)

3 JUDGE SCHMIDT: Go ahead.

4 **REDIRECT EXAMINATION**

5 Q BY MR. MACKAY: After February 3rd, 2010, Mr. Cornejo, did  
6 you take the position with Kaiser that you thought the terms  
7 and conditions of the national agreement do continue in effect?

8 A Yes.

9 Q Those other unions that were not members of the coalition  
10 that Counsel asked you about, those unions existed at the time  
11 that you engaged in that national bargaining in 2005, correct?

12 A Yes.

13 Q Okay. And they didn't participate in that bargaining?

14 A They did not.

15 Q And they were not signatory to any contract with  
16 Respondents with respect to that national agreement, correct?

17 A Correct.

18 Q Kaiser on this issue of extending the continuing education  
19 benefits to March 1st, 2010, did they ever state a willingness  
20 to not eliminate it from that point forward?

21 A No.

22 Q Did you ever ask Respondents why they're continuing to  
23 apply the health retirement account benefit as opposed to  
24 these other provisions from the national agreement that they  
25 are not?

1 MR. LINDSAY: Objection, vague.

2 JUDGE SCHMIDT: Overruled. You may answer.

3 THE WITNESS: The first time I asked them that question  
4 was last Thursday.

5 Q BY MR. MACKAY: And what was their response to that?

6 A "I don't know." That was Bill Blank (phonetic). He's the  
7 representative for the group of folks that we were bargaining  
8 for on Thursday.

9 Q Okay. And when you say "I don't know," you're saying that  
10 that was his answer?

11 A Uh-huh.

12 JUDGE SCHMIDT: Your answer is yes?

13 THE WITNESS: Yes. Oh, I'm sorry. Yes.

14 Q BY MR. MACKAY: Has Kaiser ever -- has -- have  
15 representatives of Respondents ever stated a willingness to  
16 bargain over the issue of whether those terms and conditions  
17 that have been the subject of this case that have been  
18 eliminated -- to bargain over the decision to eliminate them?

19 A No.

20 MR. MCKAY: Nothing further, Your Honor.

21 JUDGE SCHMIDT: Charging Party?

22 MS. HOFFMAN: Nothing further.

23 COURT EXAMINATION

24 Q BY JUDGE SCHMIDT: Are you familiar with the reasons -- or  
25 reason or reasons that underlie the establishment of this

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1 bargaining separate national, regional and local agreements?

2 A Originally --

3 Q Well --

4 A Oh, I'm sorry.

5 Q -- first of all --

6 A Yes.

7 Q -- your answer is yes?

8 A Yes.

9 Q Okay. Why is it then, to your knowledge?

10 A To my knowledge, Kaiser and all the various locals that  
11 were involved in the coalition in 2000 agreed to bargain a  
12 national agreement where certain provisions that they would  
13 agree to for all the various locals throughout the country  
14 would apply to the various bargaining units. Not all, just  
15 some of the things. One of the things was across-the-board  
16 increases. That's the only place across-the-board increases  
17 were ever bargained were in the national negotiations.

18 Then there was an agreement in 2005 that Kaiser and the  
19 SEIU locals would actually come together and reach a master  
20 agreement where they would try to find out -- find provisions  
21 that would be in common for all the various SEIU locals. And  
22 we did that in 2005. And in agreement you'll see that -- on  
23 page 71 the various bargaining units that are included in the  
24 master agreement under SEIU.

25 Then in the past where we just had national and then local

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1 bargaining in 2000, in 2005 we had national, cross-regional,  
2 and then local bargaining. Once local bargaining was concluded  
3 and then the contract would be ratified. But it would be the  
4 national agreement that would determine across-the-board  
5 increases for all of the various locals. Not the local  
6 bargaining.

7 Q When I read these agreements will I find separate wage  
8 rates set out for different classifications?

9 A Yes.

10 Q And are those bargained locally or not?

11 A The across-the-board increases are bargained nationally.  
12 What happens is that the national agreement -- in national  
13 bargaining, they would give directives the various locals as to  
14 whether or not they could bargain special adjustments for  
15 certain classifications. For instance, in 2005, a national  
16 bargaining day allowed for special adjustments for radiology  
17 techs and clinical lab scientists -- I don't remember -- a few  
18 other classifications. But it was all directed by national  
19 then.

20 JUDGE SCHMIDT: General Counsel, any questions as a result  
21 of mine?

22 MR. MACKAY: None, Your Honor.

23 JUDGE SCHMIDT: Charging Party?

24 MS. HOFFMAN: None.

25 JUDGE SCHMIDT: Respondent?

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1 MR. LINDSAY: No, Your Honor.

2 JUDGE SCHMIDT: Thank you. You may be excused.

3 Want to take about 10 minutes at this point?

4 MR. MACKAY: That would be great, Your Honor.

5 JUDGE SCHMIDT: All right.

6 MR. LINDSAY: Thank you.

7 JUDGE SCHMIDT: Let's be off the record.

8 (Off the record)

9 JUDGE SCHMIDT: Let's be on the record.

10 As a result of an off-the-record discussion, we're going  
11 to be in recess until 9:00 a.m. tomorrow morning in order to  
12 permit counsels for the acting General Counsel to review  
13 several documents that have been provided to them today.  
14 Several boxes, from the appearance in the hearing room, is  
15 probably the more apt description.

16 We'll be in recess till 9:00 a.m., same place.

17 MR. LINDSAY: Thank you, Your Honor.

18 MS. HOFFMAN: Thank you, Your Honor.

19 **(Whereupon, at 3:51 p.m., the hearing in the**  
20 **above-entitled matter was adjourned, to be reconvened on**  
21 **Tuesday, October 19th, 2010 at 9:01 a.m.)**

22

23

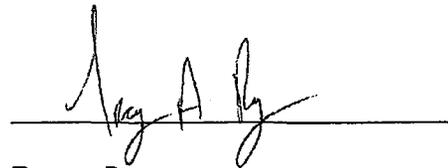
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**CERTIFICATION**

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 21, Case 21-CA-39296, Kaiser Foundation Hospitals; Southern California Permanente Medical Group; Kaiser Foundation Health Plan, Inc., at the National Labor Relations Board, Region 21, 888 South Figueroa Street, Suite 902, Los Angeles, California 90017, on Monday, October 18, 2010, at 1:12 a.m., was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



Troy Ray

Official Reporter

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OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 21

In the Matter of:

Case No. 21-CA-39296

Southern California Permanente  
Medical Group, and Kaiser  
Los Angeles Medical Center,

Employer,

and

National Union Of Healthcare  
Workers,

Union.

---

---

Place: Los Angeles, California

Dates: October 19, 2010

Pages: 76 through 213

Volume: 2

OFFICIAL REPORTERS

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BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 21

_____	)	
In the Matter of:	)	
	)	
SOUTHERN CALIFORNIA PERMANENTE	)	
MEDICAL GROUP; AND KAISER	)	
LOS ANGELES MEDICAL CENTER,	)	
	)	
Employer,	)	
	)	
and	)	Case No. 21-CA-39296
	)	
NATIONAL UNION OF HEALTHCARE	)	
WORKERS,	)	
	)	
Union.	)	
_____	)	

The above-entitled matter came on for hearing, pursuant to notice, before **WILLIAM L. SCHMIDT**, Administrative Law Judge, at the National Labor Relations Board, Region 21, 888 South Figueroa Street, Suite 902, Los Angeles, California 90017, on **TUESDAY, OCTOBER 19, 2010, at 9:01 a.m.**

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**A P P E A R A N C E S (continued)**

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>	<u>VOIR DIRE</u>	<u>CRT EXAM</u>
Gabriel Kristal	93	118 120	124	126		
John Borsos	127	133				
Richard Rosas	135 158	171 178				157
Maryanne Miller	182	207 208				

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EXHIBITS

<u>EXHIBIT</u>	<u>IDENTIFIED</u>	<u>IN EVIDENCE</u>
<b>General Counsel</b>		
12	82	82
13	82	83
14	83	83
15	83	84
16	85	--
17	85	87
18	85	87
<b>Respondent</b>		
1	140	142
2	151	152
3	153	153
4	169	170
5	185	187
6	195	195
7	202	202

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P R O C E E D I N G S

1  
2           **JUDGE SCHMIDT:** This will be on the record. This is a  
3 continuation of the hearing in Southern California Permanente  
4 Medical Group and Kaiser Foundation Hospitals and the National  
5 Union of Healthcare Workers, Case 21 CA 39296.

6           You may proceed, General Counsel.

7           **MR. MACKAY:** Your Honor, just a few housekeeping matters.  
8 First I'd like to -- with respect to General Counsel's Exhibit  
9 7. Yesterday, I know we did not have copies and so I withdrew  
10 the exhibit to make copies.

11           I just want to reflect that I'm providing the Court  
12 reporter with two copies of General Counsel's Exhibit 7, which  
13 are the executed copies of the 2008 memorandum of agreement.  
14 And I provided the parties with the same copy.

15           **JUDGE SCHMIDT:** Very well.

16           (Counsel confer)

17           **MR. MACKAY:** Next housekeeping matter, Your Honor, I'd  
18 like to substitute. Yesterday I mentioned with respect to  
19 joint Exhibit 1, it was an unsigned copy of the stipulation.

20           I'm substituting now a copy of the stipulation that was  
21 file with the District Court that contains the signature of  
22 counsel, her Respondent and for the acting General Counsel.  
23 That's Joint Exhibit 1, replacing that.

24           **JUDGE SCHMIDT:** All right. Thank you.

25           (Counsel confer)

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1 MR. MACKAY: Your Honor, I marked as General Counsel's  
2 Exhibit 12, a post hearing brief submitted by the Respondents  
3 in connection with the underlying R Case.

4 I have circled on the second page, the relevant facts that  
5 I'm seeking to introduce for purposes of this case.

6 I move for the introduction of General Counsel's Exhibit  
7 12.

8 JUDGE SCHMIDT: Any objection?

9 MR. LINDSAY: No objection.

10 JUDGE SCHMIDT: Received.

11 **(General Counsel Exhibit 12 received into evidence.)**

12 JUDGE SCHMIDT: Well, but you're limiting GC 12 to the  
13 circled portion on the second page. Is that my understanding?

14 MR. MACKAY: Well, I'm introducing it for that. I have no  
15 objection to the entire document being received and for the  
16 sake of completeness, I wanted to introduce the entire thing.

17 JUDGE SCHMIDT: I see. Is that compatible with everybody  
18 else's understanding? Good. That being the case, I'll receive  
19 it.

20 (Counsel confer)

21 MR. MACKAY: I have marked as General Counsel's Exhibit  
22 13, an internal email between representatives of Respondent's.

23 **(General Counsel Exhibit 13 marked for identification.)**

24 MR. MACKAY: This time I move for the introduction of  
25 General Counsel's Exhibit 13.

1 JUDGE SCHMIDT: Any objections?

2 MR. LINDSAY: No objection.

3 JUDGE SCHMIDT: Received.

4 **(General Counsel Exhibit 13 received into evidence.)**

5 (Counsel confer)

6 MR. MACKAY: I've marked as General Counsel's Exhibit 14,  
7 an email exchange between the Union's Chapter secretary, David  
8 Mallon, an agent of the Union and Richard Rosas (phonetic),  
9 Assistant Director of Labor Relations Department for  
10 Respondent's.

11 **(General Counsel Exhibit 14 marked for identification.)**

12 MR. MACKAY: I move for the introduction of General  
13 Counsel's Exhibit 14.

14 MR. LINDSAY: No objection.

15 JUDGE SCHMIDT: Received.

16 **(General Counsel Exhibit 14 received into evidence.)**

17 (Counsel confer)

18 MR. MACKAY: I've marked as General Counsel's Exhibit 15,  
19 an internal email exchange between Respondent's  
20 representatives.

21 **(General Counsel Exhibit 15 marked for identification.)**

22 MR. MACKAY: I move for the introduction of General  
23 Counsel's Exhibit 15.

24 MR. LINDSAY: May I inquire as to relevance?

25 MR. MACKAY: The email discusses this issue of tuition

1 reimbursement. And the very last response, which is the top  
2 response from Mr. Rosas --

3 MR. LINDSAY: Okay. That's what you want to focus in on?

4 MR. MACKAY: Well --

5 MR. LINDSAY: Because I --

6 MR. MACKAY: Yeah. Well, I mean, although I think you  
7 need to see the other emails just to get the context of what  
8 the issue is. But I believe the relevance at -- for the most  
9 part is Mr. Rosas' statements.

10 MR. LINDSAY: No objection.

11 (Counsel confer)

12 JUDGE SCHMIDT: Received.

13 **(General Counsel Exhibit 15 received into evidence.)**

14 MR. MACKAY: That was 15, correct?

15 JUDGE SCHMIDT: Yes.

16 MS. PARKER: 16.

17 MR. MACKAY: That I just introduced 16?

18 MS PARKER: No, you just introduced 15 and we're on 16.

19 MR. MACKAY: Okay.

20 (Counsel confer)

21 MR. MACKAY: May I have a second, Your Honor?

22 JUDGE SCHMIDT: Yes. Let's be off the record.

23 (Off the record)

24 JUDGE SCHMIDT: On the record.

25 You may proceed, General Counsel.

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1 MR. MACKAY: Your Honor, yesterday there was a reference  
2 to a CB charge involving SEIU. I've marked as General  
3 Counsel's Exhibit 16 a copy of the dismissal letter that issued  
4 from Region 21 in that case.

5 (General Counsel Exhibit 16 marked for identification.)

6 MR. MACKAY: The Union appealed and that appeal is  
7 currently before the Office of Appeals where the case file is.  
8 So you'll see that this is an unsigned copy of the dismissal  
9 letter.

10 JUDGE SCHMIDT: All right.

11 MR. MACKAY: But, nevertheless, I offer as General  
12 Counsel's Exhibit 16, a copy of Region 21's dismissal letter in  
13 that case.

14 JUDGE SCHMIDT: All right. I'm going to take  
15 administrative notice of that. Thanks.

16 (Counsel confer)

17 MR. MACKAY: I will provide you another copy shortly.

18 (pause)

19 MR. MACKAY: Your Honor, I've marked as General Counsel's  
20 Exhibit 17 and 18.

21 (General Counsel Exhibit 17 and 18 marked for  
22 identification.)

23 MR. MACKAY: Exhibit 17, a May 20th, 2010 position  
24 statement submitted by Respondent's to the National Labor  
25 Relations Board in connection with this case.

1           General Counsel's Exhibit 18 is a follow up email  
2 submitted by respondent to Region 21 of the NLRB in connection  
3 with this case.

4           I move for the introduction of General Counsel's Exhibit  
5 17 and 18.

6           MR. LINDSAY: I note that both 17 and 18 address a number  
7 of issues that are no longer part of this case.

8           MR. MACKAY: And to help illustrate that so that time is  
9 not spent on that, in Exhibit 17, there is a section called  
10 dues deduction. So it's not being offered for anything in  
11 connection with the dues deduction section.

12 (Counsel confer)

13           JUDGE SCHMIDT: You were going to speak further or --

14           MR. MACKAY: Oh --

15           JUDGE SCHMIDT: -- is that it?

16           MR. MACKAY: -- were there other --

17           MR. LINDSAY: I believe it also addresses the EBTs.

18           MS. PARKER: I think that's in the supplemental.

19           MR. LINDSAY: Or is that in 18?

20           MS. PARKER: I think that's in 18 from my recollection.

21           MR. LINDSAY: Okay.

22           MS. PARKER: Right. This is where it talks about the  
23 special assignments.

24           MR. MACKAY: In looking at General Counsel's Exhibit 18,  
25 section Number 2, it's not being introduced in connection with

1 section Number 2 of GC 18, however the very last paragraph on  
2 Page 2, I do wish to include. The one paragraph that starts,  
3 The employers continue to believe.

4 MR. LINDSAY: And I believe Exhibit C to General Counsel's  
5 17 is addressed to those issues as well, C1.

6 JUDGE SCHMIDT: Well, can we approach it in this fashion  
7 to the extent that GC 17 addresses the issues covered by the  
8 complaint, it can be received?

9 MR. LINDSAY: That would be fine, 17 and 18.

10 JUDGE SCHMIDT: All right. Good. Those are received.

11 **(General Counsel Exhibit 17 and 18 received into**  
12 **evidence.)**

13 MR. MACKAY: And then I think I may be resting shortly,  
14 but may we go off the record, just so I can look at these last  
15 set of documents that were introduced to make sure I have not  
16 missed something?

17 JUDGE SCHMIDT: Yes. Let's be off the record.

18 (Off the record)

19 JUDGE SCHMIDT: On the record.

20 You may proceed, General Counsel.

21 MR. MACKAY: Counsel for the acting General Counsel,  
22 rests, Your Honor.

23 JUDGE SCHMIDT: Does the Charging Party care to supplement  
24 the acting General Counsel's case?

25 MS. HOFFMAN: No, Your Honor.

1 JUDGE SCHMIDT: All right. Respondent, ready to proceed?

2 MR. LINDSAY: We are, Your Honor.

3 JUDGE SCHMIDT: You may proceed.

4 MR. LINDSAY: I will begin with our reserved opening  
5 statement.

6 JUDGE SCHMIDT: Yes.

7 MR. LINDSAY: And then pursuant to the stipulation that  
8 we have worked out several of the Union witnesses in support of  
9 the 10J will be questioned here. That questioning will largely  
10 relate to the 10J issue.

11 JUDGE SCHMIDT: All right.

12 MR. LINDSAY: We will then proceed to put in our witnesses  
13 after -- following those two members of the Union.

14 JUDGE SCHMIDT: All right.

15 MR. LINDSAY: Okay. By way of an opening statement, I  
16 will be relatively brief. I think this isn't about the  
17 national agreements, the master agreement or the local  
18 agreements. It's really about what happens when one union  
19 supplants another and you have that interim period before a new  
20 bargaining agreement is reached.

21 The employer clearly has an obligation to maintain the  
22 status quo as a general rule. There are exceptions to that  
23 general rule.

24 So there's really two issues. What was the status quo and  
25 what are the exceptions to the general rule that you maintain

1 the status quo?

2 To determine the status quo you really have three issues  
3 in this case. The continuing education -- the tuition  
4 reimbursement for the continuing education credits, the  
5 training time for the stewards and the two percent across the  
6 board increase.

7 The continuing education payments under Kaiser's policy,  
8 its corporate policy governs for all employees except those who  
9 are members of a coalition union. And there is an exception in  
10 the written policy for the coalition union.

11 So if you're not in the coalition union, you're limited to  
12 the four corners of the policy and that's a benefit that Kaiser  
13 provided to these employees following the certification and the  
14 certification of NUHW.

15 JUDGE SCHMIDT: Well, is the corporate, pardon my  
16 interruption.

17 MR. LINDSAY: Certainly.

18 JUDGE SCHMIDT: Is the corporate policy and the -- what  
19 was negotiated by the coalition unions the same or are they  
20 different?

21 MR. LINDSAY: The policy provides that for all employees  
22 not covered by the coalition of unions, you get this. For  
23 employees provided -- covered by the coalition of unions, you  
24 get whatever is in the coalition agreement. But you have to be  
25 a member of a union within the coalition.

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1 JUDGE SCHMIDT: You have to be a member of the unit?

2 MR. LINDSAY: You have to be a member of a union within  
3 the coalition under Kaiser's policy.

4 I understand the distinction that Your Honor is making,  
5 but the way the policy itself is written, it's written in terms  
6 of what the -- whether you are a member of a union in the  
7 coalition. It's just the way it's drafted.

8 JUDGE SCHMIDT: All right.

9 MR. LINDSAY: Okay. With respect to training time,  
10 training time is a pure creature of the LMP, the Labor  
11 Management Partnership. It relates to the formation of the  
12 contract. Obviously, our contention is that that does not  
13 continue as part of the status quo.

