

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

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

and **Cases** **08-CA-1178900, et al.**¹

**NATIONAL NURSES ORGANIZING COMMITTEE
(NNOC), CALIFORNIA NURSES ASSOCIATION/NATIONAL
NURSES ORGANIZING COMMITTEE (CNA/NNOC)
and CALIFORNIA NURSES ASSOCIATION (CNA),
NATIONAL NURSES UNITED, et al.**

ORDER APPROVING SETTLEMENT AGREEMENTS

On March 18, 2020, the parties in this case filed a Joint Motion to Approve Settlement Agreements that will resolve trial litigation that has been in progress since February 29, 2016.² For the reasons set forth below, I grant the parties' joint motion and approve the settlements discussed herein. The same day, the General Counsel filed an unopposed motion to reopen the record to admit revised formal documents and the index thereto, which is hereby granted and the amended exhibits (revised GC Exhibit 1.2 and GC Exhibits 1.1307-1.1320) are hereby admitted.

The Settlement Agreement of Allegations against CHSI and CHSPSC and Guarantee of Charged Party Hospital Remedies requires my signature. I have signed this document and attached it to this order.

¹ The following cases are collectively referred to as CHS2: Cases 08-CA-117890, 08-CA-124398, 08-CA-131772, 08-CA-144212, 08-CA-153759, 08-CA-166039, 08-CA-130717, 31-CA-116300, 31-CA-119831, 31-CA-124540, 31-CA-133880, 31-CA-153504, 10-CA-094403, 10-CA-110743, 10-CA-112255, 10-CA-116246, 21-CA-121480, 21-CA-124295, 21-CA-134774, 21-CA-143512, 10-CA-117698, 10-CA-121156, 10-CA-126416, 10-CA-124354, 32-CA-120642, 32-CA-124332.

² The parties have also filed a joint motion to approve settlement agreements that would resolve CHS2 (Cases 08-CA-117890, et al.), a consolidated case pending before Administrative Law Judge Geoffrey Carter that began litigation in March 2017.

Background

In the consolidated complaint at issue in this case, the General Counsel has alleged that the following six hospitals committed various violations of the National Labor Relations Act: Affinity Medical Center (Affinity); Barstow Community Hospital (Barstow); Bluefield Regional Medical Center (Bluefield); Greenbrier Valley Medical Center (Greenbrier); Fallbrook Hospital (Fallbrook); and Watsonville Community Hospital. The General Counsel further alleged that Community Health Systems Professional Services Corporation, LLC (CHSPSC) directly participated in certain allegations. Broadly speaking, the General Counsel alleged that the hospitals engaged in the following types of unfair labor practices:³

Maintaining/enforcing various unlawful work rules;

Coercively removing assignment despite objection forms (ADOs) and informing employees of same;

Engaging in unlawful surveillance of employees;

Prohibiting off-duty employees access to the parking lot and non-working areas;

Prohibiting employees from distributing literature;

Prohibiting employees from talking about the Union;

Denying employees Weingarten rights;

Threatening employees with reprisal;

Unlawfully disciplining employees;

Failing to transfer employees;

Unilaterally changing employee working conditions without notifying the Charging Party and affording an opportunity to bargain about the decision and/or its effects;

Failing/refusing to bargain over workplace changes and discipline;

Failing/refusing to provide, or unreasonably delaying in providing, information requested by the Charging Party;

Maintaining a baseless and retaliatory lawsuit;

³ The specific complaint allegations vary by hospital. The list of allegations here describes the range of allegations at issue (combining all allegations against all hospitals).

Failing and refusing to bargain in good faith for a period of time.

The General Counsel included Respondents Community Health Systems Incorporated (CHSI) and CHSPSC in the complaint as alleged single/joint employers.

Trial in this case began on February 29, 2016, and we completed 56 days of trial. I closed the record on May 24, 2018, and set a briefing schedule. I suspended the briefing schedule to permit the parties to engage in settlement discussions. The ensuing settlement discussions were lengthy and complex but the parties, to their credit, have worked out settlement agreements that resolves this matter.

