

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

BAYONNE MEDICAL CENTER

and

Cases 22-CA-28919
22-CA-28959
22-CA-28960

HEALTH PROFESSIONAL AND
ALLIED EMPLOYEES, AFT, AFL-CIO

**ORDER CONSOLIDATING CASES,
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

Health Professional and Allied Employees, AFT, AFL-CIO, herein called HPAE or the Union, has charged that Bayonne Medical Center, herein called Bayonne or Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151 et seq., herein called the Act. Based thereon, and in order to avoid unnecessary costs or delay, the General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, ORDERS that these cases be consolidated.

These cases having been consolidated, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations, issues this Consolidated Complaint and Notice of Hearing and alleges as follows:

1. (a). The charge in Case 22-CA-28919 was filed by the Union on May 26, 2009, and a copy was served by regular mail on Respondent on May 27, 2009.

(b). The charge in Case 22-CA-28959 was filed by the Union on June 14, 2009, and a copy was served by regular mail on Respondent on June 15, 2009.

(c). The charge in Case 22-CA-28960 was filed by the Union on June 14, 2009, and a copy was served by regular mail on Respondent on June 15, 2009.

2. At all material times Respondent, a corporation, with an office and place of business in Bayonne, New Jersey, herein called Respondent's Bayonne facility, has been engaged in the operation of a hospital providing inpatient and outpatient medical care.

3. During the preceding twelve months, Respondent, in conducting its business operations described above in paragraph 2, derived gross revenue in excess of \$250,000. During the same period of time Respondent purchased and received at its Bayonne, New Jersey facility, goods valued in excess of \$5,000 directly from points outside the State of New Jersey

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

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

6. At all material times the following individual held the position set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act.

Daniel Kane – President and Chief Executive Officer
Chris Spengler - Human Resources Assistant Manager

7. On or about May 20, 2009 Respondent terminated its employee, Louise Piel.

8. Respondent engaged in the conduct described above in paragraph 7 because the named employee of Respondent joined, supported and assisted the Union, and to discourage employees from engaging in these activities.

9. On or about June 5, 2009, Respondent promised its employees benefits if they did not support the recommendation of their Union and, instead, voted to accept the Employer's final offer in negotiations.

10. The following employees of Respondent, employed at Respondent's Bayonne facility, herein called the Units, constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

- a) All full-time and regular part-time registered nurses;
- b) All full-time and regular part-time professional employees;
- c) All full-time and regular part-time service employees;
- d) All full-time and regular part-time technical employees; and
- e) All full-time and regular part-time business office clerical employees

11. For many years and at all material times, the Union has been the designated exclusive collective-bargaining representative of the Units and has been recognized as such by Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from June 1, 2009 through May 31, 2012.

12. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Units.

13. On or about June 5, 2009, Respondent bypassed the Union and dealt directly with its employees in the Units by offering employees two weeks pay if they accepted Respondent's final offer in negotiations.

14. By the conduct described above in paragraph 9, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

15. By the conduct described above in paragraphs 7 and 8, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

16. By the conduct described above in paragraph 13, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

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

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 7 and 8, the General Counsel seeks an Order requiring that the Respondent pay interest on any back pay or other monetary awards on a compounded, quarterly basis. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on December 2, 2009 at 9:30 am and on consecutive days thereafter until concluded, a hearing will be conducted in the Veterans Administration Building, 20 Washington Place, 5th Floor, Newark, New Jersey 07102 before an Administrative Law Judge of the National Relations Board. At the hearing,

Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

ANSWER REQUIREMENT

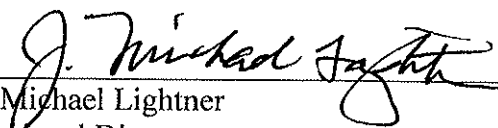
Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before November 6, 2009, or postmarked on or before November 5, 2009.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's e-filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than two hours after 12 noon (Eastern time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented

parties or by the party if not represented. See Sections 102.21. If an answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-Filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must still be accomplished in accordance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

Dated at Newark, New Jersey, this 23rd day of October, 2009.



J. Michael Lightner
Regional Director
National Labor Relations Board
Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102

Attachments

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

NATIONAL LABOR RELATIONS BOARD
NOTICE

Case No. 22-CA-28919
22-CA-28959
22-CA-28960

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

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be served on the Regional Director;
- (2) Grounds thereafter must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertain in advance by the requesting party and set forth in the request; **and**
- (5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

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

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