14 The exception to the general rule is where an event is  
15 going to take place in the future. Following certification, at  
16 some point in the future, some event is going to take place.

17 There's a well established line of cases, some of them  
18 coming from this very Region, including Neighborhood House,  
19 which came from this Region to the board and in 2006, the board  
20 held that where there is a future event, such as an across the  
21 board pay increase in Neighborhood House it was a cost of  
22 living increase and the employer announces its position and  
23 allows an opportunity for bargaining, the employer has not  
24 violated the act. And that's what happened with respect to the  
25 two percent. So --

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1 JUDGE SCHMIDT: What's the Neighborhood House case again?

2 MR. LINDSAY: It is -- I have to find the file with those  
3 cases. The citation on Neighborhood House is 347 NLRB 553.

4 JUDGE SCHMIDT: Okay. So you say when I get into reading  
5 those cases, I'm going to find that -- did Neighborhood House,  
6 involved supplanting -- one union supplanting another or --

7 MR. LINDSAY: It involved a certification for a --  
8 following a first contract in a situation where the employer,  
9 because of its governmental contracts, had an annual cost of  
10 living increase --

11 JUDGE SCHMIDT: Okay.

12 MR. LINDSAY: -- that it provided each year. It follows  
13 Stone Container and TXU, which were earlier cases following the  
14 same principles.

15 JUDGE SCHMIDT: All right.

16 MR. LINDSAY: Okay. And what the board actually said that  
17 was because the COLA, the cost of living increase and I'm  
18 quoting here from Neighborhood House, constituted a discreet  
19 event that was scheduled to occur during negotiations for an  
20 initial contract. The Respondent was free to implement its  
21 proposal as long as the Respondent provided the Union with  
22 reasonable advance notice and an opportunity to bargain.

23 And as far as the two percent, it was a discreet event,  
24 occurring in the future. The company informed -- Kaiser  
25 informed the Union of its position and they had opportunities

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1 to discuss and bargain.

2 JUDGE SCHMIDT: But does that case involve the granting of  
3 a previously announced benefit while bargaining is going on?

4 MR. LINDSAY: This case involves the withholding of a  
5 previous announced benefit.

6 JUDGE SCHMIDT: All right.

7 MR. LINDSAY: As does TXU and as does Stone Container.  
8 There are earlier cases from the board that have involved a  
9 situation Your Honor just referred to where the employer  
10 granted a benefit as well. And there are cases, frankly, on  
11 both sides of that issue.

12 JUDGE SCHMIDT: All right.

13 MR. LINDSAY: Okay. So just to kind of set the framework  
14 for where evidence is going to go. So I wanted to kind of  
15 lay that out so that you would --

16 JUDGE SCHMIDT: All right.

17 MR. LINDSAY: -- understand where we are coming from and  
18 what our position is.

19 JUDGE SCHMIDT: Very well.

20 MR. LINDSAY: Okay. And with that, I'm going to turn the  
21 time over to Mr. Neulight who is going to take the Union's  
22 witnesses at this point.

23 JUDGE SCHMIDT: Good.

24 MR. NEULIGHT: Thank you. The Respondent's call at this  
25 time, Gabe Kristal.

1 JUDGE SCHMIDT: Please step forward. We're going to have  
2 you raise your right hand.

3 (Whereupon,

4

GABRIEL KRISTAL

5 having been first duly sworn, was called as a witness herein  
6 and was examined and testified as follows:)

7 JUDGE SCHMIDT: Proceed.

8

DIRECT EXAMINATION

9 Q BY MR. NEULIGHT: Mr. Kristal, by whom are you employed?

10 A The National Union of Healthcare Workers.

11 Q And what is your position?

12 A Field representative organizer.

13 JUDGE SCHMIDT: Before you go further, could you spell  
14 your name for the record, please?

15 THE WITNESS: K-R-I-S-T-A-L and that's pronounced crystal.

16 MR. MACKAY: I apologize for interrupting. Ms. Parker is  
17 co-counsel and I anticipate she may handle any cross. I'm just  
18 waiting -- if you'd let her take a seat here.

19 JUDGE SCHMIDT: Oh.

20 MR. NEULIGHT: I'm sorry. No problem. My apologies.

21 MR. MACKAY: I should have jumped in earlier and said  
22 that. That's my fault actually. I apologize for the  
23 interruption.

24 JUDGE SCHMIDT: All right. That's fine. We're all set  
25 now. You can proceed.

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1 Q BY MR. NEULIGHT: Thank you. Mr. Kristal, when did you  
2 begin your position as a field representative organizer for  
3 NUHW?

4 A Most recently, I've been employed since May 1st of this  
5 year.

6 Q And prior to that date, did you hold a position with SEIU,  
7 UHW?

8 A Yes.

9 Q What was that position?

10 A At the time of my -- at the time I left SEIU or --

11 Q Yes.

12 A -- I held a number of positions? Assistant director.

13 Q And how long had you held that position?

14 A About a year and a half.

15 Q So could you tell us, generally what your duties are as  
16 field representative organizer for NUHW?

17 A Sure. I mean, I'm sure that I'm going to leave some out,  
18 but generally it's my responsibility to recruit leaders,  
19 stewards, leaders, bargaining committee representatives about  
20 -- to have support for the Union's program.

21 I communicate with a number of -- with individual members  
22 about what's happening with negotiations, contract enforcement,  
23 grievance solicitation, grievance filing, grievance processing.

24 I -- just there are so many things that I know I'm going  
25 to probably leave out 80 percent of the stuff that I do on a

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1 daily basis. But answering phone calls about the Union. Going  
2 to different facilities, distributing leaflets, writing  
3 leaflets.

4 That pretty generally covers it. Ask me any of the  
5 specifics you want.

6 Q And do your duties encompass, as you've describe them, the  
7 bargaining units of employees at issue here, namely the AFN  
8 Unit, the Psych Social Unit and the Healthcare Professionals  
9 Unit?

10 A Yes.

11 Q Okay. Mr. Kristal, do you recall giving an affidavit to  
12 the board on September 29th 2010?

13 A Yes. I'm not sure the exact date, but --

14 Q Okay.

15 A -- it sounds right.

16 Q Do you have in mind the contents of that affidavit?

17 A I'd like to see it. I've given a couple affidavits. I'd  
18 like to see a copy if I could.

19 MR. NEULIGHT: Counsel, do you have a copy or I have one  
20 as well?

21 MR. MACKAY: We've got an extra copy.

22 MS. HOFFMAN: I have it, Your Honor.

23 (Pause)

24 Q BY MR. NEULIGHT: Mr. Kristal, do you now have it in front  
25 of you, the affidavit you made out on September 29th, 2010?

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1 A Yes.

2 Q Turning your attention to Page 1 of the affidavit, Line  
3 24.

4 A Uh-huh.

5 Q You state there that you estimate you had between 50 and  
6 100 conversations with between 50 and 100 unit employees during  
7 the course of the day.

8 How did you arrive at that estimate?

9 A Oh, I'd be happy to go through that with you. And if  
10 you'll indulge me, part of that would require me explaining,  
11 kind of my typical day as representative at Kaiser LEMC.

12 Q Please.

13 A So if I could -- I'm just going to try and give you a  
14 visual of how I arrived at that. The -- Kaiser Los Angeles  
15 Medical Center is the largest medical center for Kaiser in  
16 southern California. It's a tertiary care center and by that  
17 it's -- the sickest patients in all of Kaiser are at that.

18 So the nursing staff -- it's a brand new state of the art  
19 facility and it's laid out in a way that which -- it's a seven  
20 story building and the first floor of the building is --  
21 there's, of course a basement, but the first floor of the  
22 building is O.R. the operating room, the post anesthesia care  
23 unit, PACU and pre-op, of which --

24 I say this because I generally start my day out by  
25 visiting every single unit of the -- every floor of the seven

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1 floors. And there's between ten and fifteen units, I could go  
2 through those with you one by one if you wanted. But in the  
3 course of doing that, we've recruited about 50 to 70 active  
4 shop stewards since the certification election.

5 So my duties, involve on a general day -- I'll go to every  
6 unit, contact -- my first point of contact would be stewards  
7 and there will be, you know, generally five to ten nurses, you  
8 know, anywhere from three to ten nurses in that range, who are  
9 at the nursing station, who are in the break room and who will  
10 come to me. And I would say that on an average day I speak to  
11 about 50 to 100 nurses.

12 Q So these conversations you reference are all conversations  
13 you've had with employees on non-work time?

14 A Or incidental to their -- I mean, if somebody is working  
15 at the nursing station and they say to me, When are we going to  
16 get our two percent raise, I don't say to that person, I'm not  
17 going to answer your question. I'll answer their question.  
18 I'll say, I'll be in the break room if you want to talk to me  
19 there.

20 Q And I'm just trying to understand in terms of your  
21 estimate here, is that a daily estimate for communications that  
22 you've had from when you started in this position through at  
23 least the end of September or is it varied?

24 A I mean in order for me to get more comprehensive on that,  
25 I would have to, of course go back to my calendar and look at a

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1 day to day at what I did. But what I tried to capture in that  
2 estimate was my general day where I try to go to the hospital  
3 and visit every unit and check in with everyone of my working  
4 stewards.

5 Q And --

6 A And if I may, there are some exceptions of course.  
7 Probably three times a week, between two and three times a  
8 week, I actually have a formal meeting with a department, which  
9 might be an issue of there's a change the employer wants to  
10 make to the way scheduling is happening or we have a concern  
11 with the way that the on call policy is being administered.

12 And so the department will schedule -- so we'll schedule  
13 an actual meeting like for example, I would have tomorrow,  
14 which is Wednesday, I had a meeting scheduled with the hospice  
15 department, to where they want to meet to discuss what happens  
16 on their week on call. Because there's a problem with that and  
17 in an -- and 15 nurses will show up at that meeting.

18 And so that meeting is not going to happen without workers  
19 first asking me about the contents of what I reference here in  
20 the two percent, because it's the issue that's primary on their  
21 mind is when are we going to get our raise, do we actually have  
22 a union?

23 I have to establish credibility for what the Union is  
24 doing before we actually talk about the nuts and bolts issue  
25 that work side issue that they had.

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1 Q So out of these 50 to 100 conversations you state in your  
2 affidavit that you estimate in about half of those, employees  
3 have asked you about or complained to you about not getting the  
4 two percent wage increase. Is that correct?

5 A Uh-huh. That's correct.

6 Q So your estimate then is approximately 25 to 50 employees  
7 have broached that subject with you?

8 A Absolutely.

9 Q And has that been the case for the entire time you've been  
10 field organizer from May through the present or the end of  
11 September?

12 A Well, I, I mean, in order to answer that question, I think  
13 it's important that I clarify that I am actually -- I  
14 volunteered to help with this. I've been with this unit, I  
15 helped on a volunteer basis, organize -- just going back to  
16 December of last year when the election was announced.

17 So it is not -- it has not been the case that I've been  
18 asked that question throughout my time of representing the  
19 employees. I'd say probably from May when I was actually on  
20 staff on, it's been somewhere close to that estimate, but it's  
21 escalated over the last -- it's increased over time since going  
22 back to certification. The number of questions asked about the  
23 two percent.

24 Q Okay. Well, can you then provide me with some -- or  
25 quantify the number of inquiries that you've had from employees

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1 or complaints that you've had from employees about the two  
2 percent from the date of certification in February through the  
3 present day?

4 A I'm not going to be able to, obviously, arrive at an exact  
5 number, but I can -- if you will I can kind of walk you through  
6 that.

7 Q What I'm trying to get at is you said that it's fluctuated  
8 and so I'm -- you make a statement here that you received about  
9 25 to 50 inquiries a day from employees about that subject, at  
10 least as of the time you wrote this declaration in September  
11 2010.

12 A And today if I were to go back to the hospital or if I  
13 were to go to the hospital, that would be the number I would  
14 receive, yes.

15 Q So when you say it's increased, can you give me some sense  
16 as to how much it's increased and when that increase has taken  
17 place?

18 A Sure. Obviously, in February the inquiries that I had  
19 about it were questions from employees who asked the question  
20 and very intermittent. You know, because a lot of enthusiasm  
21 about the fact that people had chosen NUHW as their new union  
22 overwhelmingly, but people -- but on occasion, I'll say maybe  
23 one out of ten to twenty conversations I would have, people  
24 would say, So are we still going to get our raise in April?  
25 Are we still going to get this two percent raise in April.

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1 My response at that time was, Well of course the law  
2 states that and I would cite More Truck Lines for example. And  
3 I would say, Yes, it's our understanding that's going to  
4 happen.

5 So -- but it wasn't an issue of concern. It didn't become  
6 an issue of concern until the employer stated that they were  
7 not going to provide that two percent wage increase. And then  
8 -- and they had an active partner in SEIU who communicated that  
9 in a leaflet to our members frequent -- regularly, through  
10 leaflets and through email regularly.

11 And had staff people soliciting -- given access by Kaiser  
12 soliciting dissent among the registered nurses by talking about  
13 how they hadn't received the two percent and it was a mistake  
14 for them to choose our union. So the inquiries increased over  
15 time.

16 And then, you know, of course there is the -- we have a  
17 different proceedings of which this is a culmination of one,  
18 where we filed the charge, we explained the charge, what that  
19 meant, our rationale behind it and how it's always been our  
20 position that Kaiser has -- that Kaiser violated the law by not  
21 allowing the employees a two percent increase.

22 And so just to explain that process and as we went  
23 further, dissatisfaction has increased and -- the further  
24 people got away from when they should have received their wage  
25 increase. And that reflects the increase -- number of

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1 inquiries.

2 So I would say in February one to ten to one and twenty  
3 up. And I don't know if it had been a consistent increase, but  
4 I do know that now about half the conversations I have the  
5 question is raised about the two percent.

6 Q And you list some illustrative questions here in your  
7 declaration. Are these actual questions that you got from  
8 employees or sort of paraphrased summaries on your part?

9 A Actual questions.

10 Q And are there any other types of questions that you've  
11 gotten about the two percent increase beyond those that you  
12 illustrate here?

13 A Certainly.

14 Q Can you identify those?

15 A One that just in the last few days, Can we get our two  
16 percent if we go back to SEIU?

17 Is that helpful or do you want more?

18 Q Are there any others that you can think of?

19 A Sure. Why is Kaiser punishing us for choosing the Union  
20 that we had -- or for choosing this union?

21 Q That was an actual question you got --

22 A That was an actual question.

23 Q When did that question come up?

24 A That's happened a number of times, most recently about a  
25 month -- I was -- I just got back from vacation so right before

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1 I went on vacation. So about a month ago.

2 And another one just came to my mind too. Why is Kaiser  
3 helping SEIU by denying us our two percent wage increase?

4 Q Have any of the employees with whom you've spoken about  
5 the two percent, expressed to you or identified for you any  
6 personal harm or consequences that they have suffered as a  
7 result of not getting the two percent?

8 A Define harm, please?

9 Q Any adverse impact on them personally?

10 A Other than they're not receiving their monetary benefit?

11 Q Yes.

12 A Yes, actually.

13 Q What?

14 A Their personally credibility as leaders of the Union who  
15 advocated for this union has been -- and I've had -- I can name  
16 a few nurses who absolutely have said that not getting the two  
17 percent makes them look like bad leaders because they told  
18 people they would get the two percent and they're not receiving  
19 it.

20 Q Okay. Have any of these employees identified for you any  
21 personal financial consequences to them that have resulted  
22 based on their not getting the two percent increase?

23 A Well, that would require a better definition of financial  
24 consequence. I think it's -- if somebody -- I will answer your  
25 question as yes, with a proviso or with an explanation.

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1           Which is that if somebody says to me, My pay is less than  
2 it should be, I would say that's a financial consequence. And  
3 My pay is less than it was -- than I was expecting. I based my  
4 wages upon what -- promised wage increases and I'm not getting  
5 that pay. I would say that's a financial consequence.

6 Q     Okay. But beyond the obvious fact that they are being  
7 paid less money than they otherwise would have, had the  
8 Respondent's granted the two percent increase.

9           Have any of the employees with whom you've communicated on  
10 a daily basis, these 50 to 100 employees, identified for you  
11 any adverse financial consequences that have -- that they have  
12 experienced as a result of not getting the two percent?

13 A     I don't think it's my business to be a financial counselor  
14 for employees. Nurses, I mean, and I'll -- to be frank, make a  
15 lot of money. I mean, so I don't know that they would  
16 volunteer that information to me.

17 Q     So it would be fair to say you have no knowledge that any  
18 employees, at least so far as has been communicated to you, who  
19 have suffered irreversible financial harm as a result of not  
20 getting the two percent?

21 A     You mean, like, bankruptcy, that type of thing?

22 Q     Sure.

23 A     Nobody has communicated that to me.

24 Q     I'd like to turn your attention to Page 2 of your  
25 affidavit. Lines 1 through 3, you state there, "I have tried

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1 to explain to these employees that Kaiser violated the law by  
2 not giving the pay raises and by taking away the other benefits  
3 too. Their response to this has been along the lines of 'Well,  
4 we haven't gotten the money. Kaiser's not giving us the raise  
5 so why should we believe you?'"

6 Mr. Kristal, the comments here that you have in quotes,  
7 was that an actual statement that was made by a particular  
8 employee or is that, again, a summary or an interpretation by  
9 you of a combination of things that you've heard from  
10 employees?

11 A I wouldn't characterize it as an interpretation. I would  
12 say more along the lines of a summary of cumulative -- of many  
13 questions asked. I tried to paraphrase it. I tried to  
14 summarize that in those lines.

15 Q Okay. So to be clear then, you're not quoting here any  
16 particular comment or remark made by any specific employee that  
17 you heard?

18 A I could give you -- I could give you -- be more specific  
19 if you'd like I can give you an actual quote --

20 Q Well, no, my --

21 A -- that reflects that. I was just -- there were a number  
22 of employees who said things that all fit within the framework  
23 of those three sentences.

24 Q Okay. All I want to clarify and I think you've answered  
25 this, but I just do want to just make sure that I have it clear

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1 that the quoted statements on Page 2, Lines 2 to 3 of your  
2 declaration do not reflect specific statements you actually  
3 heard by any specific employee, correct?

4 A With the clarification I provided, that's correct.

5 Q On the same page of your affidavit 2, lines 4 through 8,  
6 you make reference to scheduling monthly meetings with the  
7 stewards. Do you see that?

8 A Yes.

9 Q And are those monthly meetings held with stewards from all  
10 three of the units at issue here, or do you hold meetings with  
11 each of them separately?

12 A They are different meetings. So yes, to all of your  
13 questions actually.

14 Q Well, can you tell me with respect to your regular monthly  
15 meetings, are those meetings that you hold with stewards from  
16 each of the three units as a combination, or I'm just trying to  
17 get a sense for how you organize those meetings.

18 A Could you repeat -- I still don't understand your  
19 question.

20 Q So you indicated here that you schedule at least one  
21 meeting a month for stewards to come and meet with you.

22 A Yes.

23 Q And what I'm trying to understand is who is it that you  
24 invite to that meeting or those meetings, if there are more  
25 than one?

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1 A Okay. I don't think you wanted to ask the question you  
2 just asked, which is I invite everybody to attend our meetings,  
3 every member.

4 Q Everybody meaning who?

5 A Every member of NUHW is invited to attend our meetings.

6 Q Well, but you stated here that this was a monthly meeting  
7 for stewards.

8 A The targeted turnout group is stewards, and the voting  
9 body would be shop stewards. However, everybody is invited to  
10 attend our meetings.

11 JUDGE SCHMIDT: It's not clear in my mind. When you try  
12 to schedule a meeting with the stewards once a month, that's  
13 stewards as a group as opposed to individual stewards?

14 THE WITNESS: That's correct. And if you -- just in  
15 response to his question, I apologize for my trying to be too  
16 specific there.