Proposed Settlement Agreements

In their joint motion, the parties presented the following proposed settlement agreements:

Informal Settlement Agreement with Respondents Affinity, Barstow, Bluefield, Fallbrook, Greenbrier and Watsonville and Combined Notices

Settlement Agreement of Allegations against CHSI and CHSPSC and Guarantee of Charged Party Hospital Remedies

Non-Board Settlement Agreement between Affinity and NNOC

Non-Board Settlement Agreement between Barstow and NNOC

Non-Board Settlement Agreement between Watsonville and NNOC

Collectively, the proposed settlement agreements resolve multiple complaint allegations, establish liability and/or guarantees, and establish remedies (including backpay where appropriate and agreed to by the parties).

Applicable Legal Standard

Since this case remains under my jurisdiction and the parties have presented proposed settlement agreements, I must evaluate whether the settlement agreements should be approved under the applicable legal standard.

In *UPMC*, 365 NLRB No. 153 (2017), the Board announced that it was returning to the practice of analyzing all settlement agreements under the reasonableness standard set forth in *Independent Stave*, 287 NLRB 740 (1987). The *Independent Stave* standard requires the judge to examine all the surrounding circumstances to determine whether a proposed settlement agreement is reasonable, including considering the following factors:

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

UPMC, 365 NLRB No. 153, slip op. at 7 (quoting *Independent Stave*); see also *McDonald's USA, LLC*, 368 NLRB No. 134, slip op. at 4 (2019) (applying *Independent Stave*).

Discussion and Analysis – Are The Proposed Settlement Agreements Reasonable under *Independent Stave*?

I have reviewed the proposed settlement agreements that the parties have executed, and now consider whether the proposed agreements are reasonable under the *Independent Stave* standard.

Independent Stave Factor One

The General Counsel, the Charging Parties and the applicable Respondents have each agreed to be bound by the proposed informal and formal settlement agreements and the proposed settlement agreement of allegations against CHSI and CHSPSC and guarantee of charged party hospital remedies. In addition, the Charging Parties and the applicable Respondents have agreed to be bound by the proposed non-Board settlement agreements, which the General Counsel has reviewed and does not oppose. The parties also have represented that the alleged discriminatees do not oppose the settlement agreements.

Based on the parties' positions and in the absence of any objections, I find that the first *Independent Stave* factor weighs in favor of approving the proposed settlement agreements.

Independent Stave Factor Two

The settlement agreements provide an substantial relief to the Charging Parties and alleged discriminatees, taking into account the nature of the alleged violations, the risks inherent in litigation and the stage of litigation. Although I had closed the record in this case, without settlement the case would be far from over. The parties would need to

write extensive briefs and await a lengthy decision with the potential for appeals and compliance matters.

Given the uncertainty of the outcome, the parties have reasonably opted to work out a considered compromise that will provide substantial relief. The relief includes (among other aspects): the posting, mailing, and reading of notices that include cease-and-desist language; affirmative remedies; backpay and other monetary relief; and a guarantee of remedies. I have reviewed the settlement terms and find them to be reasonable given the posture of this case, and accordingly I find that *Independent Stave* factor two favors approving the proposed settlement agreements. See *Mine Workers (Island Creek Coal)*, 302 NLRB 949, 949-950 (1991) (approving a proposed formal settlement agreement that included a non-admissions clause and may not have included all relief that could be awarded if the General Counsel prevailed after full litigation, explaining that “the settlement was the result of a compromise prior to a final adjudication on the merits” and would effectuate the purposes of the Act).

Independent Stave Factor Three

I find that *Independent Stave* factor three favors approval of the proposed settlement agreement. There are no allegations or evidence of any fraud, coercion or duress by any party in reaching the proposed settlement agreements.

