The Fremont-Rideout Health Group d/b/a Fremont Medical Center and Rideout Memorial Hospital *and* California Nurses Association, AFL–CIO. Cases 20–CA–34194 and 20–CA–34227

August 27, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

On April 28, 2009, Administrative Law Judge William N. Cates issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party each filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board[1] has considered the decision and the record in light of the exceptions and briefs,[2] and has decided to affirm the judge's rulings, findings,[3] and conclusions and to adopt the recommended Order.

REMEDY

For the reasons set forth in *Caterair International*, 322 NLRB 64 (1996), we find that an affirmative bargaining order is warranted in this case as a remedy for the Respondent's unlawful withdrawal of recognition. The Board has held that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees." Id. at 68.[4] In several cases, however, the U.S. Court of Appeals for the District of Columbia Circuit has required that the Board justify, on the facts of each case, the imposition of such an order. See, e.g., *Vincent Industrial Plastics v. NLRB*, 209 F.3d 727 (D.C. Cir. 2000); *Lee Lumber & Bldg. Material v. NLRB*, 117 F.3d 1454, 1462 (D.C. Cir. 1997); and *Exxel/Atmos v. NLRB*, 28 F.3d 1243, 1248 (D.C. Cir. 1994). Although the judge recommended an affirmative bargaining order to remedy the Respondent's unlawful withdrawal of recognition, he did not justify imposition of such an order to the extent required by the U.S. Court of Appeals for the District of Columbia Circuit. Thus, for the reasons stated below, we agree with the judge that an affirmative bargaining order is warranted on the facts of this case.[5]

In *Vincent*, supra, the court summarized its requirement that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: '(1) the employees' Section 7 rights; (2) whether other purposes of the Act over-

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed 77 U.S.L.W. 3670 (U.S. May 22, 2009) (No. 08-1457); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), rehearing denied No. 08-1878 (May 20, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petitions for rehearing denied Nos. 08-1162, 08-1214 (July 1, 2009).

[2] In its reply brief, the Respondent moved to strike a portion of the General Counsel's answering brief. The General Counsel filed a response to the Respondent's motion to strike, and the Respondent filed a reply to the General Counsel's response. After consideration of the motion and briefs, we deny the motion as the General Counsel's answering brief is responsive to arguments raised by the Respondent's exceptions.

[3] For institutional reasons, Member Schaumber joins his colleague in adopting the judge's finding of 8(a)(5) violations, as those findings are not inconsistent with extant precedent. At the end of the day, Member Schaumber agrees that *Levitz Furniture Co. of the Pacific*, 333 NLRB 717 (2001), cannot fairly be read to create an affirmative obligation on the part of a union confronted with a withdrawal of recognition to notify the employer that the union possesses evidence tending to negate the employer's evidence of loss of majority support. Nonetheless, he notes that *Levitz* does state, albeit in dicta, that "had the Union not asserted that it had contrary evidence, the Respondent would have had a good case, based on the petition it received from a majority of the unit employees, that the Union had, in fact, lost majority support." *Levitz*, supra at 725. That particular passage is obviously difficult to square with a reading of *Levitz* that renders a union's nonassertion of contrary evidence irrelevant; after all, if the only issue is whether, in fact, there was a loss of majority support when the employer withdrew recognition, why would the majority in *Levitz* state that a union's failure to come forward would create a "good case"? Nonetheless, Member Schaumber does not believe that it would be appropriate to divine from that single *Levitz* sentence a safe harbor or affirmative defense based upon a failure to disclose, particularly where, as here, the Respondent was on notice that the Union was seeking signatures on reaffirmation cards, never inquired as to the status of those efforts, and instead simply announced that it was withdrawing recognition based upon the petition. He leaves to another case whether such a disclosure obligation ought to be imposed and under what circumstances.

[4] Member Schaumber does not agree with the view expressed in *Caterair International* that an affirmative bargaining order is "the traditional, appropriate remedy" for an 8(a)(5) violation. He agrees with the District of Columbia Circuit that a case-by-case analysis is required to determine if the remedy is appropriate. He recognizes, however, that the view expressed in *Caterair International* represents extant Board law. See *Flying Foods*, 345 NLRB 101, 109 fn. 23 (2005), enfd. 471 F.3d 178 (D.C. Cir. 2006); and *Alpha Associates*, 344 NLRB 782, 787 fn. 14 (2005).

[5] In adopting the judge's recommended affirmative bargaining order, we do not rely, as the judge did, on alleged unfair labor practices found by Administrative Law Judge John McCarrick in a separate case involving these parties, as exceptions to Judge McCarrick's findings are currently pending before the Board.

ride the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act.'" Id. at 738.

Consistent with the court's requirement, we have examined the particular facts of this case as the court requires and find that a balancing of the three factors warrants an affirmative bargaining order.

(1) An affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining by the Respondent's unlawful withdrawal of recognition and resulting refusal to collectively bargain with the Union. At the same time, an affirmative bargaining order, with its attendant bar to raising a question concerning the Union's continuing majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued union representation because the duration of the order is no longer than is reasonably necessary to remedy the ill effects of the violation. Thus, restoring the status quo ante and requiring the Respondent to bargain with the Union for a reasonable time will vindicate the employees' Section 7 right to union representation. It will also give employees an opportunity to fairly assess the Union's effectiveness as a bargaining representative and determine whether continued representation by the Union is in their best interests.