17 But yes, I invite all the shop stewards from the different  
18 group, depending on the meeting that it is. The members are  
19 always also invited to come to there, because we're trying to  
20 generate more interest, more participation in stewards.

21 And you don't have to technically be an elected steward to  
22 come to the steward meeting. You do have to be a steward to  
23 have a vote in the meeting.

24 JUDGE SCHMIDT: Go ahead.

25 Q BY MR. NEULIGHT: Between the time that you started as

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1 field organizer in May to the present, can you estimate how  
2 many of these meetings you've held?

3 A Oh, God, I have to say it's -- there was a period in which  
4 we were having one or two every week. So I would -- I'd say  
5 approximately a dozen.

6 Q Okay. And you stated in here in your declaration that  
7 over the course of the last few months prior to the end of  
8 September 2010, that attendance was dwindling, that when you  
9 first started holding them there would be 40 to 50, and then  
10 attendance went down to 15 or 20.

11 When did you first start -- when you say when you first  
12 started holding these meetings, what time or period are you  
13 referring to?

14 A And that's where I wanted to get a little clarification.  
15 I would -- the gap in when I actually began working as an  
16 employee versus being a volunteer. The meetings that I began  
17 first -- the first meetings that I attended were -- or started  
18 holding were in February of this year.

19 Q And so in February of this year there were about 40 or 50  
20 stewards who attended those meetings?

21 A Consistently.

22 Q And that number has decreased to 15 or 20?

23 A That's the average, yeah.

24 Q And did you ever poll any of the stewards to find out why  
25 there was a decrease in attendance?

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1 A A formal poll, no, but informally, yes.

2 Q And in your informal inquiries what, if anything, did you  
3 learn as to the reason why attendance was dwindling?

4 A A couple factors. The first of which being that it was  
5 just too difficult based on the fact that they weren't getting  
6 paid anymore to go to the steward meetings, steward training.  
7 And these nurses work 12-hour shifts. So for them to -- for  
8 any meeting we have has to be at 8:00 p.m. if we aren't able to  
9 schedule it during regular off work time. So the meeting would  
10 start at 8:00 p.m., wouldn't conclude until 10:00 p.m. at the  
11 earliest. And then the following -- and then the next day  
12 they'd -- many nurses had to come back to work, have to be back  
13 at work at 7:00 a.m., and it's just -- it was just too much of  
14 -- and that's one factor.

15 The other factor is, you know, really dissatisfaction with  
16 the way the processes happen, the bargaining process, the way  
17 that Kaiser hasn't, you know, really provided for many of the  
18 things that we said that they were obligated to provide for  
19 under the law. So dissatisfaction with the Union.

20 Q And is that your interpretation as to why the attendance  
21 is dwindling, or have the stewards actually told you that?

22 A The stewards have told me that.

23 Q And these meetings that you hold on a monthly basis or  
24 more often as you testified to, are these the steward training  
25 meetings, or are these other meetings held for different

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1 purposes, or some combination?

2 A Well, I was a rep for Kaiser under SEIU, and these are the  
3 meetings very consistent with what Kaiser was paying people for  
4 steward training in the past. So within the four corners of  
5 what Kaiser has always paid for the steward training.

6 Q And you conduct that training?

7 A Many times.

8 Q And that training relates to grievance administration  
9 under the contract?

10 A Sometimes. Other times it's about bargaining, you know,  
11 the Union's priorities and bargaining. And that's pretty  
12 much -- and there are other things that are discussed as well,  
13 business of the Union, but all things that were -- that Kaiser  
14 has historically paid these group of workers for in the  
15 training.

16 Q And that includes interpretation of the contract?

17 A Yes.

18 Q Would you say that the primary duty of a shop steward is  
19 to administer grievances and interpret the contract for its  
20 members?

21 A That would not be my definition of the primary duty of a  
22 steward.

23 Q What's your definition?

24 A My definition would be the primary duty of a shop steward  
25 is to be an effective leader for his or her constituents.

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1 Q In terms of the primary tasks, however, that a shop  
2 steward undertakes, is there anything that they do more often  
3 than assist unit members in adjusting grievances and  
4 interpreting the collective bargaining agreement?

5 A I'd say those are the primary -- I'd say those are the  
6 primary tasks. Education -- I'd add education as well. They  
7 need to educate their members about the contract.

8 Q Do you recall, Mr. Kristal, in or about June, early June  
9 of 2010 proposing specifically to Richard Rosas on behalf of  
10 the respondents, that the weekend call shifts for hospice  
11 nurses be moved from 24-hour call shifts to two 12-hour shifts?

12 A Yes. In fact I just referenced that issue in the meeting  
13 I was going to have with the hospice department tomorrow.

14 Q And did you ask Mr. Rosas to discuss this issue through HR  
15 on an urgent basis away from the bargaining table?

16 A Yes.

17 Q Why?

18 A Okay. Because the way that Kaiser's policy work, an  
19 employee -- an RN could -- and sir, I'm probably going to bore  
20 you to death with the nuts and bolts of nursing, but --

21 JUDGE SCHMIDT: That's all right. Go ahead. You know --

22 THE WITNESS: But I --

23 JUDGE SCHMIDT: Believe me this is interesting compared to  
24 some things I've heard.

25 THE WITNESS: So part of this requires an understanding of

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1 the way the old collective bargaining agreement dealt with  
2 this, which is that for everywhere in the hospital employees  
3 would be paid \$12 an hour to carry a beeper when they're off  
4 duty. Some departments that do that are the OR department,  
5 acute dialysis.

6 But there was an exception carved -- that's carved out in  
7 the collective bargaining agreement that says that hospice  
8 nurse who work a Monday -- and you understand what hospice is?

9 JUDGE SCHMIDT: Yes.

10 THE WITNESS: People -- hospice and palliative care,  
11 people in their final --

12 JUDGE SCHMIDT: Waning days.

13 THE WITNESS: It's conducted in their home. And really a  
14 special kind of nurse.

15 But in doing that -- but it's generally a Monday through  
16 Friday position. It was Monday through Friday, 9:00 to 5:00  
17 type position where it was -- how the entire hospital was -- or  
18 how the entire department was scheduled.

19 And historically there had been -- they said, "Well, we  
20 might need one nurse per shift in off time to carry the beeper,  
21 to carry this beeper to deal with calls that happen. You know,  
22 somebody messes up their pump for their medication. We might  
23 need a nurse to come out and do that."

24 And when that was negotiated it ended up being maybe one  
25 call every ten times you had the beeper. And the census and

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1 the amount of work the hospice and palliative care department  
2 had done had increased -- had tripled over the past few years.  
3 And it was an ever-expanding department.

4 So the nurse who had the beeper on Saturday would -- it  
5 wasn't a situation just having a beeper and dealing with one  
6 call. They were actively working between on average 12 hours  
7 spread out over 24 hours, but many times up to 19 and 20 hours  
8 in a 24-hour period.

9 And that -- it's not like you went to work at 7:00 a.m.,  
10 and you were done 19 hours later. It was you were finishing  
11 your last call at 4:00 a.m. the next morning. And they're  
12 driving all over the community.

13 And the nurses were greatly concerned, and they expressed  
14 great concern to me that they would be losing -- they were  
15 endangering themselves and their licenses, and the patients,  
16 and the community by driving. And we felt that it was an  
17 emergent situation that had to be dealt with away from the  
18 collective bargaining agreement.

19 And the remedy that we were asking for was just was a  
20 cost-neutral remedy which was just instead of having a nurse  
21 carry it for 24 hours on a Saturday or a Sunday, that the  
22 nurses would two twice as many shifts and just take 12 hours  
23 per -- would just take a 12-hour shift on a Saturday or Sunday.

24 So that was the most any nurse ended up working in one  
25 24-hour period was 12 hours. I thought it was a reasonable

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1 thing that we could deal with outside of bargaining.

2 Q BY MR. NEULIGHT: Well, would it be fair to say though  
3 that the reason why you asked that this be -- issue be  
4 addressed on an immediate basis away from the table was  
5 because, at least in your view, you viewed it as an urgent  
6 issue requiring immediate attention?

7 A I would say I viewed it as an emergent issue, yes.

8 Q Do you draw a distinction between "emergent" and "urgent"?

9 A I felt that it was -- when it was explained to me that  
10 people were being forced to drive when they couldn't see the  
11 lines -- when the lines on the freeway were moving back and  
12 forth, and that was repeated to me twice, and that they were  
13 afraid of losing their job for not doing that, I considered  
14 that to be an emergency situation.

15 One in which under the statute I felt they would have a  
16 right to refuse that work. And so that's why I felt like that  
17 we should deal with that rather than have to go through the  
18 nonsense of them being terminated for insubordination.

19 Q Okay. So the weekend call shifts for hospice nurses, in  
20 your view, was an issue that raised potential harm to the unit  
21 employees. And therefore, you wanted to deal with it and have  
22 the respondents deal with it on an immediate basis. Is that  
23 fair to say?

24 A Union employees, and the greater public, and Kaiser  
25 Permanente as an organization. Because if -- I shudder to

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1 think of the liability that Kaiser would have if a nurse killed  
2 somebody while driving back after being forced to work a shift.

3 Q And when you broached this issue with Mr. Rosas, what was  
4 his response?

5 A I don't remember the exact response, but essentially it  
6 was -- it was communicated through his representative in human  
7 resources, Sam Park. I mean the most -- the response that I  
8 can think of. Which was that there was no way they were  
9 willing to make a change through the collective bargaining  
10 agreement of our proposal about the 24 hours going to 12-hour  
11 shifts outside of the context of the global settlement.

12 Q So was this an issue that, in response to your request,  
13 the respondents said that they would address away from the  
14 table or not?

15 A With their parameters, not with our parameters.

16 Q Well, regardless of the parameters, did the respondents  
17 agree to address or discuss this issue with you away from the  
18 table?

19 A By saying that there could be no change to -- at the  
20 outset there could be no change to the 24 hour, and that was  
21 communicated to me in writing -- the 24 hour, people carrying a  
22 beeper for 24 hours.

23 Q The change of weekend call shifts for hospice nurses, is  
24 that a change that you had requested under the old contract as  
25 well?

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1 A I wasn't the rep -- I wouldn't know.

2 Q I take it you never asked, either you nor anyone else to  
3 your knowledge representing NUHW, asked that the issue of the  
4 steward training be discussed on an immediate basis away from  
5 the table; correct?

6 A Yes, we did.

7 Q When did that occur?

8 A We raised it in our -- when we met with the director of  
9 nursing.

10 Q When was it raised?

11 A February, February or March.

12 Q And by the director of nursing, are you referring to Debra  
13 Grant?

14 A That's correct.

15 Q And did you indicate to Ms. Grant at that time that you  
16 felt that the steward training was an issue that required  
17 immediate attention based on consequences to union members?

18 A I wouldn't characterize it like that, no.

19 Q Did you express to Ms. Grant any type of urgency in  
20 discussing the issue of restoring the steward training?

21 A I would never -- that would be so unprofessional to try  
22 and compare a woman who deals with life and death every day in  
23 the most significant -- acute hospital in Southern California,  
24 for me to put -- for me to say that this -- it just wouldn't be  
25 appropriate for me to raise steward training with her in that

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1 way as being an urgent or emergent thing, or being an emergent  
2 thing.

3 Q And you didn't do so?

4 A I raised it as being important to the Union --

5 Q But you didn't --

6 A -- and being helpful to the employer.

7 Q But you didn't raise it as an urgent issue, that it  
8 required immediate attention?

9 A I mean you understand what are considered to be the issues  
10 that require immediate attention, urgent in a medical facility.

11 Q Did you ever raise with Kaiser the issue of tuition  
12 reimbursement for continuing education as an immediate issue, a  
13 discontinuation of which had consequences to Kaiser members,  
14 Kaiser employees that required discussion away from the table?

15 A I didn't, no.

16 Q Is that also because in your view that didn't constitute  
17 an urgent issue that required immediate attention?

18 A If you're asking if I raised it with Debra Grant as an  
19 urgent issue requiring immediate attention, the issues that I  
20 raised with Debra Grant as being urgent issues requiring  
21 immediate attention are issues related to patient care and the  
22 safety of the staff and patients at the hospital.

23 Q And so you wouldn't put the steward training or the  
24 tuition reimbursement for continuing education in that  
25 category?

1 A That's a judgment call on my part, but I think that that  
2 would not be appropriate.

3 Q Leaving aside Debra Grant, did you raise with Richard  
4 Rosas or anyone on behalf of the employer either tuition  
5 reimbursement or steward training as issues that required  
6 immediate discussion away from the table based on their  
7 consequences to unit members?

8 A I raised it. I don't think I raised it in that context,  
9 no.

10 MR. NEULIGHT: Nothing further. Thank you.

11 JUDGE SCHMIDT: General Counsel?

12 MS. PARKER: Could we have just a few minutes, Your Honor?

13 JUDGE SCHMIDT: Oh, yeah. Let's be off the record.

14 (Off the record)

15 JUDGE SCHMIDT: Let's be on the record.

16 You may examine the witness.

17 **CROSS-EXAMINATION**

18 Q BY MS. PARKER: Mr. Kristal, I'd like to just ask you a  
19 few questions about duties of shop stewards.

20 A Sure.

21 Q Do stewards have the authority to make verbal or written  
22 information requests?

23 A Yes.

24 Q Who would an employee go to first if they're having some  
25 type of problem in the work place?

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- 1 A Their steward.
- 2 Q Do you and your -- in your position keep stewards updated  
3 on respondents' terms and conditions of employment?
- 4 A Yes.
- 5 Q And to your knowledge, do stewards then communicate these  
6 issues to the employees?
- 7 A I'm -- yes.
- 8 Q Did you understand my question?
- 9 A Yes, yes.
- 10 Q Do stewards ever come to you and relate questions that  
11 their co-workers are having about their terms and conditions of  
12 employment?
- 13 A Frequently.
- 14 Q Do stewards ever meet with supervisors or managers?
- 15 A Yes.
- 16 JUDGE SCHMIDT: The answer is yes?
- 17 THE WITNESS: Yes.
- 18 JUDGE SCHMIDT: Okay, go ahead.
- 19 Q BY MS. PARKER: Do stewards ever serve as Winegarden  
20 (phonetic) representatives in meetings?
- 21 A Oh, yes.
- 22 MS. PARKER: No further questions.
- 23 JUDGE SCHMIDT: Ms. Hoffman?
- 24 MS. HOFFMAN: I have a couple of questions.
- 25 JUDGE SCHMIDT: Very well.

CROSS-EXAMINATION

1

2 Q BY MS. HOFFMAN: Does SEIU represent other units of  
3 employees at the facility where you represent employees?

4 A Yes.

5 Q And do the SEIU represented employees work with the  
6 employees that you represent at that facility?

7 A Yes.

8 Q And are the employees that you represent aware or know  
9 that the SEIU represented employees receive the two-percent  
10 increase?

11 A Yes.

12 Q And are they aware that they're still getting tuition  
13 reimbursement?

14 A Yes.

15 Q And are they aware that they're still paying for stewards  
16 for SEIU?

17 A Oh, yes.

18 Q Okay. And do SEIU reps --

19 JUDGE SCHMIDT: Wait. Can you hold for a second?

20 (Pause)

21 JUDGE SCHMIDT: Pardon the interruption. You may  
22 continue.

23 Q BY MS. HOFFMAN: And do SEIU representatives also  
24 represent employees of the -- on the same floors and at the  
25 same facility that you do?

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1 A Yes.

2 Q Okay. And do they communicate with your represented  
3 employees about the advantages of being an SEIU member, and  
4 that they would receive these benefits?

5 A Yes.

6 Q And how does that affect the employees that you represent  
7 that every day they see SEIU employees or SEIU reps.  
8 communicating to them that they're receiving the two-percent  
9 wage benefits that they're not receiving?

10 MR. NEULIGHT: Objection; leading, lacks foundation.

11 JUDGE SCHMIDT: Overruled. You may answer.

12 THE WITNESS: Okay. Can you repeat the question.

13 MS. HOFFMAN: Can the court reporter repeat my question?

14 (Pause)

15 THE WITNESS: It was a long question you asked, Florice.

16 THE REPORTER: How does that affect -- apologize, Your  
17 Honor.

18 MS. HOFFMAN: I guess I can ask another question.

19 Q BY MS. HOFFMAN: How does the fact that the employees that  
20 you represent know that the SEIU represented employees received  
21 the wage increase, the tuition reimbursement, or the -- and the  
22 shop steward training benefit? How does that affect the  
23 employees that you represent?

24 MR. NEULIGHT: Objection; lacks foundation, leading.

25 JUDGE SCHMIDT: Well, I don't think it's leading. But

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1 have employees complained to you at all about --

2 THE WITNESS: Yes.

3 JUDGE SCHMIDT: -- what they're hearing from  
4 representatives of other unions?

5 THE WITNESS: Yes.

6 JUDGE SCHMIDT: What types of things have you heard?

7 THE WITNESS: Well, this morning in fact I received a  
8 phone call that SEIU one-to-one RN, which doesn't represent any  
9 employees but is allowed into that facility by Kaiser, was  
10 distributing leaflets talking about how they -- Kaiser didn't  
11 represent them, or Kaiser didn't recognize our union. And it  
12 was repeated, "We should just go back to SEIU. We want to just  
13 go back to SEIU so that we could get the two percent."

14 JUDGE SCHMIDT: I guess I missed what it is you're saying.  
15 Somebody was in distributing a leaflet saying what?

16 THE WITNESS: Disparaging our union and talking about the  
17 benefits of SEIU.

18 JUDGE SCHMIDT: Oh, saying that the -- and the NUHW did  
19 not represent them in the sense that they weren't doing a very  
20 good job. Is that the gist of what this was saying?

21 THE WITNESS: No. That Kaiser wasn't recognizing us.  
22 That's what was communicated to me.

23 JUDGE SCHMIDT: Oh, I see.

24 Q BY MS. HOFFMAN: I'm asking you more specifically about  
25 what employees you represent have said about the fact that SEIU

1 employees working with them received the benefits that they're  
2 not receiving.

3 A Well, along that same lines, along those same lines, I'm  
4 trying to recall the specific conversation I had a few weeks  
5 ago with a nurse who said, "It really seems to me like Kaiser  
6 likes SEIU better. And would we have -- would we get the two  
7 percent wage increase if we went back to SEIU?"

8 Q Okay. Did one of the per-diem nurses in the bargaining  
9 unit that you represent actually put out a flyer that said that  
10 she had wished she hadn't voted for NUHW, because she would  
11 have received the raises?

12 A Yes.

13 Q Have you heard other employees say similar things?

14 A Yes.

15 Q Okay. And is -- did -- and is NUHW actively trying to  
16 organize other employees at Kaiser?

17 A Yes.

18 Q And what is the major issue that comes up when you're  
19 trying to organize other employees at Kaiser?

20 A They lost their raises.

21 Q The employees you represent lost their raises?

22 A Yeah.

23 Q And you mentioned that are other unions actively trying to  
24 decertify NUHW at Kaiser?

25 A Yes.

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1 Q And what is the issue that they're using in attempting to  
2 decertify NUHW at Kaiser?

3 A They receive raises if they're part of the coalition.

4 MS. HOFFMAN: I have no further questions.

5 JUDGE SCHMIDT: redirect?

6 MR. NEULIGHT: Just one question, Your Honor.

7 **REDIRECT EXAMINATION**

8 Q BY MR. NEULIGHT: Mr. Kristal, you testified to some  
9 additional duties of shop stewards, those being among others,  
10 that they may from time to time make requests for information,  
11 address problems with employees in the workplace, update  
12 employees on terms and conditions of employment.

13 Are the shop stewards paid for their time spent in those  
14 activities?

15 A It varies.

16 Q What are the factors as to when it varies?

17 A Probably the primary factors is the different department  
18 manager and department administrators.

19 Q How does the identity of the department manager or  
20 administrator factor into whether or not the shop steward gets  
21 paid for the activities you've identified?