Independent Stave Factor Four

There have been prior unfair labor practice findings against Respondents Affinity, Fallbrook, and Barstow. I note, however, that both Affinity and Fallbrook have closed, thus there is no risk of future violations at those hospitals. I also have not been advised of any evidence that Respondents have breached previous settlement agreements resolving unfair labor practices.⁴ Accordingly, I find that *Independent Stave* factor four favors approving the proposed settlement agreements.

Conclusion

After considering the joint motion, the proposed settlement agreements, the surrounding circumstances, and each of the *Independent Stave* factors, I find that the proposed settlement agreements are reasonable and meet the *Independent Stave* standard for approval. Accordingly, I hereby approve the settlement agreements in this case and enter the following:

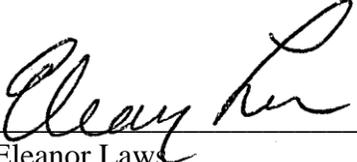
⁴ As an aside, I note that the Board has held that a settlement agreement with a non-admissions clause does not have probative value in establishing that a violation of the Act has occurred, and thus may not be relied on to establish a proclivity to violate the Act. See *Bodega Latina Corporation d/b/a El Super*, Case 28-CA-170463, unpublished slip op. at 4, 2019 WL 2435789 (June 10, 2019); *Brotherhood of Teamsters, Local 70*, 191 NLRB 11, 11 (1971).

ORDER

With good cause being shown, I hereby GRANT the parties' joint motion to approve the settlement agreements. The trial record is hereby closed and this case is hereby remanded to the Regional Director(s) for further processing consistent with the terms of the settlement agreements.

IT IS SO ORDERED.

Dated: March 19, 2020
Washington, D.C.



Eleanor Laws
Administrative Law Judge

Served by email upon the following:

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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT OF ALLEGATIONS AGAINST COMMUNITY HEALTH SYSTEMS,
INC. AND CHSPSC, LLC AND GUARANTEE OF CHARGED PARTY HOSPITAL
REMEDIES

IN THE MATTER OF

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

Cases 08-CA-117890
08-CA-124398,
08-CA-131772,
08-CA-144212,
08-CA-153759,
08-CA-166039

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

Case 08-CA-130717

HOSPITAL OF BARSTOW, INC., d/b/a BARSTOW COMMUNITY HOSPITAL, COMMUNITY HEALTH SYSTEMS, INC., and/or COMMUNITY HEALTH SYSTEMS PROFESSIONAL SERVICES CORPORATION, LLC, et al., a single employer and/or joint employers

Cases 31-CA-116300
31-CA-119831
31-CA-124540
31-CA-133880
31-CA-153504

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

Cases 10-CA-094403
10-CA-110743
10-CA-112255
10-CA-116246

ABS 3/12/2020
BIA 3/11/20
~~Y~~ 3/4/20
DSE 2/26/2020
M2 3/10/2020

FALLBROOK HOSPITAL
CORPORATION, d/b/a FALLBROOK
HOSPITAL, COMMUNITY HEALTH
SYSTEMS, INC., and/or COMMUNITY
HEALTH SYSTEMS PROFESSIONAL
SERVICES CORPORATION, LLC, et al., a
single employer and/or joint employers

Cases 21-CA-121480
21-CA-124295
21-CA-134774

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

Cases 10-CA-117698
10-CA-121156
10-CA-126416
10-CA-124354

WATSONVILLE HOSPITAL
CORPORATION d/b/a WATSONVILLE
COMMUNITY HOSPITAL,
COMMUNITY HEALTH SYSTEMS, INC.,
and/or COMMUNITY HEALTH
SYSTEMS PROFESSIONAL SERVICES
CORPORATION, LLC, et al., a single
employer and/or joint employers

Cases 32-CA-120642
32-CA-124332

Subject to the approval of the Administrative Law Judge Eleanor Laws (Administrative Law Judge) for the National Labor Relations Board, the Charging Parties set forth below, CHSPSC, LLC ("CHSPSC") and Community Health Systems, Inc. ("CHSI") **HEREBY AGREE TO SETTLE ALL ALLEGATIONS IN THE ABOVE MATTERS AGAINST CHSPSC AND CHSI IN THE SECOND AMENDED CONSOLIDATED COMPLAINT ("COMPLAINT") AS FOLLOWS:**

