

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

**KAISER FOUNDATION HOSPITALS AND
HEALTH PLAN, INC.; KAISER PERMANENTE;
KAISER PERMANENTE MEDICAL CARE
PROGRAM; THE SOUTHEAST PERMANENTE
MEDICAL GROUP; KAISER FOUNDATION
HEALTH PLAN, INC.; THE PERMANENTE
MEDICAL GROUP; MID-ATLANTIC
PERMANENTE MEDICAL GROUP;
THE PERMANENTE FEDERATION;
NORTHWEST PERMANENTE MEDICAL GROUP;
COLORADO PERMANENTE MEDICAL GROUP**

and

Case 32-CA-220268

**COALITION OF KAISER PERMANENTE UNIONS,
AFL-CIO**

**ORDER GRANTING RESPONDENT'S
MOTION TO POSTPONE MARCH 19, 2019 HEARING**

On December 28, 2018, the Regional Director of Region 32 filed her complaint against Respondents, the Southeast Permanente Medical Group, Inc., Kaiser Foundation Health Plan, Inc., The Permanente Medical Group, Inc. ("TPMG"), Mid-Atlantic Permanente Medical Group, P.C., The Permanente Federation LLC, Northwest Permanente, P.C., and Colorado Permanente Medical Group, P.C. (collectively Respondents) and giving notice of the current hearing date of March 19, 2019, in Oakland, California. The complaint alleges that, among other things, the Respondents unlawfully took actions during various times in 2018 which failed to timely and unequivocally withdraw its recognition from the Charging Party Coalition of Kaiser Permanente Unions, AFL-CIO (Charging Party or Coalition) as the exclusive collective bargaining representative of the Unit and Respondents also have failed and refused to bargain collectively and in good faith with the Coalition as the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended (the Act). The hearing in this case has not been postponed previously.

On February 25, 2019, Respondents filed a letter Motion Requesting Continuance of [the 3/19/19] Hearing date in this matter, seeking to reschedule the hearing to a date "within the window of April 16 and 23[, 2019]" (the Motion) due to:

(1) the unavailability of one of the anticipated principal witnesses, Executive Vice President and Group President Greg Adams, on the currently scheduled hearing date, and (2) the unavailability of counsel for respondents, Michael Lindsay and Alicia Anderson, owing to a conflict with another NLRB case involving respondent TPMG, that the Region knowingly set for hearing on March 18, the day before this hearing is scheduled to start.

I take administrative notice that the March 18, 2019 hearing mentioned by Respondents' counsel in its Motion is styled *The Permanente Medical Group, Inc.*, 32-CA-226909, and that at a status conference call last Tuesday before me, the parties estimated that the hearing should last 2-3 days from March 18-20, 2019 and overlap the instant matter.

Also, on February 25, 2019, I issued an Order to Show Cause giving the parties until noon on March 1, 2019, to file a response as to why Respondent's Motion should not be granted.

On February 27, 2019, counsel for the Charging Party filed his opposition to the Motion (CP Opposition) which argues that Respondents have not shown good cause as to why, in its large law firm, they do not have two lawyers – one of which can handle the March 18 matter and the other who can defend the current March 19 matter. The CP Opposition further argues that the instant matter is likely to last more than a day and there is no evidence that Respondents' principal witness cannot attend the hearing after the first day when he is alleged to be unavailable.

Also, on February 27, 2019, the Counsel for the General Counsel (CGC) filed her opposition to the Motion (GC Opposition) which argues that:

[The Complaint] in this matter on December 28, 2018 and the parties have been aware of the scheduled March 19, 2019 trial date since that time. The Regional Attorney consulted with the parties prior to setting the hearing on March 19, 2019 and no party raised a conflict with this date at that time. While Respondents' counsel has since raised a conflict for one of its witnesses, Respondents do not claim that this witness is their party representative, that this witness must be present for every day of trial, or that the General Counsel's case and Respondents' other witnesses could not proceed outside the presence of this particular witness. Counsel for the General Counsel would not oppose a continuance of the hearing if the other testimony in the case concludes and the witness is still not available. However, Counsel for the General Counsel objects to the postponement of the entire trial based on the unavailability of this one witness. With respect to the conflict for Respondents' legal counsel due to the March 18, 2019 trial in another case, the Region has reached out to the parties in that case regarding their availability and is willing to reschedule the hearing in that case to April 1, which would remove counsel's conflict in moving forward with this case on its