22 A Because some department administrators are much -- they  
23 view -- some department administrators have relationships with  
24 their stewards where they say, "If you need to go represent  
25 this person, I'll relieve you so that you can go represent this

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1 person." They get paid.

2 Other department administrators say, "We don't have  
3 time" -- or, "After you finish your shift you can go represent  
4 that person." And when they do that it's largely done on their  
5 own time.

6 Q And this practice, how do you know that this is the  
7 practice in terms of whether shop stewards get paid for those  
8 activities?

9 A It's what's communicated to me by the stewards.

10 Q And how long has that been the case that whether or not  
11 shop stewards get paid for the types of activities that you  
12 referenced here depends upon the particular department manager  
13 or administrator? How long has that practice been in place?

14 A Well, since certification of our union.

15 Q And what about prior to certification?

16 A Well, prior to certification it was expressly stated that  
17 employees wouldn't -- that stewards would be compensated.

18 Q Regardless of who the department manager or administrator  
19 was?

20 A Within certain parameters.

21 Q What were the parameters?

22 A There's an eight-hour meeting which the stewards met with  
23 the Union, dealt with the handling of grievances, and it was  
24 just -- it was clear that if you were to represent somebody you  
25 were paid to represent somebody.

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1 Q And again that was regardless of the discretion of the  
2 particular department administrator?

3 A Yes.

4 MR. NEULIGHT: Nothing further.

5 JUDGE SCHMIDT: Is that it?

6 MR. NEULIGHT: That's it.

7 JUDGE SCHMIDT: Thank you. You may be --

8 You're saying you have other questions?

9 MR. MACKAY: May we consult for just 30 seconds?

10 JUDGE SCHMIDT: All right. Off the record.

11 (Off the record)

12 JUDGE SCHMIDT: On the record.

13 **RECROSS-EXAMINATION**

14 Q BY MS. PARKER: Now, previously when you were asked --  
15 when you were answering the question about stewards being paid  
16 for performing certain duties you were referring to duties that  
17 stewards might perform throughout the workday and not paid time  
18 off for monthly steward trainings; correct?

19 A Yes.

20 JUDGE SCHMIDT: Very well. Thank you. You may be excused  
21 as a witness.

22 Next witness.

23 MR. NEULIGHT: The respondents call Mr. John Borsos.

24 JUDGE SCHMIDT: Is he out of the room?

25 MS. HOFFMAN: Yes.

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1 JUDGE SCHMIDT: All right. Let's be off the record until  
2 you have him come in.

3 (Off the record)

4 JUDGE SCHMIDT: On the record.

5 (Unrelated matters discussed)

6 JUDGE SCHMIDT: If I can have you raise your right hand.  
7 Whereupon,

8 JOHN BORSOS

9 having been first duly sworn, was called as a witness herein  
10 and was examined and testified as follows:

11 JUDGE SCHMIDT: Be seated.

12 Proceed.

13 DIRECT EXAMINATION

14 Q BY MR. NEULIGHT: Mr. Borsos, good morning. Could you  
15 please state and spell your full name, please for the record.

16 A Sure. It's John Borsos. J-O-H-N. My last name is  
17 B-O-R-S-O-S.

18 Q By whom are you currently employed?

19 A The National Union of Healthcare Workers.

20 Q And what's your position?

21 A I'm a vice president.

22 Q How long have you held that position?

23 A Since January 28, 2009.

24 Q Will you describe generally what your duties and  
25 responsibilities are in that position.

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1 A Pretty varied. Sometimes responsible for new organizing,  
2 sometimes for collective bargaining, kind of as needed as  
3 things unfold.

4 Q And do you have responsibilities in your current position  
5 that relate to the three bargaining units of employees at issue  
6 here, namely the AFN Unit, Psych Social Unit, and the  
7 Healthcare Professionals Unit?

8 A Yes, I do.

9 Q What are those responsibilities?

10 A I work with Ralph, and Gabe, and I guess now it's Cathy  
11 Baca to help to do the contract negotiations, and the  
12 collective bargaining, and the enforcement of the terms and  
13 conditions of the previously expired contract.

14 Q And have you attended any of the bargaining sessions  
15 between NUHW and Kaiser for any of the three units?

16 A I think I attended a total of three.

17 Q And were those sessions for the AFN Unit and the Psych  
18 Social Unit?

19 A Two were for the AFN Unit, if I remember right, and one  
20 was for the Psych Social Unit.

21 Q So you've not attended any bargaining sessions for the  
22 Healthcare Professionals Unit?

23 A I don't believe so.

24 Q Did you attend a bargaining session for the AFN Unit on or  
25 about May 28, 2010?

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1 A I think that was the first one. I remember it being in  
2 May. I don't remember the specific date.

3 Q Okay. And was that in the basement of the Kaiser Sunset  
4 Hospital?

5 A Yes, I believe it was.

6 Q And did you attend that entire session?

7 A I don't think I stayed for the whole session, and I know I  
8 was in and out of it.

9 Q And do you recall giving a declaration or affidavit in --  
10 to the board signed and subscribed by you on August 30th, 2010?

11 A Yes.

12 Q You reference in your affidavit that at this particular  
13 negotiating session the Union committee presented about ten  
14 bullet points of issues that they needed to address; is that  
15 correct?

16 A Yes.

17 Q And one of those issues was the two-percent wage increase?

18 A Yes.

19 Q And do you recall what the other issues were?

20 A There was an issue on one of the RNs had been physically  
21 attacked by an SEIU steward. And from our perspective, Kaiser  
22 hadn't done anything about it. I know that issue was raised.

23 There were issues about staffing. It was like an  
24 overview, bullet points of the kind of proposals we'd be making  
25 more formally is how I remember it.

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1 Q Was there someone representing NUHW that presented those  
2 ten bullet points of issues --

3 A Yes.

4 Q -- on behalf of the Union?

5 A Yeah, yes.

6 Q Who was that?

7 A Ralph Cornejo.

8 Q Did you speak on any of those issues?

9 A No, I did not.

10 Q With respect to the two percent wage increase, do you have  
11 any memory as to how Mr. Cornejo presented that issue to the  
12 employer?

13 A Just in the sense that it was something that was a  
14 previous term and condition of employment, and should have been  
15 provided in April, and it wasn't.

16 Q And do you recall what the response was, if any, from any  
17 representatives on the employer side of that session?

18 A Yeah. Rick Rosas was the spokesperson for the hospital.  
19 And I remember him saying that it was something that came from  
20 the national agreement, and therefore something that they  
21 didn't have to abide by, that they weren't going to talk about  
22 it.

23 Q And when you say that Mr. Rosas said that they weren't  
24 going to talk about it, you're referring specifically to the  
25 two-percent wage increase?

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1 A Yes.

2 Q Did Mr. Rosas ever say that the employer wasn't going to  
3 talk about any wage proposal?

4 A You have to rephrase your question. It's kind of -- I  
5 don't quite understand it.

6 Q Well, did Mr. Rosas or anyone else on the employer side at  
7 that session make any comment to the effect that the employer  
8 refused to talk about any wage issue?

9 A They refused to talk about the two percent.

10 Q I take it that the director of nursing, Debra Grant, did  
11 not attend this particular session?

12 A She did not.

13 Q And did any management representatives with nursing  
14 responsibilities attend the bargaining session at the end of  
15 May that you attended on behalf of the employer?

16 A Yes.

17 Q And was that Mindy Ophiana and Gail Owens?

18 A I don't know.

19 Q You don't know.

20 But there were management representatives with nursing  
21 responsibilities at the table?

22 A I don't know what those two individuals' responsibility  
23 is. It's unusual. Typically the director of nursing and RN  
24 bargaining is participating in the bargaining.

25 Q And what is your basis for that statement?

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1 A Twenty years of bargaining in healthcare.

2 Q And in your 20 years or bargaining, do the director of  
3 nursing always attend bargaining sessions for the nursing unit?

4 A They mostly attend bargaining. Not always, but it's --  
5 especially with an RN unit, even in our experience with a CNA,  
6 it's the director of nursing is typically involved in  
7 negotiations with an RN unit.

8 Q Okay. But you had experience with RN unit bargaining  
9 sessions where the director of nursing did not attend, other  
10 than this one?

11 A Yes.

12 Q Is the California Nursing Association Union part of the  
13 coalition?

14 A Part of what coalition?

15 Q Coalition at Kaiser unions.

16 A I don't believe so.

17 Q Was the issue of paid time off for steward training raised  
18 by anyone on behalf of NUHW at this late May bargaining session  
19 you attended?

20 A I don't remember.

21 Q Was the issue of tuition reimbursement for continuing  
22 education raised by the Union at this session?

23 A I believe that was raised, but I don't specifically  
24 remember.

25 Q Do you have any recollection as to who spoke on that

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1 issue?

2 A The primary spokesperson for the Union -- I assume you're  
3 talking about for the Union.

4 Q Yes.

5 A Was Ralph.

6 Q Do you have any recollection as to what Ralph said on that  
7 issue at this session you attended?

8 A I don't. As I said, I don't remember.

9 MR. NEULIGHT: Nothing further.

10 JUDGE SCHMIDT: Why don't we take about ten minutes at  
11 this point. All right?

12 (Off the record)

13 JUDGE SCHMIDT: On the record. You may examine the  
14 witness.

15 MS. PARKER: We have no additional questions for  
16 Mr. Borsos.

17 JUDGE SCHMIDT: You have no questions? Okay.

18 Ms. Hoffman?

19 MS. HOFFMAN: I just have one, I think.

20 JUDGE SCHMIDT: I won't hold you to that.

21 MS. HOFFMAN: Okay.

22 JUDGE SCHMIDT: Go ahead.

23 MS. HOFFMAN: That's why I said "I think" afterwards.

24 **CROSS EXAMINATION**

25 Q BY MS. HOFFMAN: You testified that you had 20 years

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1 experience in negotiations. Could you explain your background  
2 prior to being vice president for NUHW?

3 A Yeah, I was a vice president of SEIU United Health Care  
4 Workers West and before that I had worked for an SEIU local in  
5 Pennsylvania.

6 Q And how many years were you with SEIU UHW?

7 A Since January of 1996.

8 MS. HOFFMAN: I have no further questions.

9 MR. NEULIGHT: Nothing further.

10 JUDGE SCHMIDT: Thank you. You may be excused.

11 THE WITNESS: Sure, thank you.

12 JUDGE SCHMIDT: Appreciate your patience.

13 THE WITNESS: Oh, not a problem.

14 MR. LINDSAY: I'm going to go next door.

15 JUDGE SCHMIDT: For the witness, let's be off the record  
16 until Respondent obtains its next witness.

17 (Off the record)

18 JUDGE SCHMIDT: On the record.

19 MR. LINDSAY: Respondent calls as its first witness for  
20 this portion of this case Mr. Richard Rosas.

21 JUDGE SCHMIDT: Please step forward. If I can have you  
22 raise your right hand.

23 (Whereupon,

24 **RICHARD ROSAS**

25 having been first duly sworn, was called as a witness herein

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1 and was examined and testified as follows:)

2 JUDGE SCHMIDT: Be seated.

3 THE WITNESS: Thank you.

4 JUDGE SCHMIDT: You may proceed.

5 DIRECT EXAMINATION

6 Q BY MR. LINDSAY: Mr. Rosas, could you state and spell your  
7 name for the record for the benefit of the Clerk?

8 A Richard Rosas, R-I-C-H-A-R-D R-O-S-A-S.

9 Q And what position do you currently hold?

10 A Assistant director, labor relations, Kaiser Permanente.

11 Q And how long have you held that position?

12 A About five years.

13 Q And what was your position before that?

14 A Senior labor relations representative.

15 Q Where?

16 A Kaiser Permanente.

17 Q And how long have you been employed with Kaiser in total?

18 A Little over 20 years.

19 Q And what positions have you held with Kaiser during that  
20 time period besides the two you just identified?

21 A Various HR and labor relations positions.

22 Q And in your current position, what are you responsible for  
23 primarily?

24 A The day to day operations of labor relations, managing the  
25 staff.

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- 1 Q Is --
- 2 A Contract negotiations.
- 3 Q Anything else?
- 4 A Managing grievances and arbitrations.
- 5 Q Is there a particular area or region or territory that you
- 6 are associated with?
- 7 A Yes, southern California region and I administer a couple
- 8 of contracts.
- 9 Q Okay. And what are those contracts for which you are
- 10 primarily responsible?
- 11 A UNAC which is the United Nurses Association of California
- 12 and I'm currently bargaining with AFN and UHWA I've had one.
- 13 Q Which is one of the units involved in this proceeding, is
- 14 that correct?
- 15 A Correct.
- 16 Q Prior to the certification election in February of this
- 17 year, did you have any responsibility for the AFN unit?
- 18 A A few years ago I did.
- 19 Q And what was your responsibility for that unit at that
- 20 time?
- 21 A Years ago when I was a labor relations rep, I was
- 22 responsible for hearing grievances at LA Medical Center. And
- 23 so I also administered the AFN agreement at that time.
- 24 Q The AFN agreement was one of the units then located at the
- 25 LA Medical Center?

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- 1 A Correct.
- 2 Q All right. And how long did you have that position where  
3 you were administering those contracts?
- 4 A The AFN agreement?
- 5 Q Yes.
- 6 A Approximately two years.
- 7 Q And when did that end?
- 8 A The early 2000s.
- 9 Q Okay. Did you have any responsibility for the AFN unit at  
10 the time of the 2005 negotiations?
- 11 A No.
- 12 Q Until -- from the 2005 negotiations until the  
13 certification earlier this year, did you have any  
14 responsibility for the AFN unit?
- 15 A Only to the extent that I managed the staff.
- 16 Q Somebody who reported to you then had that responsibility?
- 17 A To me and Maryanne Malzone.
- 18 Q Okay. And who is Ms. Malzone?
- 19 A Ms. Malzone is sitting at the table next to you.
- 20 Q And what is her position?
- 21 A She's a senior director of human resources and I report to  
22 her.
- 23 Q All right. Did you attend the ballot count for the three  
24 units at issue in this matter?
- 25 A Yes, I did.

1 Q Okay. And do you recall the margins of victory in that  
2 ballot count?

3 A I could not recite the numbers chapter and verse but quite  
4 frankly it was overwhelming in favor of NUHW.

5 Q Understood. And at some point did you learn whether or  
6 not SEIU was going to file any objections to the election  
7 results?

8 A I understood a couple days after the actual ballot count  
9 that -- I was starting to hear that they were not going to file  
10 an objection.

11 Q What did you do in -- did you do anything in response to  
12 learning that information?

13 A Well, even before hearing that information, I was already  
14 starting to think about bargaining with NUHW and starting to  
15 think through basically what was going to be status quo, how we  
16 were going to deal with the contracts going forward, how we  
17 were going to communicate with the HR offices, how they were  
18 going to communicate with operations.

19 Q What was your understanding of Kaiser's obligations with  
20 respect to the contracts that had existed with SEIU prior to  
21 the certification as that's being -- the elections being  
22 certified?

23 A High level maintain status quo.

24 Q When you talk about that you started looking at the status  
25 quo, what -- to determine what the status quo is, what did you

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1 do?

2 A The first thing frankly that I was trying to ascertain was  
3 really just trying to come up with categories of things that we  
4 would have to look at. There's a lot of things contained in  
5 the contracts and originally trying to get, you know, my arms  
6 around what the categories were.

7 Q Why were you doing this as opposed to somebody else?

8 A That's part of my role as assistant director of labor  
9 relations. In part to do the work but also to manage that  
10 work. I was not doing that in isolation. I was doing that  
11 with others as well.

12 Q Okay. It's my understanding there was a meeting with the  
13 Union on February 12, 2010, is that your understanding as well?

14 A Yes.

15 Q Did you attend that meeting?

16 A I did.

17 Q Who did you attend it with?

18 A Maryanne Malzone and Arlene Peasnall, a senior VP of human  
19 resources.

20 Q And as you approached that meeting, what was your  
21 understanding of the purpose of that meeting?

22 A Going in I understood that to be a meet and greet, get  
23 acquainted meeting.

24 Q Okay. When you got there, who was present besides  
25 yourselves?

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1 A There was about 15, 17 people I would say from NUHW. I  
2 certainly would not remember everyone but certainly Ralph  
3 Cornejo, David Mallon, Gabe Kristal, Jim Clifford, Donna Rice,  
4 Layla Valdivia, Lynetta Fitzhugh (phonetic) and then after that  
5 I wouldn't know without seeing my notes.

6 Q Did you take notes at that meeting?

7 A Yes.

8 Q Okay.

9 MR. LINDSAY: I need to get this marked. Oops, I should  
10 mark it. Sorry. Respondent's Exhibit 1.

11 **(Respondent Exhibit 1 marked for identification.)**

12 THE WITNESS: Thanks.

13 Q BY MR. LINDSAY: You have before you a five-page document  
14 that's been marked for identification as Respondent's Exhibit  
15 1. Can you identify this document for me? Tell me what it is?

16 A These are my notes take the day of the meeting.

17 Q And why did you take these notes?

18 A You know, my role that day was more of an observer and I  
19 wanted to keep track of what was happening in the meeting.

20 MR. LINDSAY: We'd move the admission of Respondent's  
21 Exhibit 1.

22 MR. MACKAY: No objection.

23 MS. HOFFMAN: I can't read some of the notes at the bottom  
24 of the first and second page. Do you have better copies?

25 MR. LINDSAY: This is all I have.

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1 JUDGE SCHMIDT: Oh, it's a copy thing?

2 MR. LINDSAY: Yeah.

3 JUDGE SCHMIDT: Oh, I think I know what she's talking  
4 about. It's -- I noticed on, yeah, on mine it looks like there  
5 is a line cut off.

6 MR. LINDSAY: Oh, okay.

7 MS. HOFFMAN: Also it says what will KP's position be re  
8 NUHW reports participating in and there's something.

9 MR. LINDSAY: Oh, I see that. Okay, we'll see if we can  
10 get a better copy.

11 MR. MACKAY: Okay.

12 JUDGE SCHMIDT: All right.

13 MR. MACKAY: If it helps, I would -- it just appears to me  
14 that these are the same notes that are part of the Employer's  
15 position statement that was introduced in GC17 and in that copy  
16 it's Exhibit F. I can read the bottom line that you're talking  
17 about.

18 MR. LINDSAY: I think it was reduced in Exhibit F and this  
19 is a full copy.

20 JUDGE SCHMIDT: Oh.

21 MR. MACKAY: Exhibit F of GC17 appears to be the same  
22 notes and you can read the bottom. I don't know if that helps  
23 or it doesn't help but I just --

24 JUDGE SCHMIDT: Well, oh -- have you found Exhibit F yet?

25 MS. HOFFMAN: Yes, I have.

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1 JUDGE SCHMIDT: Okay. Well, it appearing that they're  
2 both the same, I'll receive it.

3 (Respondent Exhibit 1 received into evidence.)

4 MR. LINDSAY: All right. Thank you.

5 JUDGE SCHMIDT: Respondent's 1.

6 Q BY MR. LINDSAY: Going through your notes for just a  
7 moment, can you identify some of the abbreviations in it? You  
8 have RC. Who and/or what was RC?