BA 3/11/20

3/4/20

ABS 3/12/2020

DS 2/26/2020

ND 3/10/2020

CHSPSC shall be the guarantor of the remedies set forth in the Informal Settlement Agreements and Non-Board Settlement Agreements ("Hospital Settlements") entered into by the Charged Party Hospitals herein (DHSC, LLC d/b/a Affinity Medical Center, Hospital of Barstow, Inc. d/b/a Barstow Community Hospital, Bluefield Hospital Company, LLC d/b/a Bluefield Regional Medical Center, Fallbrook Hospital Corporation d/b/a Fallbrook Hospital, Greenbrier VMC, LLC d/b/a Greenbrier Valley Medical Center, and Watsonville Hospital Corporation d/b/a Watsonville Community Hospital) with respect to the allegations presented against Charged Party Hospitals in the above cases by the Charging Party signatories below.

As the guarantor, CHSPSC must ensure that the Charged Party Hospitals take all steps necessary to comply with any remedies referred to above, including providing for any such remedies themselves, if the Charged Party Hospitals fail to do so, subject to CHSPSC's compliance rights to contest its ability to effectuate non-monetary remedies for divested Charged Party Hospitals. CHSI accepts these terms and has appointed CHSPSC to be its agent with respect to effectuating compliance. All allegations against CHSPSC and CHSI herein shall be dismissed, as under the circumstances further litigation would not effectuate the policies of the Act. CHSI and CHSPSC shall remain in the case as parties for the purpose of ensuring enforcement of this Settlement of Allegations against Community Health Systems, Inc. and CHSPSC, LLC and Guarantee of Charged Party Hospital Remedies.

The above-stated guarantee shall not constitute a formal order or formal settlement stipulation. The approved withdrawal of a Complaint allegation against a Charged Party Hospital shall extinguish the remedial guarantee related to such Complaint allegation. Prior to such approved withdrawal, if a Charged Party Hospital breach occurs, the corresponding dismissed allegations against CHSPSC and CHSI shall not reissue and the above-stated guarantee shall remain in effect. The above-stated guarantee shall not apply to financial amounts owed because of future unfair labor practices by the Charged Party Hospitals.

If the General Counsel alleges that any Charged Party Hospital breaches any terms of the Hospital Settlements, including failure to pay the remedies owed, the General Counsel will address the breach, and the guarantee obligation to satisfy all remedies, through the negotiated process specified in the informal settlement agreements. CHSPSC and CHSI will continue to be involved in those proceedings pursuant to the guarantee. The determination of the existence of an alleged breach of this guarantee settlement shall be governed by the same process that governs an alleged breach by a Charged Party Hospital.

BA 3/11/20

~~BA~~ 3/4/20

ABS 3/12/2020

DS 2/26/2020

MD 3/10/2020

CHSPSC, LLC d/b/a Community Health Systems Professional Services Corporation

By [Signature] 3/3/20
Name and title: Date

Community Health Systems, Inc.
By [Signature] 3/4/20
Name and title: Date
Leonard W. Sachs
Attorney

National Nurses Organizing Committee (NNOC); The California Nurses Association/National Nurses Organizing Committee (CNA/NNOC); and California Nurses Association, National Nurses United (CNA)

By [Signature] 3/10/2020
Name and Title: Date
Nicole Daro, Legal Counsel

General Counsel

By [Signature] 3/12/2020
~~Nora McGinley, Acting Regional Director~~ Date
~~Region 8 (with authority on behalf of all applicable Regional Directors)~~
Aaron B. Sukert, Counsel for General Counsel

Approved:

By [Signature] 3/19/20
Judge Eleanor Laws Date
Administrative Law Judge
National Labor Relations Board

BA 3/11/20
ABS 3/12/2020
[Signature] 2/24/2020
ND 3/10/2020