originally scheduled date. As noted above, Respondents and Respondents' counsel have been aware of the March 19, 2018 hearing date in this matter since the Complaint issued nearly two months ago and Counsel for the General Counsel objects to any unnecessary delay in resolving this matter, which impacts the collective bargaining rights and representation of a unit of roughly 85,000 employees.

Also, on February 27, 2019, the trial judge in this matter, Administrative Law Judge Ariel Sotolongo, conducted a telephonic status conference call with counsel to the parties and during the yesterday's conference call, Judge Sotolongo asked General Counsel, Amy Berbower, to contact me to advise me of the General Counsel's and Charging Party's availability for trial in the above matter during the week of April 22, 2019. Ms. Berbower, in her February 27, 2019 email to me, copied to the other counsel, confirmed that she as well as Mr. Harland, counsel for the Charging Party, and their witnesses are available for trial the week of April 22, 2019.

Furthermore, I am informed that Judge Sotolongo is also trial judge in another matter scheduled to begin on March 19, 2019, at Region 20, in San Francisco, which at this time does not appear to be a matter that will settle.

Having fully considered the pleadings, and the docket of the San Francisco Division of Judges, I find that, under these unique circumstances, good cause has been shown to postpone the hearing in this matter for a first time for as short period of time to April 22, 2019. I further find, however, that postponing the hearing beyond April 22 would cause a serious hardship to the Charging Party that outweighs any inconvenience to Respondents or its legal counsel caused by having this case heard on a postponed basis beginning on April 22, 2019. While I remain sympathetic to the double-booking of cases the week of March 18, I hereby admonish Respondents and their legal counsel to make the hearing in this matter a priority and, as one option, possibly train or hire more labor lawyers to try matters before the NLRB as in the future I will expect Mr. Lindsay and Ms. Anderson to capably handle two unrelated cases set for hearing on the same or overlapping dates at the NLRB. Respondents' current counsel is from a large labor law firm that should be able to staff more than one case at a time at the NLRB in the future.

Consequently, I find that hearing in this matter shall be postponed from March 19, 2019 to April 22, 2019.

ORDER

For the reasons stated above:

IT IS ORDERED that Respondents' motion to continue hearing is **GRANTED** and the hearing shall be **POSTPONED** from March 19, 2019 to **Monday, April 22, 2019, at 9:00 a.m., at the same Region 32 regional office as previously noticed, and consecutive days thereafter to conclusion.** *No further hearing postponement requests shall be granted absent exigent circumstances.*

SO ORDERED.

Dated: February 28, 2019, San Francisco, California.



Gerald M. Etchingham, Associate Chief
Administrative Law Judge

Served via facsimile and email upon the following:

For the NLRB:

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For the Respondents:

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For Charging Party:

Bruce A. Harland, Esq., Fax: (510) 337-1023
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From: Lee, Vanise J.

Sent: Thursday, February 28, 2019 3:13 PM

To: Anderson, Alicia <acanderson@nixonpeabody.com>; Lindsay, Michael R. <mlindsay@nixonpeabody.com>; Berbower, Amy <Amy.Berbower@nlrb.gov>; Bruce Harland <bharland@unioncounsel.net>

Cc: Gomez, Doreen E. <Doreen.Gomez@nlrb.gov>; DiCrocco, Brian <Brian.DiCrocco@nlrb.gov>

Subject: Kaiser Foundation Hospitals, 32-CA-220268, ACALJ's Order Granting 1st Motion to Postpone Hrg., dd., 2-28-19

Importance: High

Good afternoon, attached please find an Order from Associate Chief Administrative Law Judge Gerald M. Etchingham which will fax to your offices.

Thank you.

Vanise J. Lee, Legal Tech.

NLRB Division of Judges San Francisco Branch

Main – 415.356.5255

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Reason : No answer