9 A Ralph Cornejo.

10 Q AP?

11 A Arlene Peasnall.

12 Q CKPU.

13 A Kaiser Coalition Permanente Unions.

14 Q Okay. UBTs?

15 A Unit based teams.

16 Q And let's see if I see any other abbreviations. Oh, PSP.

17 A Performance sharing plan.

18 Q And Lela (phonetic)?

19 A Layla Valdivia.

20 Q I just see a Layla, okay, that's Layla Valdivia?  
21 Clifford.

22 A Jim Clifford.

23 Q Okay, who's Jim Clifford?

24 A A member of NUHW.

25 Q All right.

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- 1 A And a Kaiser employee.
- 2 Q All right. Mallon.
- 3 A David Mallon.
- 4 Q This is the individual you identified earlier?
- 5 A Yes, he's a member of NUHW and a Kaiser employee.
- 6 Q All right. Can you tell us what happened at this first  
7 meeting? Who spoke first? What was said?
- 8 A Ralph opened the meeting, identified it as a getting  
9 reacquainted. You know, I certainly walked into the meeting  
10 expecting just that, a reacquainted meet and greet type  
11 meeting. I think it transitioned pretty quickly into something  
12 more of Ralph giving us proposals. And so he proceeded to give  
13 us some proposals during the meeting.
- 14 Q What did Ralph -- and by Ralph, you're talking about  
15 Mr. Cornejo?
- 16 A Correct.
- 17 Q And what did he propose?
- 18 A I'm not saying -- I'm not giving this to you  
19 chronologically. He proposed that we extend the three  
20 contracts through September 30th. He proposed that the three  
21 contracts, basically the terms and conditions of these  
22 contracts remain in place with the exception of dues and  
23 arbitration. And then he made some more specific itemized  
24 proposals which I'd have to look at my notes to go through.
- 25 Q Well, I'd like you to look at your notes and tell me what

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1 other specific proposals were made by Mr. Cornejo at this first  
2 meeting. Have you looked at your -- having looked at your  
3 notes, do you now have a refreshed recollection of some of the  
4 proposals that Mr. Cornejo made besides the ones you've already  
5 identified in your testimony here today?

6 A Yes, I do.

7 Q Okay, could you tell us what other proposals you recall  
8 him making?

9 A Sure. You know, the meeting I believe took place on a  
10 Friday and so that was a payday. So he was referencing that  
11 dues had been taken out that pay period so he was proposing  
12 that the dues money that had been taken out for that pay period  
13 be returned to the NUHW members because he was suggesting that  
14 was inappropriately taken out, deducted from their paycheck.

15 Q What dues payments had been deducted from their paycheck?

16 A Union dues.

17 Q For which union?

18 A SEIU.

19 Q Was SEIU the bargaining representative for these employees  
20 during a portion of that pay period?

21 A For the majority of those days in that pay period, yes.

22 Q I understand. What --

23 A I'm sorry.

24 Q Did anyone on Kaiser's behalf make a response to that  
25 statement?

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1 A Not that day.

2 Q All right. Go ahead. What else can you recall Mr.  
3 Cornejo raising at that meeting?

4 A Other things that were mentioned or proposed, he proposed  
5 that we would honor dues deduction upon receipt of dues  
6 authorization. He proposed that the grievance procedure would  
7 stay in effect though arbitration would not. Also noted that  
8 these employees have corrective action and that should not  
9 change during the interim period.

10 Q Where did corrective action come from? Is that part of  
11 the collective bargaining or is that some of the process?-

12 A Corrective action is actually through collective  
13 bargaining. Then he also mentioned sort of a catchall where  
14 benefits and working conditions should stay in effect and he  
15 listed a number of items. Bulletin boards, access to KP email,  
16 office space for stewards, steward counsel days and then he  
17 noted that stewards should continue to have the same rights and  
18 privileges as noted in the CBA.

19 Q Did anyone on behalf of Kaiser make any response to any of  
20 these proposals at this first meeting?

21 A Not that day. We really were in a listening mode and  
22 making sure that we understood the proposals he was making.  
23 Later in the meeting, he also proposed -- requested that we  
24 provide Gabe Kristal with a badge and let me see if there's  
25 anything else that was -- oh, he also proposed that the people

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1 who were on special assignment continue on their special  
2 assignments and not be returned to their home department in  
3 part because they'd been out long enough to where they would  
4 not be ready to go back and see patients. He also made a  
5 proposal regarding the performance sharing program,  
6 specifically related to the psych-social employees.

7 Q What was that proposal?

8 A Simply that psych-social, they have a performance sharing  
9 program and also an alternate sharing performance sharing  
10 program and that they should get the better of the two. He  
11 also mentioned contract specialists and my notes indicate here  
12 that he proposed that -- I think they wanted to continue the  
13 contract specialists but he was not specific on the numbers.

14 Q Okay. Can you recall anything else that happened in this  
15 first meeting?

16 A I'd have to look at my notes to refresh my memory.

17 Q Please do. See if there's anything else that comes to  
18 mind.

19 A Ralph also mentioned wanting the access rights, proposing  
20 access rights per the old CBA. And then there were other  
21 things that came up but they were more about staffing concerns  
22 raised by one of the nurses at LAMC.

23 Q When you talk about access rights, what kind of access  
24 rights are you talking about here?

25 A Referring to steward access rights is my understanding.

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1 Q And what kind of access rights did the stewards have?

2 A Well, in the -- they had access rights pursuant to the  
3 local CBA which was actually something pursuant to cross  
4 regional bargaining. And so this language actually existed in  
5 all the SEIU contracts and it was really greater access than  
6 what is provided by law.

7 Q Okay. How did this meeting end?

8 A Discussion about having a second meeting and I don't  
9 believe that we actually set a date that day but we ended up  
10 having a second meeting.

11 Q Did you -- was there a second meeting?

12 A There was a second meeting.

13 Q And did you do anything to prepare for that second meeting  
14 before it was held?

15 A Yes, I did.

16 Q And just so that we're all talking about the same meeting,  
17 the second meeting took place on February 26th, 2010?

18 A Correct.

19 Q Yes.

20 A That's correct.

21 Q Okay. And what did you do in preparation for that  
22 meeting?

23 A Well, the idea certainly was for us to either respond to  
24 the proposals that were made in the first meeting. So sort of  
25 continuing the process that we'd already started even prior to

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1 the first meeting, but now continuing with kind of a renewed  
2 focus was to sort of itemize now the -- itemize the categories  
3 that were raised in the first meeting and prepare to respond to  
4 those. So certainly we were doing some work in the labor  
5 relations department and also consulting with our legal  
6 department.

7 Q And when was the second -- at the second meeting, blah,  
8 sorry. I'll get a good question out of here in a second. When  
9 you attended the second meeting, who else attended it with you  
10 on behalf of Kaiser?

11 A Arlene Peasnall and Maryanne Malzone.

12 Q Okay. Who was the primary spokesperson for Kaiser at this  
13 second meeting?

14 A Arlene Peasnall.

15 Q Did you have an expected role as a spokesperson at this  
16 meeting?

17 A I did. I was expected to take an active role in that  
18 meeting. I was expecting that if Arlene needed any assistance  
19 in leading the meeting, that I was going to fill in the blanks  
20 so to speak.

21 Q As it turned out, did she need any assistance?

22 A Not much.

23 Q Okay. What happened at this -- what did Kaiser inform the  
24 Union or strike that. What happened at the second meeting?

25 A At the second meeting, we responded to the proposals. It

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1 was about 15, 16 different items that ranged from contract  
2 specialists, steward training, UBTs, I'm sure there were -- oh,  
3 office space, I'm sure there are many others. I'd have to see  
4 notes to remember them all. And within that discussion we  
5 ended up also discussing the two percent increase.

6 Q Okay. Let's talk about the three issues that are relevant  
7 to this case. The two percent pay increase, the credit for  
8 continuing or the tuition reimbursement for continuing  
9 education and the steward training time if I can shorten it to  
10 that abbreviation.

11 A Sure.

12 Q What do you recall being said about the two percent pay  
13 increase?

14 A We were asked a direct question from Jim Clifford about  
15 the two percent increase and in response Arlene said that we  
16 were not providing the two percent increase.

17 Q Were you asked to explain why?

18 A Yes.

19 Q And what was the explanation that was given?

20 A Arlene said that it was a future event.

21 Q And --

22 JUDGE SCHMIDT: It was what? I'm sorry.

23 MR. LINDSAY: That's all right.

24 JUDGE SCHMIDT: Pardon my interruption. I didn't hear  
25 your answer.

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1 THE WITNESS: Arlene said that it was a future event.

2 JUDGE SCHMIDT: Go ahead.

3 Q BY MR. LINDSAY: Okay. What conversation do you recall  
4 with respect to the education or the continuing education  
5 credits and the tuition reimbursement as to that? Was that  
6 discussed?

7 A Give me a second to think that through. I know that it  
8 did come up, yes.

9 Q Do you recall who raised it?

10 A I think that was part -- I don't think that was in  
11 response to a question. I think that was something that Arlene  
12 raised affirmatively as she was going through the items that  
13 she planned on discussing.

14 Q Okay. And was there a discussion with respect to paid  
15 training time for the stewards?

16 A Are you referring to -- can you clarify the question  
17 please?

18 Q Okay. One of the issues in this case as I understand it  
19 is that Kaiser did not provide paid leave for the stewards to  
20 attend certain training sessions as stewards. My question is  
21 is was this discussed at that --

22 A Oh, steward training?

23 Q Steward training, thank you.

24 A Oh.

25 Q Sorry.

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1 A Okay.

2 Q I forget that you are the one who has not been here for  
3 the past 24 hours. My apologies.

4 A Yes, steward training came --

5 Q Okay, steward training.

6 A I'm sorry to cut you off.

7 Q Was steward training discussed?

8 A Yes, it came up.

9 Q And who initiated that part of that conversation?

10 A Arlene.

11 Q Okay. Did you take notes during this meeting?

12 A No. Well, very sketchy, very sketchy.

13 MR. LINDSAY: Okay. I'm going to have this marked as  
14 Respondent's 2.

15 **(Respondent Exhibit 2 marked for identification.)**

16 THE WITNESS: Thank you.

17 Q BY MR. LINDSAY: Can you identify this document?

18 A These are my notes from that meeting taken the day of the  
19 meeting.

20 Q I notice these notes are somewhat shorter than your notes  
21 from the first meeting. Is there an explanation for that?

22 A Yes. I was expecting to take a more active role in this  
23 meeting and so I was relying on Maryanne's notes, Maryanne  
24 Malzone's notes, as she was the designated minute taker for the  
25 meeting for us.

1 Q With respect to the continuing education units -- I'll  
2 move the admission of Respondent's 2.

3 MR. MACKAY: No objection.

4 MS. HOFFMAN: No objection.

5 JUDGE SCHMIDT: Received.

6 **(Respondent Exhibit 2 received into evidence.)**

7 MR. LINDSAY: Okay.

8 Q BY MR. LINDSAY: With respect to the continuing education  
9 units, what was the position that Kaiser initially articulated  
10 at this meeting?

11 A With the CEUs?

12 Q For the CEUs?

13 A That since the -- since NUHW was no longer part of the  
14 coalition, then really our guiding document was our corporate  
15 policy and the corporate policy indicates that CEUs are only  
16 reimbursed for unions that are part of the LMP.

17 Q Okay. Let me have --

18 JUDGE SCHMIDT: I'm sorry. What's only reimbursed?

19 THE WITNESS: Continuing education units, CEUs.

20 JUDGE SCHMIDT: I see. Okay.

21 MR. LINDSAY: All right.

22 JUDGE SCHMIDT: And they're only reimbursed for whom?

23 THE WITNESS: For unions that are part of the labor  
24 management partnership, the LMP.

25 JUDGE SCHMIDT: I -- okay. Gotcha.

1 MR. LINDSAY: Okay. Did I mark that as 3? I'm sorry,  
2 RX3.

3 **(Respondent Exhibit 3 marked for identification.)**

4 MR. LINDSAY: I'd ask that the witness be shown your copy  
5 because for some reason I only have four of those or five of  
6 those.

7 Q BY MR. LINDSAY: You have before you a document that's  
8 been marked for identification as Respondent's Exhibit 3. It's  
9 an eight-page document with the logo KP8, 9, 10 and 11 on the  
10 lower right hand corner. Can you identify this document for  
11 the record?

12 A Yes, this is southern California regional policy and  
13 procedure for tuition reimbursement.

14 Q All right. And I will represent that this was a document  
15 that was produced by Kaiser to the General Counsel in response  
16 to the General Counsel's subpoena. And move its admission.

17 MR. MACKAY: I have no objection with of course  
18 maintaining the fact of what legal arguments I'm going to be  
19 making about what terms apply to these units or not. But to  
20 the extent this has been identified as their tuition  
21 reimbursement policy, I have no objection.

22 JUDGE SCHMIDT: Yeah, okay. Charging party?

23 MS. HOFFMAN: No objection.

24 JUDGE SCHMIDT: Then I'll receive this.

25 **(Respondent Exhibit 3 received into evidence.)**

1 JUDGE SCHMIDT: Before you plunge on though, this does  
2 raise a matter. With respect to the -- you have -- I think  
3 this came up before. You have a separate tuition reimbursement  
4 policy for people who are not a part of the coalition. There's  
5 a house policy, correct? This is what this is, Respondent's 3?

6 MR. LINDSAY: Actually if I may, Your Honor, direct your  
7 attention to paragraph 5.1.2.3 of this policy. It specifically  
8 addresses employees represented by LMP units, unions are also  
9 eligible for courses including -- and including at the very end  
10 of that for continuing education and/or to maintain licensure  
11 or certification. So the policy actually is -- includes  
12 reference to the LMP unions.

13 JUDGE SCHMIDT: I see.

14 MR. LINDSAY: And I was simply going to direct the witness  
15 to present Your Honor with what I just did. So --

16 JUDGE SCHMIDT: Yeah, yeah, all right. Well, okay, but  
17 this leads to my question. Am I getting this right that there  
18 came a time where as I understood the testimony yesterday the  
19 tuition reimbursement that had been approved up to a certain  
20 point was paid out? That was paid to the members of the three  
21 units that were where the NUHW was certified as the  
22 representative. But thereafter did the house policy apply to  
23 those three units?

24 MR. LINDSAY: It's the employer's position that this  
25 policy applies to all employees at all times. Okay.

1 JUDGE SCHMIDT: Right.

2 MR. LINDSAY: And that this policy contains a specific  
3 provision for those employees who are part of a union -- that  
4 is part of the LMP. I think the confusion arose yesterday and  
5 I was just about to go there with this witness so.

6 JUDGE SCHMIDT: Oh, then maybe I'm rushing it.

7 MR. LINDSAY: Okay.

8 JUDGE SCHMIDT: I'll zip up and let you proceed.

9 MR. LINDSAY: All right.

10 Q BY MR. LINDSAY: At the meeting on February 26th, was the  
11 issue of what Kaiser would do in connection with the continuing  
12 education tuition reimbursement, did that arise beyond the  
13 statement made by Ms. Peasnall, good thing she's not here, that  
14 Kaiser considered that ended as a part of this policy effective  
15 the certification date?

16 A Could you repeat that question please?

17 Q I doubt it. Let me try and ask a better one. Did an  
18 employee raise with Ms. Peasnall this policy and what -- how  
19 Kaiser would treat requests that had been approved after the  
20 certification date?

21 A Yes.

22 Q And what, if anything, did Ms. Peasnall say in response to  
23 that question?

24 A I'm paraphrasing but essentially that we'd take it under  
25 advisement.

1 Q To your knowledge did anyone on behalf of Kaiser ever  
2 respond to anyone at the Union with respect to that issue?

3 A Yes.

4 Q And what happened?

5 A Maryanne Malzone responded to Ralph Cornejo and we did  
6 modify our position on that matter.

7 Q Okay. And how was it modified?

8 A We extended the cutoff date.

9 Q To?

10 A I believe -- I don't like to do this on the stand. I  
11 think it was March 1st but I am not certain of that.

12 Q Okay.

13 A But we did extend it by some time period.

14 Q All right.

15 A To accommodate -- it was Ms. Wilson who raised the issue  
16 at the 2/26 meeting.

17 Q I'm going to --

18 JUDGE SCHMIDT: Oh, I'm sorry.

19 MR. LINDSAY: Okay. I was just going to --

20 JUDGE SCHMIDT: Were you concluded with that inquiry?

21 MR. LINDSAY: I was just going to ask that he be shown  
22 General Counsel's Exhibit 8, which I believe is on page --

23 THE WITNESS: Thank you.

24 Q BY MR. LINDSAY: You have before you a document that was  
25 marked earlier in this matter, General Counsel's Exhibit number

1 8. And I'm going to ask if you've seen the bottom portion of  
2 this that -- of this email which we understood from testimony  
3 yesterday was an email and a response. The bottom part that  
4 begins Ralph and I direct your attention to paragraph 4 of that  
5 email. Have you ever seen this email before?

6 A Yes.

7 Q Okay. And having reviewed paragraph 4, does that refresh  
8 your recollection as to what position Kaiser took eventually  
9 after the discussions with Ms. Wilson?

10 A Yes. My recollection on the date was actually correct.  
11 It was March 1st.

12 MR. LINDSAY: All right. With that, Your Honor, I have  
13 finished with this area if you have any questions.

14 JUDGE SCHMIDT: You've finished -- oh, this area.

15 MR. LINDSAY: No, no, with this area.

16 JUDGE SCHMIDT: Yeah, all right.

17 MR. LINDSAY: Okay.

18 **COURT EXAMINATION**

19 Q BY JUDGE SCHMIDT: Well, just clear this up in my mind  
20 right now. For these three units, as of today, is there any  
21 kind of tuition reimbursement policy applicable to them?

22 A Yes.

23 Q And that is the house policy? The standard house  
24 policy?

25 A Correct.

1 Q Okay. Good.

2 JUDGE SCHMIDT: I'm through.

3 MR. LINDSAY: I will follow up with one.

4 DIRECT EXAMINATION CONTINUED

5 Q BY MR. LINDSAY: Prior to the certification, was this  
6 policy in effect as to them?

7 A Yes.

8 Q This policy -- oh, I'm sorry, this policy was the policy  
9 that the Judge was showing which was Respondent's Exhibit 3,  
10 correct?

11 A Correct.

12 JUDGE SCHMIDT: Yeah, sorry.

13 MR. LINDSAY: Thank you, Seth. Somebody will clean up the  
14 record for us eventually,

15 JUDGE SCHMIDT: Yeah, I know.

16 Q BY MR. LINDSAY: Was there yet a subsequent meeting with  
17 the Union in --

18 A There was a third meeting, yes.

19 Q And prior to the third meeting, strike that. During the  
20 second meeting, were you asked to provide any information to a  
21 member of the Union?

22 A Yes.

23 Q Okay. And what were you asked to provide?

24 A When we provided our prospective on the two percent, Jim  
25 Clifford and David Mallon had asked that we provide our legal

1 research that would support our perspective on that. So I  
2 committed to David Mallon that I would provide that.

3 MR. LINDSAY: Okay. Can I have one second off the record,  
4 Your Honor? I'm --

5 JUDGE SCHMIDT: Yes, let's be off the record.

6 (Off the record)

7 JUDGE SCHMIDT: On the record.

8 MR. LINDSAY: I'm going to ask that the witness be shown  
9 General Counsel's Exhibit number 14 which is KP85 and KP86 that  
10 was marked and admitted earlier today.

11 JUDGE SCHMIDT: I've got them. Here.

12 THE WITNESS: Thank you.

13 Q BY MR. LINDSAY: Now Mr. Rosas, this is the document that  
14 was marked for -- that has been admitted into evidence earlier  
15 today. Can you identify this document for me?

16 A Yes, this is the email that I sent to David Mallon in  
17 response to his request.

18 Q That's the top part. There is a second part and a third  
19 part. Can you identify each of the three parts?

20 A The first email from David to me was reiterating his  
21 request for supporting documentation. My second email was  
22 really an acknowledgment that I was not meeting his timeline.  
23 And then the third email is my complying with his request.

24 Q All right. Thank you. Between the second and the third  
25 meeting, did you do anything else to prepare -- oh, strike

1 that. It's my understanding that there was a request at the  
2 end of the second meeting for a written proposal -- for a  
3 written response from Kaiser to the Union, is that correct?

4 A Yes.

5 Q Okay. And did Kaiser agree to provide that written  
6 response?

7 A I actually don't -- can I back up for just a moment?

8 Q Sure.

9 A Certainly at the conclusion of the second meeting, NUHW  
10 was taking the position that we need to be more specific with  
11 what we saw as status quo and what we didn't. I don't recall  
12 if we committed at that meeting to giving them that information  
13 or not. We did commit to having a third meeting.

14 Q And sometime between the second and the third meeting, did  
15 you undertake to prepare a writing that reflected Kaiser's  
16 position between the status quo and the non-status quo issues?

17 A Yes.

18 MR. LINDSAY: Okay. I'm going to ask that you be shown  
19 General Counsel's Exhibit number 10 from yesterday.

20 JUDGE SCHMIDT: I'll hand it to him. Go ahead.

21 Q BY MR. LINDSAY: Okay. This was entered into evidence  
22 yesterday as General Counsel's Exhibit Number 10. We  
23 established at that time it was three separate documents that  
24 to save the government the cost of a staple were consolidated  
25 into a single one. Can you identify this document for us?

1 A This is one of the documents that we distributed at that  
2 meeting.

3 Q Did you prepare this document?

4 A Yes, I was one of the people who prepared this document.

5 Q Okay. How did you go about preparing this document? What  
6 was the process that led to it?

7 A I was the, for lack of a better phrase, I was the lead on  
8 compiling this information. Simply went through the local  
9 agreements and tried to identify the pertinent sections, worked  
10 with two other folks on our labor relations staff and then  
11 ultimately consulted with legal on our findings.

12 Q And when you first undertook to prepare this document, was  
13 the primary audience the Union or was it some other purpose?

14 A Initially it was not the Union. Initially, at the request  
15 of Arlene Peasnall we were compiling this information really to  
16 get our arms around what was out there. I think -- we had  
17 multiple audiences and certainly one audience for me would have  
18 been Arlene so she made the request. Another would have been  
19 Maryanne. But we also were thinking of the HR offices. And  
20 then as we were having our meetings with the Union, it became  
21 clear that they were another audience.

22 Q And then did you -- and then you said you ultimately  
23 presented this to the Union at the meeting on March 18th, is  
24 that correct?

25 A Yes, we did and it was not one document like this. It was

1 three.

2 Q Okay. Do you have any notes from the meeting at March 18?

3 A None.

4 Q Okay. Why not?

5 A That meeting I knew I was going to be taking a lead role  
6 in that meeting because of all the work I put into this and so  
7 I was really reliant on Maryanne as again our designated note  
8 taker for that meeting. That's standard fare for me. If I'm  
9 going to take a lead role in a meeting like that or even when  
10 I'm negotiating as a chief negotiator, like in our AFN  
11 sessions, I've always had someone take notes for me.

12 Q Understood. What do you recall about the meeting on March  
13 18?

14 A On March 18th, we -- there was basically four documents  
15 that we distributed.

16 Q Those in General Counsel's 10?

17 A Right. I'm counting this as three separate documents.

18 Q Okay. And just to be clear that we are all talking about  
19 the same one, it was either 11 or 9.

20 JUDGE SCHMIDT: 11.

21 Q BY MR. LINDSAY: Okay. General Counsel's 11 was the other  
22 document. I'm just going to show you the copy I've got.

23 A Correct.

24 Q That's the other document that was --

25 A This, right, that is.

1 Q Okay. So those were the four documents that were  
2 presented to the Union?

3 A Correct.

4 Q Okay. Was there any discussion about any of these  
5 documents at that meeting?

6 A Yes.

7 Q What discussion can you recall?

8 A The document --

9 Q Let's start with -- what discussions do you recall about  
10 General Counsel's 11 which is the letter?

11 A I don't have it in front of me but I can still -- I  
12 remember it pretty specifically. Thank you.

13 Q I'll give you my copy.

14 A We at Ralph's request, we went through this paragraph by  
15 paragraph. The first two or three paragraphs we were -- there  
16 were a couple of questions asked about those paragraphs. Once  
17 we got into paragraphs I think starting with number --  
18 paragraph number 4, really we were not into Q&A anymore. We  
19 were just simply reviewing the paragraphs for the benefit of  
20 presumably his members. He had a comment about paragraph  
21 number 4. He wasn't real pleased with the last sentence. But  
22 otherwise it was basically at that point just reviewing the  
23 last couple paragraphs after a Q&A regarding the first three.

24 Q What Q&A can you remember about the first three?

25 A He was asking if you look in the first -- it's actually

1 the second and third paragraph where there's a reference to  
2 clear language in the national agreement. He wanted to know  
3 what that clear language was. And I did not have an answer for  
4 him. And that was the extent of the Q&A regarding those  
5 paragraphs.

6 Q Do you recall any discussion around the document that has  
7 been marked as -- that has been admitted as GC10, which is  
8 the --

9 A Oh, yes, okay, I had to look for that number.

10 Q Which is the other one. Yes.

11 A Yes, there was quite a bit of discussion regarding these  
12 documents. It really did not come from Ralph. It really came  
13 from his membership. They had quite a few questions about this  
14 document. I had made the statement that in response to a  
15 question I believe that between the three documents, it should  
16 be pretty consistent. And then as luck would have it, there  
17 was one that was inconsistent and someone found that. So we  
18 spent some time talking about that.

19 Q What was the inconsistent provision?

20 A That would take me a second or maybe even more to figure  
21 out what that was.

22 Q Go ahead.

23 A Let's see. On my copy I circled it but these are dry  
24 copies and so I'm not sure which one it was.

25 Q Was it the non-discrimination provision?

1 A We talked a lot about the non-discrimination provision.  
2 Let me see if that was the one that was different between the  
3 three. Oh, yes, that appears to be the one that was different.

4 Q And just to make sure that the record is clear, for the  
5 AFN and CBA inventory, and the health care CBA inventory, the  
6 non-discrimination clause is shown as terms and conditions  
7 whereas on the psych-social CBA, it was shown as a creation of  
8 the CBA, is that correct?

9 A Correct.

10 Q What do terms and conditions in creation of CBA mean to  
11 you who was the author of this document?

12 A Creation of the CBA, you know, from my perspective is  
13 something that doesn't really represent the status quo. And I  
14 know it's always dangerous to use the same term in the  
15 definition but it's not a term and condition of employment.  
16 It's not wages, it's not benefits, it doesn't fall into that  
17 category. So when we were speaking about the  
18 non-discrimination as an example, the questions that we were  
19 getting were are you saying now that we can discriminate since  
20 it's the creation of the contract. And the response to that  
21 was no, you know, even absent contract language, there's  
22 certainly policies that speak to our non-discrimination  
23 policies. What we're really getting at is the need to bargain.  
24 This type of language in the contract.

25 And if you, you know, the common theme through each of

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1 these three meetings was an eagerness for us to basically  
2 continue our bargaining process in separate units.

3 Q What do you mean by in separate units?

4 A Well, we had these three meetings. We had three meetings  
5 with Maryanne, Arlene and I with NUHW. And you know as I  
6 mentioned earlier, in that first meeting, we were expecting  
7 more of a meet and greet. And then I -- certainly from my  
8 perspective, that turned into -- it turned into bargaining.  
9 You know, when you look at the composition of our group, it was  
10 Rich, Arlene and Maryanne. That's not a bargaining team per se  
11 in terms of having the operations folks at your side. Or akin  
12 to the Union side, having your membership with you, if you  
13 will. So we certainly wanted to get to the point where we  
14 could break into AFN, psych-social and the health care  
15 professionals and really continue now the bargaining process in  
16 those three units since there were separate contracts.

17 Q Okay. Was there any discussion that you can recall with  
18 respect to any of the other items that you had marked either as  
19 terms and conditions or creations of the CBA other than the  
20 non-discrimination one?

21 A I know that we had discussion about quite a few of them.  
22 Of the top, I don't recall which they were.

23 Q Okay.

24 A I'd have to see notes to jar that -- jar my memory.

25 Q And Maryanne was our note taker?

1 A Yes.

2 Q Okay. Then we'll deal with it with her. What was the  
3 next involvement that you had with the Union in connection with  
4 any of these matters? Either the across the board increase --  
5 well let me ask you a question. Did anyone ever discuss in any  
6 of these three meetings the health care reimbursement account?

7 A I don't recall the health care reimbursement account being  
8 raised.

9 Q Okay. Was there anything -- what was your next  
10 involvement in any of these matters?

11 A My next involvement was quite frankly waiting for Ralph  
12 and Maryanne to decide whether we were going into three tables  
13 or one table. So I can schedule my dates.

14 Q And at some point was that issue resolved?

15 A Yes, in May and then eventually I saw an email from Ralph  
16 saying I'm ready to bargain in May. We agreed on a May 28th  
17 date.

18 Q Okay. And did you attend the May 28th bargaining session?

19 A Yes.

20 Q Okay. And were you the company's lead spokesperson at  
21 that negotiating session?

22 A I was.

23 Q Okay. What happened at that bargaining session?

24 A At that bargaining session, certainly you know, I had  
25 prepped our bargaining team which was solely made up of LAMC,

1 hospital nursing representatives that we were there to bargain,  
2 the NUHW AFN agreement and when we walked in it was very clear  
3 that there were representatives from psych-social, health care  
4 professionals and AFN at the meeting.

5 Initially, quite frankly I didn't think much of that until  
6 it became apparent at some point that they believed they were  
7 there to bargain all three contracts.

8 Q What was your understanding of what you were going to be  
9 doing there?

10 A I said repeatedly ad nauseam that we were there to bargain  
11 the AFN agreement and that led to quite a bit of frustration on  
12 the part of the NUHW membership as it's my clear belief that  
13 they were not told that we were there to bargain the AFN  
14 agreement only.

15 Q Was any -- were any proposals made at this meeting?

16 A Ralph gave us two documents that day. The title of one  
17 document was a list of priorities. Priorities is the word that  
18 was actually in the title. It was a longer title than that but  
19 basically priorities. And then an extensive RFI, request for  
20 information. That was addressed to Maryanne, me, Bill Blank,  
21 and Chuck Norris. Bill Blank and Chuck Norris are the chief  
22 negotiators for the other two agreements.

23 Q Okay.

24 A And I made it very clear that I was accepting this on  
25 behalf of AFN and on behalf of the NUHW AFN bargaining table I

1 would be passing it on to the other two chief negotiators to  
2 have them address the RFI independently.

3 Q Okay. Anything else that you can recall from this first  
4 meeting?

5 A Not off the top, no.

6 Q Was there a second meeting held?

7 A On July 2nd.

8 Q Okay. And at the meeting on July 2nd, did Mr. Cornejo  
9 present you with a proposal for a new agreement?

10 A Yes.

11 MR. LINDSAY: Okay. This is -- we are to -- I'm sorry, 4?  
12 Thank you.

13 **(Respondent Exhibit 4 marked for identification.)**

14 THE WITNESS: I think I took this from you. I think.

15 THE CLERK: No.

16 Q BY MR. LINDSAY: You have before you a document that's  
17 been marked for identification as Respondent's Exhibit 4. Can  
18 you identify this document?

19 A This is the proposal that he gave us on July 2nd.

20 Q And there's some handwritten material on this document on  
21 page 1 and again on page 9 of it. Is that your handwriting?

22 A On page 1, that's my handwriting. I'm looking for page 9  
23 right now. And that's my handwriting on page 9.

24 MR. LINDSAY: I move the admission of Respondent's Exhibit  
25 4.

1 MR. MACKAY: No objection.

2 MS. HOFFMAN: No objection.

3 JUDGE SCHMIDT: Received.

4 **(Respondent Exhibit 4 received into evidence.)**

5 Q BY MR. LINDSAY: Okay. Let me direct your attention to  
6 page 2 of this agreement. Is there a -- and I'd like to direct  
7 your attention specifically to paragraph, oh, I forget it. The  
8 one that begins new section steward training.

9 A Yes.

10 Q Okay. Did you discuss this proposal at the table?

11 A To the extent that Ralph -- Ralph reviewed this entire  
12 document thoroughly so yes, it was reviewed.

13 Q Okay. And is your understanding of the paragraph entitled  
14 new section steward training an effort to incorporate the  
15 steward training from the so-called LMP or national agreement  
16 into this local agreement?

17 A That's my understanding, yes.

18 Q All right. There is some handwriting on page 5.

19 A That's my handwriting also.

20 Q Oh, thank you. Let me direct your attention now to page -  
21 - strike that. Is there anything in this agreement relating to  
22 continuing education benefits or tuition reimbursement for  
23 continuing education?

24 A No.

25 Q Okay. Is there anything in this agreement related to the

1 across the board pay increase?

2 A No.

3 Q Are you continuing to negotiate with the Union at the AFN  
4 table?

5 A Yes, we have three dates scheduled.

6 MR. LINDSAY: Okay. If you'll give me a minute. Nothing  
7 further, Your Honor, of this witness.

8 JUDGE SCHMIDT: Cross?

9 (Counsel confer)

10 JUDGE SCHMIDT: All right. We'll be in recess for lunch.  
11 Back at a quarter to 1:00.

12 All right. Off the record.

13 (Off the record)

14 JUDGE SCHMIDT: All right. Let's be on the record.

15 General Counsel, you may cross-examine.

16 MR. MACKAY: If I could have the witness shown General  
17 Counsel's Exhibit 11.

18 **CROSS EXAMINATION**

19 Q MR. MACKAY: Are you ready? And first, just so I  
20 introduce myself, my name is Robert Mackay and I'm here as  
21 counsel on behalf of the acting General Counsel.

22 Looking at that document, does this letter correctly  
23 represent Respondents' positions regarding the national  
24 agreement and local agreement?

25 MR. LINDSAY: Objection. Calls for a legal conclusion;

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1 vague as to time.

2 JUDGE SCHMIDT: Let me look at this again.

3 Your question is what?

4 MR. MACKAY: Do the positions set forth by the Respondent  
5 to the Union in this letter accurately reflect Respondents'  
6 positions?

7 MR. LINDSAY: Objection. Vague as to time and it calls  
8 for a legal conclusion.

9 JUDGE SCHMIDT: Overruled.

10 THE WITNESS: I assume we're the respondent?

11 JUDGE SCHMIDT: Yes.

12 MR. MACKAY: Yes.

13 THE WITNESS: Okay. Yes.

14 Q BY MR. MACKAY: And Respondents have, in fact, eliminated  
15 paid time off for shop steward training as well as tuition  
16 reimbursement for continuing education courses for the  
17 employees involved in these bargaining units for the reasons  
18 described in this letter, correct?

19 MR. LINDSAY: Objection. Calls for a legal conclusion.

20 JUDGE SCHMIDT: Overruled.

21 THE WITNESS: So let's take them one at a time. The first  
22 one you asked me was steward training?

23 Q BY MR. MACKAY: Paid time off for steward training has  
24 been eliminated for each of the three units involved in this  
25 case, correct?

1 A Steward training has been -- paid steward training, we do  
2 not pay for that any longer. That's correct.

3 Q And that's for the reasons described in this letter,  
4 correct?

5 A Correct.

6 MR. LINDSAY: Objection. Calls for a legal conclusion.

7 JUDGE SCHMIDT: Overruled.

8 THE WITNESS: Correct.

9 Q BY MR. MACKAY: And continuing -- tuition reimbursement  
10 for continuing education courses to obtain or maintain  
11 licensure, Respondents have eliminated that benefit as called  
12 for under the terms of the National Agreement for each of the  
13 three bargaining units involved in this case, correct?

14 MR. LINDSAY: Objection. Mischaracterizes the testimony  
15 and it calls for a legal conclusion.

16 JUDGE SCHMIDT: Overruled.

17 THE WITNESS: I previously testified that that was  
18 pursuant to our policy, our corporate policy.

19 MR. MACKAY: Okay.

20 Q BY MR. MACKAY: And your opinion -- your testimony that  
21 the corporate policy is why it's been eliminated is because it  
22 is Respondents' position that the terms established through the  
23 national agreement no longer exist, correct?

24 MR. LINDSAY: Objection. Calls for a legal conclusion as  
25 to whether or not the terms of the national agreement still

1 exist.

2 JUDGE SCHMIDT: Overruled.

3 THE WITNESS: The -- when the -- when NUHW was certified,  
4 the national agreement, essentially, was terminated.

5 Q BY MR. MACKAY: On the spot, correct?

6 MR. LINDSAY: Objection. Calls for a legal conclusion.

7 He can answer.

8 JUDGE SCHMIDT: Overruled.

9 THE WITNESS: Yes.

10 Q BY MR. MACKAY: So the operative date is February 3rd,  
11 2010. And so terms and conditions of employment set forth in  
12 that national agreement expired, correct, under your -- under  
13 Respondents' position, correct?

14 MR. LINDSAY: Objection. Calls for a legal conclusion.

15 JUDGE SCHMIDT: Overruled. You may answer.

16 THE WITNESS: There would be some exceptions to that, but  
17 the national agreement itself no longer apply to NUHW.

18 MR. MACKAY: Okay.

19 Q BY MR. MACKAY: As of February 3rd, 2010?

20 A If that was the date of certification, yes.

21 Q And so terms, then, and conditions of employment that had  
22 been established for these unit employees solely through  
23 provisions, say, in that national agreement, those would expire  
24 on February 3rd, 2010 as well under Respondents' position,  
25 correct?

1 A Except for certain items that would be carried under the  
2 status quo.

3 Q All right. So let's say you have a contractually  
4 established provision -- well, why don't we discuss these ones?  
5 Tuition reimbursement for continuing education courses to  
6 obtain or maintain licensure. There is a provision in the  
7 national agreement section of the contracts, correct, that  
8 provides for this, correct?

9 A Could you please restate your question?

10 Q Sure. There is a provision in the national agreement that  
11 establishes continue -- tuition reimbursement for continuing  
12 education courses to obtain or maintain licensure, correct?

13 A I'm not certain of that.

14 Q Did employees in these three bargaining units prior to  
15 February 3rd, 2010 receive tuition reimbursement for continuing  
16 education benefits to obtain or maintain licensure up and until  
17 February 3rd, 2010?

18 MR. LINDSAY: Objection. This is a matter of stipulation  
19 already in the record, Counsel.

20 MR. MACKAY: I need to be able to cross --

21 JUDGE SCHMIDT: Overruled.

22 MR. MACKAY: -- this witness.

23 THE WITNESS: Yes, they did.

24 MR. MACKAY: Okay.

25 Q BY MR. MACKAY: After February 3rd, 2010, what is

1 Respondents' position as to whether or not that contractually  
2 established term and condition of employment expired or not?  
3 Did it expire?

4 A NUHW is no longer a partner union. Therefore, the  
5 corporate policy would then apply --

6 Q In a corporate --

7 A And the corporate policy says that LMP unions are the only  
8 unions that that benefit applies to.

9 Q And your opinion that the corporate policy applies is  
10 because there's no other controlling section in the national  
11 agreement that applies, correct?

12 A Correct.

13 Q And for paid time off to attend steward training for each  
14 of the three bargaining units, this is something employees in  
15 each of the three units received up and until February 3rd,  
16 2010, correct?

17 A Correct.

18 Q After February 3rd, 2010, this is among those  
19 contractually established terms and conditions of employment  
20 that Respondent took the position expires upon the  
21 certification, correct?

22 MR. LINDSAY: I'm going to object again. It calls for a  
23 legal conclusion from this witness.

24 JUDGE SCHMIDT: Overruled.

25 THE WITNESS: That's correct.

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1 MR. MACKAY: Could I have the witness shown Respondents'  
2 Exhibit Number 2?

3 Q BY MR. MACKAY: Taking a look at Respondents' Exhibit  
4 Number 2, is there a reference there to More Trucking?

5 A Yes.

6 Q Okay. And who's the name next to More Trucking?

7 A Jim Clifford.

8 Q Okay. And is he a representative of the Union or on the  
9 Union's bargaining committee?

10 A That's my understanding. Yes.

11 Q Okay. And More Trucking, I take it you've heard that term  
12 before, right?

13 A Many times.

14 Q Okay. And that's a reference to a board case, correct?

15 A Correct.

16 Q And the Union has maintained the position since even as  
17 early as February 26th, 2010 that you're obligated to continue  
18 the working conditions involved in this case, the tuition  
19 reimbursement, the shop steward training, and the April wage  
20 increase, they've maintained the position that you are  
21 obligated to maintain those under More Trucking, correct?

22 A Who did you say took that position? Did you say the board  
23 or NUHW? I'm sorry.

24 Q The Union, NUHW.

25 A Oh. Yes.

1 Q Okay. In each of the three bargaining units, there is  
2 currently still ongoing bargaining for the initial contract,  
3 correct?

4 A Correct.

5 Q No contract has been reached yet, correct?

6 A Correct.

7 Q And no impasse has been declared yet, correct?

8 A Correct.

9 Q Have you ever told any employees in any of the three  
10 bargaining units that they reason they did not receive the  
11 April 2010 wage increase is because the Union is not a member  
12 of the Coalition of Kaiser unions?

13 A I'm thinking through your question so I make -- so I'm  
14 sure I give you a thoughtful answer. Could you please repeat  
15 the question?

16 Q Have you ever told employees in any of the -- any employee  
17 in any of the three bargaining units that they reason they did  
18 not get the April 1st or the April 2 -- is it April 1st, 2010  
19 wage increase is because the Union is not a member -- the NUHW  
20 is not a member of the Coalition of Kaiser unions?

21 A Not that I recall. No.

22 MR. MACKAY: No further questions, Your Honor.

23 JUDGE SCHMIDT: Charging Party?

24

**CROSS EXAMINATION**

25 Q BY MS. HOFFMAN: Do you know when the Coalition of Kaiser

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1 unions was formed?

2 A I think it was in the late 90's, '99, 2000, but I'm not --  
3 well, between '99 -- between '97 and '99, I think, but I'm not  
4 certain of that.

5 Q Is it the position of the Respondents that if NUHW joined  
6 the coalition that the benefits under the national agreement  
7 would automatically apply to them without bargaining?

8 MR. LINDSAY: Objection. Calls for a legal conclusion;  
9 beyond the scope of direct.

10 JUDGE SCHMIDT: Sustained.

11 Q BY MS. HOFFMAN: Could you look at Respondent's Exhibit 3?

12 A Okay.

13 Q Do you know what -- I noticed that it was revised in  
14 November of '09. Do you know what was revised in this document  
15 in November of '09?

16 A No, I don't.

17 MS. HOFFMAN: I have no further questions.

18 JUDGE SCHMIDT: No further?

19 Redirect?

20 MR. LINDSAY: Nothing further, Your Honor.

21 JUDGE SCHMIDT: At the risk of beating a dead horse, I  
22 work in one of these units. Before the certification of the  
23 NUHW if I took a continuing education course to maintain my  
24 license and I submitted a bill for that course, I would get  
25 paid, I assume, somehow?

1 THE WITNESS: You would be reimbursed.

2 JUDGE SCHMIDT: Reimbursed. Okay. After the  
3 certification of the NUHW, if I took a continuing education  
4 course for a licensure and submitted a bill for the course,  
5 would I get reimbursed?

6 THE WITNESS: Not for the CEUs, no.

7 JUDGE SCHMIDT: Pardon?

8 THE WITNESS: Not for the continuing education units, no.

9 JUDGE SCHMIDT: All right.  
10 Respondent, questions as a result of mine?

11 MR. LINDSAY: None, Your Honor.

12 JUDGE SCHMIDT: General Counsel?

13 MR. MACKAY: None, Your Honor.

14 JUDGE SCHMIDT: Charging Party?

15 MS. HOFFMAN: None, Your Honor.

16 JUDGE SCHMIDT: All right.

17 Thank you. You may be excused. I appreciate your  
18 patience.

19 THE WITNESS: Thank you.

20 JUDGE SCHMIDT: All right.

21 Respondent, you may call your next witness.

22 MR. LINDSAY: Mr. Rosas has been subject to the  
23 sequestration order. We would not intend to call him again,  
24 but I --

25 MR. MACKAY: Oh, I apologize. I was talking to

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1 Ms. Parker. I missed the --

2 MR. LINDSAY: I'm sorry. Mr. Rosas has been subject to  
3 the sequestration order.

4 MR. MACKAY: I've got no objection to him staying if --

5 MR. LINDSAY: I --

6 MR. MACKAY: -- you don't anticipate calling him again.

7 MR. LINDSAY: Thank you.

8 Well, why don't -- why don't you step outside anyway, that  
9 way it's -- we'll keep the record as clean as possible.

10 The Respondent call -- Respondents call --

11 JUDGE SCHMIDT: Sorry.

12 MR. LINDSAY: Huh?

13 JUDGE SCHMIDT: Sorry. I keep doing the same thing.

14 MR. LINDSAY: I make a motion that the record be  
15 corrected; that the word "Respondent" be changed to  
16 "Respondents."

17 JUDGE SCHMIDT: Yeah. Granted.

18 Go ahead.

19 MR. LINDSAY: Respondents call Maryanne Malzone.

20 JUDGE SCHMIDT: Please step forward.

21 Can I have you raise your right hand?

22 (Whereupon,

23 **MARYANNE MALZONE MILLER**

24 having been first duly sworn, was called as a witness herein  
25 and was examined and testified as follows:)

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1 JUDGE SCHMIDT: Be seated.

2 DIRECT EXAMINATION

3 Q BY MR. LINDSAY: Ms. Malzone, can you state and spell your  
4 name for the record?

5 A Sure. Maryanne Malzone Miller, M-A-R-Y-A-N-N-E, it's all  
6 one word, lowercase "a," Malzone, M-a-l-z-o-n-e, Miller,  
7 M-I-L-L-E-R.

8 Q And you are known as Maryanne Malzone for business  
9 purposes. Is that correct?

10 A I am.

11 Q What position do you currently hold?

12 A I'm the senior director of human resources.

13 Q Where?

14 A Kaiser Permanente Health Plan.

15 Q And how long have you held that position?

16 A I've held that particular position just about five years.

17 Q What position did you hold prior to that time?

18 A I was the director of HR operations prior to that.

19 Q And how long were you the director of HR operations?

20 A I don't recall exactly how many years in that role.

21 Q Okay. How -- how long have you worked in the human  
22 resources function in Kaiser?

23 A Twenty-five years.

24 Q How much of that time has been spent dealing with unions  
25 at Kaiser?

1 A In some capacity all 25 years.

2 Q Okay. And what has been your primary focus in your  
3 current job? What is the primary -- what are your primary  
4 duties in your current job?

5 A My current job, I oversee the operations of labor  
6 relations, compensation, diversity and HR special projects.

7 Q What do labor relations encompass?

8 A Labor relations encompasses traditional contract  
9 administration, grievance and arbitration handling for southern  
10 California, contract negotiations, contract interpretation.

11 Q Maybe I can short circuit this. Are you the person in  
12 charge of union matters for Kaiser in southern California?

13 A Yes.

14 Q Okay. And in this position you have had dealings under  
15 the national agreement and under various local agreements as  
16 well. Is that correct?

17 A Yes.

18 Q All right. Was there a meeting with the Union on February  
19 12th, 2010?

20 A Yes.

21 Q And by "the Union" I'm referring to the National Union of  
22 Healthcare Workers. And did you attend that meeting?

23 A I did.

24 Q And in what capacity were you attending that meeting?

25 Why --

- 1 A I --
- 2 Q -- were you attending that meeting?
- 3 A I attended as a -- in my leadership roles in labor  
4 relations and I also served as the note-taker at that meeting.
- 5 Q For the Kaiser?
- 6 A For the Kaiser. Yes.
- 7 Q Okay. When you began that meeting did you have an  
8 understanding of what the purpose of it was going to be?
- 9 A Yes, I did.
- 10 Q And what was that understanding?
- 11 A The purpose was, based on my conversations with Ralph,  
12 prior to the meeting we were going to have a get acquaint- --  
13 reacquainted meeting for all of the employees as well as the  
14 management representatives in the room.
- 15 Q And by Ralph you're referring to Mr. Cornejo?
- 16 A Yes.
- 17 Q And you had had previous conversations with him to arrange  
18 this meeting?
- 19 A That's correct.
- 20 Q Did you discuss anything of substance in any of those  
21 prior conversations that relates either to the continuing  
22 education benefits, two percent across the board pay increase,  
23 or the paid leave for union stewards?
- 24 A No.
- 25 Q Can you give me a general description of what you

1 discussed in the conversations you had with Mr. Cornejo prior  
2 to the February 12th, 2010 meeting?

3 A We had had conversations about Ralph's request for the  
4 meeting, and then I -- I took kind of the logistical role to  
5 coordinate the meeting.

6 Q Okay. You attended the meeting and you said that your  
7 role was to serve as note-taker primarily, correct?

8 A Yes.

9 Q All right.

10 MR. LINDSAY: Are we five or six?

11 MS. PARKER: Five.

12 JUDGE SCHMIDT: Yes, that's --

13 MR. LINDSAY: According to the --

14 JUDGE SCHMIDT: -- my understanding.

15 Thank you.

16 MR. LINDSAY: I'm going to have -- ask that the witness be  
17 shown the document that's been marked for identification as  
18 Respondents' Exhibit 5.

19 **(Respondent Exhibit 5 marked for identification.)**

20 Q BY MR. LINDSAY: Have you seen this document before?

21 A Yes.

22 Q Can you tell me where you saw it or where it came from?

23 A These are my notes from the meeting of February 12th.

24 Q I notice in the upper right-hand corner it's dated  
25 February 11th.

- 1 A Yes. I made an error.
- 2 Q Okay. Can you identify for me some of the abbreviations  
3 that appear in here? In the low -- upper right-hand -- upper  
4 left-hand corner the initials "R.C." appear. Is that Ralph  
5 Cornejo?
- 6 A Yes.
- 7 Q Okay. On the next page I see the words "AP." Is that for  
8 Arlene Peasnell?
- 9 A Yes.
- 10 Q On the lower part of Page 6 the initials "L.V." appear.  
11 Do you see that? Do you know who L.V. is?
- 12 A She is a nurse at Sunset and I can't pronounce her -- her  
13 name.
- 14 Q All right. There is a Layla identified on page -- I  
15 believe that's 8. Do you know who Layla is?
- 16 A Yes. That would be the nurse --
- 17 Q Oh.
- 18 A -- L.V.
- 19 Q Okay. And Barbara?
- 20 A Barbara Escobar is a Kaiser employee who attended that  
21 meeting.
- 22 Q On behalf of the Union?
- 23 A Yes.
- 24 Q Okay. Jim?
- 25 A That is Jim Clifford, also a Kaiser employee who attended

1 the meeting on behalf of NUHW.

2 Q Okay. At the top of the next page I see "D. Mallon"?

3 A David Mallon, again, a Kaiser employee who attended on  
4 behalf of NUHW.

5 Q And on Page 10 I have "D.M."?

6 A That would be David Mallon.

7 Q Okay. And I have another notation here, "Lynnetta"?

8 A Lynnetta. I don't recall her last name. She is a nurse  
9 at the LAMC Medical Center to the best of my recollection.

10 Q Did you --

11 MR. LINDSAY: I move the admission of Respondents' Exhibit  
12 5.

13 MR. MACKAY: No objection.

14 JUDGE SCHMIDT: Received.

15 **(Respondent Exhibit 5 received into evidence.)**

16 MR. LINDSAY: Thank you.

17 Q BY MR. LINDSAY: Can you tell me generally before we have  
18 you refresh your recollection with the notes what happened at  
19 this meeting?

20 A Sure. Ralph opened the meeting. We did some  
21 introductions to make sure everybody knew each other. There  
22 were some familiar faces and some unfamiliar faces, so we did  
23 introductions. Ralph made opening comments, was happy that we  
24 were able to come together to have this conversation. He  
25 talked about people being the same people they were before the

1 election and hoped that we could have a productive -- a  
2 productive meeting.

3 Q Anything else that you can recall right off the bat?

4 We'll go through the notes in a minute.

5 A Okay. Nothing I can recall, you know, other than that.

6 Q Okay. In your notes on Page 1 there's a reference to, "If  
7 you looked at us as people in the past we honor agreements. We  
8 are credible. We don't pick at your facilities." Was this  
9 something Mr. Cornejo said to you at that first meeting?

10 A Yeah. Yes.

11 Q And what did you understand him to mean?

12 A My understanding of the comment was we had, in August of  
13 2009, negotiated with our labor unions under what we call the  
14 affordability and transition plan. And we had some potential  
15 reductions in force, and so we had a severance plan. We had a  
16 voluntary retirement plan to help the organization meet their  
17 affordability plan.

18 And so the Coalition of Unions entered into that agreement  
19 with us. We effectuated that agreement, and then shortly  
20 thereafter there was some picketing at some of our facilities  
21 by members of SEIU UHW. So I related his comment to that  
22 activity that had taken place in August of 2009.

23 Q Was he associating or disassociating himself from  
24 picketing with those comments, if you had an understanding?

25 A I don't have an understanding.

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1 Q Okay. Turning to the next page of notes, there's a  
2 comment from Arlene, "What do you mean about NUHW in  
3 relationship with CKPU and LMP?" Can you tell me what that  
4 sentence means?

5 A In the prior statement, Ralph -- Mr. Cornejo -- if Ralph's  
6 okay, that would --

7 Q Are you more comfortable with that?

8 A I'm more comfortable if -- whichever the record's --

9 Q That would be fine.

10 A Made some comments about having to kind of think through  
11 Kaiser's position with the LMP and what NUHW's position would  
12 be with the LMP and then you would -- that would be the Kaiser  
13 Permanente Coalition of Unions.

14 Q And so what was Arlene doing?

15 A I think Arlene was trying to get some clarification, to  
16 the best of my recollection --

17 Q And --

18 A -- of Ralph's comment.

19 Q -- was that clarification provided in this first meeting?

20 A Not clearly.

21 Q Proceeding through your notes on Page 3, I'm going to skip  
22 through the records as to UBTs, which are no longer part of  
23 this case, and then go down to several issues, paycheck today,  
24 dues deductions, wages, benefits, working conditions.

25 When you were taking your notes, were you trained to

1 record what everybody was saying in the room?

2 A I -- you know, I did my best to record as much as I could  
3 of the conversation going on in the room. There were probably  
4 about fifteen, twenty people in the room. So --

5 Q Sometimes you ended up abbreviating and --

6 A Yes.

7 Q -- using the gist of what was being said rather than --

8 A That's --

9 Q -- the actual words?

10 A That's correct.

11 Q Okay. At some point during this first meeting did  
12 Mr. Cornejo propose extending the then terminated local  
13 agreements to September 30th, 2010?

14 A Yes, he did.

15 Q And did anyone on behalf of Kaiser respond to that  
16 proposal at that time?

17 A No, we did not.

18 Q Was there discussion about contract specialists at this  
19 meeting?

20 A There were comments made about contract specialists and  
21 that NUHW would want to continue that and Ralph wasn't sure how  
22 many. I recall him saying more than one.

23 Q Was there any discussion about union stewards at this  
24 first meeting, who would be union stewards, who would be  
25 selected?

1 A I don't recall if it was at this meeting or a second  
2 meeting where Ralph stated they would be appointing stewards  
3 and letting us know who those representatives would be. But I  
4 can't recall which of the conversations.

5 Q Would it have been in your notes?

6 A It may have been in my notes.

7 Q Would you take a second? Let's look at the notes from the  
8 first meeting and see if it was there.

9 MR. LINDSAY: I will just represent to the witness I  
10 didn't see it in the notes of the first meeting.

11 THE WITNESS: I don't -- I don't see it referenced in  
12 these notes.

13 MR. LINDSAY: Okay. We'll look at the second note, the  
14 meetings from the -- the notes from the second meeting in a few  
15 minutes.

16 Q BY MR. LINDSAY: Was there a discussion about badges at  
17 this first meeting?

18 A Yes.

19 Q And what was that discussion?

20 A I recall Ralph had asked for a badge for Gabe Kristal and  
21 that he was going to be starting spending more time at the LAMC  
22 Medical Center and wanted a badge for him.

23 Q Were there any other discussions about union access or  
24 union access to the facilities in this first meeting?

25 A I believe there was, but I would have to look at the notes

1 to refresh my memory.

2 Q Why don't you just take a second and flip through and see  
3 if there is anything in there that gives you recollection or  
4 that would trigger your recollection?

5 A Okay. Could you repeat the question, please?

6 Q My question was as apart from the discussion about badges,  
7 was there anything else about access by the Union to the -- any  
8 of the facilities that you can recall from that first meeting?

9 A In -- in my notes I see a reference to --

10 Q Can you tell us where -- on what page?

11 A On Page 4, one of the issues that Ralph mentioned was  
12 stewards to be awarded the same privileges as in other units,  
13 and that's the reference that I make.

14 Q Okay. On Page 4 there's a reference, "CA current interim,  
15 that does not change." Can you tell me what you meant by those  
16 notes?

17 A Sure. CA is corrective action and that is one of the  
18 processes that we use for managing performance issues within --  
19 with the employees who are covered under the LMP. And so my  
20 notes are related to Ralph's comment that that -- in the  
21 interim, that that would not change.

22 Q And then in Item Number 5 you've got "want these things to  
23 apply," and then there's a list of items. What did you mean  
24 when you wrote down "want these things to apply"?

25 A As I wrote the notes, that those are items that Ralph

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1 brought up that he wanted to apply immediately.

2 Q Was there any response to Kaiser in this first -- any  
3 response by Kaiser in this first meeting to any of these  
4 specific issues?

5 A No. We spent most of this meeting listening. The meeting  
6 took a little different turn than I had expected as we entered  
7 the room that afternoon.

8 Q And by "a different turn," what do you mean?

9 A Well, we had agreed this would be a get acquainted meeting  
10 and, clearly, after we went through introductions and some  
11 opening comments, Ralph had brought up some very specific  
12 issues, requests, proposals, and we didn't really plan for  
13 that.

14 Q So how did the -- let me direct your attention to Page 7.  
15 There is a line here from AP, "Not prepared to respond today."  
16 Is that something that Arlene Peasnall said, that Kaiser was  
17 not prepared to respond?

18 A Let me --

19 Q I'm sorry. This is on Page 7.

20 A I'm sorry. Which page?

21 Q Page -- oh, I'm sorry. Page 9. I apologize. We need  
22 that one pair -- common pair of glasses again.

23 A And I'm getting used to them, so.

24 Q It's about the -- just a little bit under -- well, it's  
25 right by the dot in --

1 A Yeah. As you can see from the notes above, Ralph had  
2 concluded talking through his proposals and some of the items  
3 he would like to continue or not continue. And then Mr. Mallon  
4 started talking and going back through each issue and wanting  
5 the employer to respond, and I think he got through a couple  
6 and it was at that point where Arlene clearly stated we weren't  
7 prepared to respond to any of these issues today.

8 Q Okay. And then what was -- what was going to happen next?  
9 Did the meeting end with no future plans or was there a future  
10 plan?

11 A We were going to meet again and Ralph, based on my notes,  
12 said any day of the week of the 22nd would be -- work for him,  
13 and so I think we -- I don't recall if we confirmed a date at  
14 that meeting, but we confirmed a date very quickly.

15 Q All right. And the next meeting was on February 26th,  
16 2010?

17 A Yes.

18 Q All right. And did you attend that meeting?

19 A Yes, I did.

20 Q And was your role at that meeting as well to serve  
21 primarily as the note-taker for the Kaiser representatives?

22 A Yeah. I attended in my role as senior director and took  
23 on the duties of the note-taker. Yes.

24 Q Ah, thank you. It's always good when the witness cleans  
25 up my questions.

- 1 A Took place on February 26, 2010.
- 2 Q And are these the notes that you took?
- 3 A Yes.
- 4 MR. LINDSAY: I move the admission of Plaintiff's Exhibit
- 5 6.
- 6 MR. MACKAY: No objection.
- 7 MS. HOFFMAN: No objection.
- 8 JUDGE SCHMIDT: Received.
- 9 **(Respondent Exhibit 6 received into evidence.)**
- 10 Q BY MR. LINDSAY: The first reference I see on page 1 here
- 11 is talking points. Can you tell me what you meant by talking
- 12 points?
- 13 A Yes. In preparation for the meeting, we had had some
- 14 conversations, Arlene, Richard and I, to kind of talk about how
- 15 the meeting was going to flow and which we would respond to in
- 16 which order.
- 17 Q And so the talking points were the items that you and
- 18 Arlene and Richard had discussed previously.
- 19 A Right, based on the meeting of February 12th.
- 20 Q While we're on that same first page, there's a line, we
- 21 cannot honor your request for extending the three agreements.
- 22 Do you see that?
- 23 A Yes, I do.
- 24 Q Okay. Can you tell me what was meant by that note?
- 25 A Yes. In the meeting of February 12th, Ralph had requested

1 that the employer extend each of the three contracts, the  
2 health care professionals, the psych-social workers and the RN  
3 contract until September 30th of 2010 and my recollection  
4 having looked at the notes was to provide stability for NUHW  
5 and so in this meeting, Arlene was responding that those  
6 contracts, once the certification took place, they didn't exist  
7 and so we would not be extending those contracts, all three of  
8 them.

9 Q Did Ms. Peasnall announce during the second meeting  
10 Kaiser's position with respect to the two percent across the  
11 board pay increase?

12 A Yes, she did.

13 Q And what did she say?

14 A She stated we would not be processing the forthcoming  
15 April 1st increases for employees in the three units.

16 Q Did she announce Kaiser's position on the education, of  
17 the continuing education benefits for these employees?

18 A I believe she did. I have to look -- look through the  
19 notes. Yes, she did.

20 Q Okay. Can you tell me where in the notes that's referred  
21 to?

22 A I'm on page 7 and I have a notation with Arlene's  
23 initials, TR, which would be Tuition Reimbursement CEUs,  
24 Continuing Education Units, only covered for LMP in NUHW with  
25 my little note. It's not in the LMP.

1 Q And was this interpretation based on the Kaiser policy  
2 that has been -- that was introduced earlier as Respondent's  
3 Exhibit -- may I ask it be shown to you if I can find it.

4 JUDGE SCHMIDT: You're talking about General Counsel 10  
5 and 11?

6 MR. LINDSAY: No. I'm talking specifically about -- okay.  
7 It's Respondent's Exhibit Number 3.

8 THE WITNESS: Thank you very much.

9 Q BY MR. LINDSAY: So was the position articulated by  
10 Ms. Peasnell at this meeting based on this policy?

11 A Yes.

12 Q And was there any discussion in this second meeting  
13 concerning Kaiser's position with respect to supervisor -- I'm  
14 sorry, steward training or pay for the stewards to attend  
15 training sessions?

16 A Yes.

17 Q And where was that?

18 A I'm going to review the notes. On the top of page 6.

19 Q All right.

20 A And my notes reflect our response was that's covered in  
21 the national agreement. It's a creation issue. It's not a  
22 status quo issue and it would be subject to bargaining.

23 Q In connection with the discussion concerning the  
24 continuing education tuition reimbursement policy, did one of  
25 the employees raise a question as to whether -- as to the

1 effective date of Kaiser's decision on that issue?

2 A To the -- I recall, yes. Ms. Turusew Wilson I believe is  
3 her name, she's an employee at the west -- if I recall, the  
4 West LA Medical Center, and she, I think many of the employees  
5 in the room, you know, this was an important issue to them and  
6 we had made this decision and communicated it on this date and  
7 so they were concerned about pre-approved classes and had asked  
8 us to reconsider that effective date of February the 3rd.

9 Q And what did you say in the room that day?

10 A That we would take it under consideration.

11 Q And then did you eventually notify the Union of your  
12 decision on that issue?

13 A Yes, we did.

14 Q And it was you who sent the email?

15 A Yes.

16 Q Okay. I'm going to just show you, ask that you be shown  
17 Exhibit -- this is General Counsel's Exhibit -- yes, General  
18 Counsel's Exhibit Number 8. Thank you. I would just ask if  
19 you were the author of the bottom portion of that --

20 A Yes.

21 Q -- email chain.

22 A Yes, I was.

23 Q All right. How did this meeting on February 26th end?  
24 What was the next steps if you will?

25 A There was a request for us to meet again. There were some

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1 unanswerd questions and decisions to be made on some of the  
2 proposals Ralph had put forward. There was still Ms. Wilson's  
3 request that we consider the CEUs and there had been some  
4 request to be more detailed about our decision making process.  
5 So we agreed to have an additional meeting. We did not  
6 schedule it that day and that caused for some additional  
7 emotional reaction from our employees who were attending the  
8 meeting with their NUHW representative.

9 Q And was it at this meeting that a representative of NUHW  
10 raised More, M-O-R-E, Trucking for the first time with you?

11 A Yes.

12 Q And who raised that?

13 A I'd have to refer to my notes to know who raised it first.  
14 I recall both Mr. Mallen (phonetic), David Mallen, and I  
15 believe Mr. Clifford, and I'll check my notes. My notes aren't  
16 clear as to exactly who raised that.

17 Q Let me direct your attention to the bottom of page 10 of  
18 your notes.

19 A Okay.

20 Q And I see a reference here to David. We need research  
21 from your legal counsel for trucking?

22 A Yes. That's David --

23 Q Is that a reference to David Mallen?

24 A Yes, it is.

25 Q Do you know Mr. Mallen by sight?

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- 1 A I do.
- 2 Q Was he here in the hearing room yesterday afternoon?
- 3 A Yes, he was.
- 4 Q And was he excluded from the sequestration order that took  
5 effect?
- 6 A No, he was not.
- 7 Q And I think there was a third meeting with NUHW. Is that  
8 correct?
- 9 A That's correct.
- 10 Q And you attended this meeting both in your capacity as the  
11 director of human resources as well as the note taker. Is that  
12 correct?
- 13 A That's correct.
- 14 Q Which meeting was this? This is now the third meeting.  
15 I'm referring you to a document that's been marked as  
16 Respondent's Exhibit 7 for identification. Can you identify  
17 this document for us?
- 18 A Yes. These are the notes that reflect the meeting on  
19 March 18, 2010.
- 20 Q I see a new set of initials here. There's an R-R. Can you  
21 tell me who RR is on the first page?
- 22 A Richard Rosas.
- 23 Q And on the second page, there's a W-A.
- 24 A W-A is Winnie Allen, who's a Kaiser employee and a member  
25 of the Psych Social Unit with NUHW.

1 Q And on page 3, there is D-M. Is that David Mallen again?

2 A Yes.

3 Q Okay. There's a D-R with a question mark. Can you tell  
4 me who that individual was?

5 A Donna Rice and she is a member, Kaiser Permanente  
6 employee, and she works in Addiction Medicine, I believe in the  
7 San Fernando Valley.

8 Q All right, and M-H at the bottom of that page?

9 A I don't recall who M-H is at this point in time.

10 Q All right. Thank you. J-C on page 6. Is that Mr.  
11 Clifford?

12 A Yes. That would be Jim Clifford.

13 Q All right. And on the bottom of page 7, the initials M-M?  
14 Is that you?

15 A That would be me.

16 Q All right. And on the bottom of page 8, the initials  
17 M-M-M?

18 A That would be me as well.

19 Q That would be you as well. All right. Can you tell me  
20 generally what happened in this third meeting?

21 A Yes. Prior to this meeting, the employer prepared four  
22 documents. There was a letter authored by Arlene and the three  
23 grid documents, and that was in request at the prior session to  
24 get some clarity around the issues moving forward and so we  
25 were prepared to provide those documents to Ralph and his

1 bargaining team members.

2 Q And just so that the record is complete, I ask that the  
3 witness be shown I believe GC 11? Ten? I'm sorry. It's GC-10  
4 and GC-11. And are these the documents that Kaiser presented  
5 to the Union at this meeting?

6 A They are.

7 Q All right.

8 MR. LINDSAY: I'd like to move the admission of  
9 Respondent's Exhibit 7.

10 MR. MACKAY: No objection.

11 JUDGE SCHMIDT: Received.

12 **(Respondent Exhibit 7 received into evidence.)**

13 Q BY MR. LINDSAY: What happened in this? You presented the  
14 documents and then what happened in this third meeting?

15 A Arlene at the beginning of the meeting, Arlene Peasnall,  
16 presented the documents and asked Ralph if he would like some  
17 time to review the documents with his team. We would leave and  
18 then we would rejoin them at a later time, and Ralph said no,  
19 we'd like you to stay and review the documents with us.  
20 There's no reason for you to leave and then come back.

21 Q So did you then go through the documents?

22 A Yes.

23 Q Is -- are the details of that meeting reflected here in  
24 your notes as you review the documents?

25 A Yes.

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1 Q At some point during this meeting, was the -- were the  
2 management representatives asked to explain why any of the  
3 decisions that they made, what they had done, what they had not  
4 done, what they'd included as continuing but they didn't put it  
5 as not continuing?

6 A It was quite a bit of discussion during this meeting from  
7 many of -- as you can see from my notes -- many of the team  
8 members, our employees and representative by NUHW.

9 Q Did the issue come up in this meeting about paying union  
10 stewards for time spent performing grievance adjustments or  
11 contract administration?

12 A I'd have to review the notes to see if that was this  
13 meeting or a prior meeting. Yes, it did, and I'm on page 4 of  
14 the notes.

15 Q And what was said in that connection?

16 A I'm reading the question from Donna Rice in regards to are  
17 you saying if someone has a grievance, people cannot be  
18 represented? Richard responded no, people can be represented  
19 by the stewards. So there was discussion about grievance  
20 meetings and if there were corrective action meetings as well.

21 Q Just for my benefit, we have three separate units. In the  
22 AFN Unit, the nurses are paid on an hourly basis. Is that  
23 correct?

24 A Yes.

25 Q And in the Psych-Social Unit and in the Healthcare

1 Professionals Unit, the employees are paid on a salaried basis.

2 Is that correct?

3 A Yes.

4 Q And for the salaried employees, if they perform any  
5 services at all for Kaiser in a given day, they are paid. Is  
6 that correct?

7 A Yes.

8 Q Regardless of how else they spend that day.

9 A Yes.

10 Q There is on pages 4 and 5 statements from Ms. Peasnell  
11 stating that -- well at least I'll stick with page 5, that we  
12 should come to the table and begin bargaining the three  
13 agreements. There are other statements to that effect through  
14 this document. Did representatives of Kaiser tell the Union  
15 that it was time to start bargaining at the table for these  
16 contracts, specific terms of the contract?

17 A Yes.

18 Q And following this meeting, were you ever contacted about  
19 making the arrangements to begin bargaining at individual  
20 tables or to continue the bargaining process following this  
21 meeting?

22 A Yes.

23 Q And how did that contact come about?

24 A Through Ralph.

25 Q Did you contact him or did he contact you?

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1 A I don't recall. I think Ralph contacted me.

2 Q Okay. And when did this contact take place?

3 A We had conversations about one table or three tables and I  
4 don't recall the exact timing of those meetings, but it would  
5 have been after the 18th of March.

6 Q And when you talk about one table or three tables, what is  
7 that a reference to?

8 A Our conversations related to -- Ralph had requested that  
9 we have one bargaining table for all three units, so the table  
10 would have representatives from AFN, the Healthcare  
11 Professionals and the Psych-Social and we would negotiate one  
12 table for all of those three separate units.

13 Q And what was Kaiser's position with respect to the one  
14 table?

15 A My position was that the elections took place. They were  
16 three separate units and that we would bargain a separate  
17 contract with each of those three units, the Healthcare  
18 Professionals, the Psych-Social Workers and the nurses at  
19 LAMC.

20 Q And what happened?

21 A Ralph and I had probably a couple of conversations about  
22 this topic and I was clear that was our position and that we  
23 were ready to bargain.

24 Q And ultimately did you decide to bargain with three  
25 tables?

1 A We did.

2 MR. LINDSAY: I have nothing further for this witness.

3 MS. PARKER: May I just have one minute, Your Honor?

4 JUDGE SCHMIDT: Yeah.

5 MS. PARKER: Thirty seconds?

6 JUDGE SCHMIDT: If I might, maybe -- I have just a few  
7 general questions if you don't mind my butting in at this  
8 point. Kaiser Southern California.

9 THE WITNESS: Yes.

10 JUDGE SCHMIDT: How many facilities are within this  
11 region?

12 THE WITNESS: We -- I believe we have 12 or it might be 13  
13 medical centers. We probably have -- don't quote me on these  
14 exact numbers.

15 JUDGE SCHMIDT: Right.

16 THE WITNESS: Over 200 medical office buildings where  
17 services are provided to our members.

18 JUDGE SCHMIDT: Okay. And how many employees overall,  
19 disregarding whether they're unionized or not unionized, are  
20 employed in this region?

21 THE WITNESS: I believe we have about 56,000 employees in  
22 Southern California, give or take a few.

23 JUDGE SCHMIDT: All right. And I know there's a Northern  
24 California region, too, or also. Is there some specific  
25 dividing line between northern, your northern region and your

1 southern California region?

2 THE WITNESS: We -- Southern California Region goes up to  
3 Bakersfield.

4 JUDGE SCHMIDT: All right.

5 THE WITNESS: And then somewhere north of that, I don't  
6 know the exact dividing line, would be the Northern California  
7 Region.

8 JUDGE SCHMIDT: All right. That's all I, all I had.

9 Now you want a couple of minutes, you say?

10 MS. PARKER: Not even that, maybe just 30 seconds.

11 JUDGE SCHMIDT: Okay. Let's be off the record.

12 (Off the record)

13 JUDGE SCHMIDT: All right. On the record. You may  
14 cross-examine.

15 MS. PARKER: Okay.

16 **CROSS EXAMINATION**

17 Q BY MS. PARKER: I just had a couple of quick questions for  
18 you. In reference to Respondent's Exhibits 6 and 7. I think  
19 you probably still have those before you?

20 A I have 7 before me. I don't have 6. Oh, I do now.

21 Q Okay. I just wanted to confirm in your notes where it  
22 says A-P? Where it has a person identified as E-A-P. That's  
23 Arlene Peasnell? Just to be clear for the record?

24 A Yes.

25 Q Okay. And R-C?

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1 A Ralph Cornejo.

2 Q Okay.

3 MS. PARKER: That's all.

4 JUDGE SCHMIDT: That's it?

5 MS. PARKER: Yes.

6 JUDGE SCHMIDT: Charging Party?

7 **CROSS EXAMINATION**

8 Q BY MS. HOFFMAN: Yes. Could you look at Respondent's

9 Exhibit 3? And the stamps at the bottom, KP11.

10 A I don't have the document in front of me yet. I'm sorry.

11 JUDGE SCHMIDT: Go ahead.

12 Q BY MS. HOFFMAN: In Section 7, it says that this policy

13 was signed by you. Is that correct?

14 A Yes.

15 Q And do you know what revisions remained in November of '09

16 in the policy?

17 A I don't recall the revisions, all the revision, if there

18 were that were made at this time.

19 Q Okay. It's my understanding that the tuition

20 reimbursement was negotiated by the coalition in 2005. Is that

21 correct?

22 A I was not -- I did not participate in bargaining in 2005.

23 Q Okay. So you don't know when the tuition reimbursement

24 was negotiated by the --

25 A I don't at this time, no.

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1 Q The coalition? So you don't know why there wasn't any  
2 revision in 2005.

3 A No, I don't.

4 Q And you don't know what the revision was in 2009?

5 A I don't recall what the revisions were in 2009.

6 Q Did it change in any way who was eligible for the tuition  
7 reimbursement program?

8 A I don't recall which revisions, what revisions were made  
9 in this last revision of 11/13/2009.

10 MS. HOFFMAN: No further questions.

11 JUDGE SCHMIDT: Redirect?

12 MR. LINDSAY: I have nothing.

13 JUDGE SCHMIDT: Under the -- well I haven't looked at the  
14 other two collective bargaining agreements, but under the AFN  
15 agreement, as I understand, as part of the local agreement,  
16 there's a rate schedule here at the end and it shows a  
17 progression of rates. Look at that. And that apparently is  
18 based on how much time you have worked at Kaiser as to whether  
19 or not you progress from one to the next one to the next one.  
20 Is that the way I should read that?

21 THE WITNESS: Yes, and there are --

22 JUDGE SCHMIDT: So I get a certain rate in a certain  
23 classification if I've worked there five years, and then when I  
24 click over to, say, six years, I would get another rate, an  
25 increased rate.

1 JUDGE SCHMIDT: That's all right. Yes. Let's be off the  
2 record.

3 (Off the record)

4 JUDGE SCHMIDT: Then we'll be back on the record.

5 In off-the-record discussion, counsel for the General  
6 Counsel -- counsel for the acting General Counsel, stated that  
7 there will be no rebuttal from that part of the table.  
8 Charging party also stated there would be rebuttal from that  
9 part of the table. I've also discussed with the parties the  
10 briefing date for this case and the parties are in agreement  
11 with the date that I discussed with them, which is November 17,  
12 2010 will be the date for the filing of the post-hearing briefs  
13 in this matter.

14 In order to be timely filed, the briefs must be put in the  
15 mail or presented to a delivery service of some type the day  
16 before November 17 or actually delivered on November 17 to my  
17 office, which is at 901 Market Street, Suite 300, San  
18 Francisco, California 94103.

19 In the event of some unforeseen emergency, and I want to  
20 underscore that, and I also want to say agreement of the  
21 parties is not an unforeseen emergency, that an extension of  
22 time for the filing of briefs is needed, the request for an  
23 extension of time should not, I underscore, should not be filed  
24 with me, should be filed with the Associate Chief  
25 Administrative Law Judge for the San Francisco Branch Office of

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1 the NLRB Division of Judges.

2 That person's name is Mary Mare Craycraft (phonetic), so  
3 if you need an extension of time, please file that request with  
4 Judge Craycraft.

5 After receiving the briefs, I will prepare and issue my  
6 decision and concurrent with that, an order transferring the  
7 case to the Board will issue. If you are not already signed on  
8 to the Board's electronic service system, I would urge you to  
9 do so. It will speed up the process a few days at least.

10 I want to thank the parties for their excellent  
11 presentation and professional manner in which this case has  
12 been presented. If there's -- General Counsel, do you have  
13 anything further at this point?

14 MR. MACKAY: Nothing further, Your Honor.

15 JUDGE SCHMIDT: Charging Party?

16 MS. HOFFMAN: Nothing.

17 JUDGE SCHMIDT: Respondents?

18 MR. LINDSAY: Nothing further. Thank you for your  
19 time.

20 JUDGE SCHMIDT: There being nothing further, then, the  
21 hearing is now closed. Thank you.

22 **(Whereupon, at 2:08 p.m., the hearing in the**  
23 **above-entitled matter was concluded)**

24

25

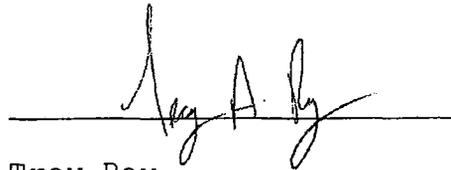
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CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 21, Case 21-CA-39296, Kaiser Foundation Hospitals; Southern California Permanente Medical Group; Kaiser Foundation Health Plan, Inc., at the National Labor Relations Board, Region 21, 888 South Figueroa Street, Suite 902, Los Angeles, California 90017, on Tuesday, October 19, 2010, at 9:01 a.m., was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



Troy Ray  
Official Reporter