(2) An affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. That is, it removes the Respondent's incentive to delay bargaining in the hope of discouraging support for the Union. It also ensures that the Union will not be pressured by the Respondent's withdrawal of recognition to achieve immediate results at the bargaining table following the Board's resolution of the Union's unfair labor practice charges and issuance of a cease-and-desist order. Providing this period of insulated bargaining will also afford employees a fair opportunity to assess the Union's performance in an atmosphere free of the Respondent's unlawful conduct.

(3) A cease-and-desist order, alone, would be inadequate to remedy the Respondent's withdrawal of recognition and refusal to bargain with the Union. It would allow another challenge to the Union's majority status before a reasonable period of time for bargaining has passed, and before the taint of the Respondent's previous unlawful withdrawal of recognition has dissipated. That would be particularly unfair in light of the fact that the litigation of the Union's charges took several months and, as a result, the Union needs a reasonable period of time to reestablish its representative status with unit employees. Moreover, the Respondent's unilateral changes subsequent to its unlawful withdrawal of recognition—increasing wages and benefits for unit members—are likely to have tainted employee disaffection with the Union arising during that period. In light of these circumstances, permitting a decertification petition to be filed immediately might very well allow the Respondent to profit from its own unlawful conduct. We find that these circumstances outweigh the temporary impact the affirmative bargaining order might have on the exercise of the rights of employees who oppose continued union representation.

For all the foregoing reasons, we find that an affirmative bargaining order, with its temporary decertification bar, is necessary to remedy the violations in this case.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Fremont-Rideout Health Group d/b/a Fremont Medical Center and Rideout Memorial Hospital, Yuba City and Marysville, California, respectively, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. August 27, 2009

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Cecily A. Vix, Esq. and *Kathleen C. Schneider, Esq.,* for the Government.[1]

Laurence R. Arnold, Esq. and *Jean C. Kosela, Esq.,* for the Hospital.[2]

Pamela Allen, Esq., for the Charging Party.[3]

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. These are withdrawal of recognition and unilateral changes in wages, hours, and other conditions of employment cases. I heard these cases in trial in Marysville, California, on February 23 and 24, 2009. The cases originate from charges filed by the California Nurses Association, AFL–CIO (the Union) on November 21, 2008, in Case 20–CA–34194 and on December 16, 2008, in

[1] I shall refer to counsel for the General Counsel's as counsel for the Government or the Government.

[2] I shall refer to counsel for the Hospital as counsel for the Hospital or the Hospital.

[3] I shall refer to counsel for the Charging Party as counsel for the Union or the Union.

Case 20–CA–34227 against The Fremont-Rideout Health Group d/b/a Fremont Medical Center and Rideout Memorial Hospital (the Hospital). The prosecution of these cases was formalized on February 4, 2009, when the Regional Director for Region 20 of the National Labor Relations Board (the Board), acting in the name of the Board's General Counsel, issued an order consolidating cases, consolidated complaint and notice of hearing (the complaint) against the Hospital.

The complaint alleges on or about November 14, 2008, the Hospital withdrew recognition of the Union as the exclusive representative of the unit [a full description of the unit is set forth elsewhere herein]. It is also alleged that from about November 17, 2008, to January 2009 the Hospital: granted two 5-1/2-percent wage increases to unit employees; reduced unit employees' contributions for health premiums by 50 percent; waived 100 percent of health insurance deductibles for unit employees; matched by 33-1/3 cents on the dollar, up to the first 3 percent of a unit employee's contribution to their 403(b); and, implemented a policy of cashing out paid time off, up to 80 hours per calendar year for unit employees. It is alleged that from an unknown date in December 2008 through an unknown date in January 2009, the Hospital: implemented new emergency department protocols; reinstated a rapid medical evaluation process; and, added an intake nurse assignment in the interview area of the emergency department lobby without bargaining with the Union about the effects of these changes. Finally, it is alleged since about November 18, 2008, and contrary to past practice, the Hospital has prohibited union representatives from accessing the Hospital's properties and facilities. It is alleged the Hospital's actions violate Section 8(a)(5) and (1) of the National Labor Relations Act (the Act).

The Hospital, in a timely filed answer to the complaint, admitted various allegations in the complaint, but denied having violated the Act in any manner alleged in the complaint.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. I carefully observed the demeanor of the witnesses as they testified. I have studied the whole record, the posttrial briefs, and the authorities cited therein. Based on more detailed findings and analysis below, I conclude and find the Hospital violated the Act substantially as alleged in the complaint.

FINDINGS OF FACT

I. JURISDICTION, LABOR ORGANIZATION, AND SUPERVISOR/AGENCY STATUS

The Hospital, a California nonprofit corporation, with offices and places of business in Marysville and Yuba City, California, has been engaged in the operation of hospitals and medical clinics providing inpatient and outpatient medical care. During the past 12 months, the Hospital, in conducting its business operations, derived gross revenues in excess of $250,000 and purchased and received goods valued in excess of $5000 which originated outside the State of California. The Hospital admits, and I find, it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The parties admit, the evidence establishes, and I find, the Union is a labor organization within the meaning of Section 2(5) of the Act.

Theresa Hamilton is chief executive officer, Tresha Moreland is vice president human resources, Andy Mesquit is director of human resources, Steve Booth is director of emergency services, and Tracie Sizemore and Brandi Cherry are emergency department supervisors for the Hospital. Each are admitted supervisors and agents of the Hospital within the meaning of Section 2(11) and (13) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

1. Background

The Hospital operates hospitals providing acute and outpatient care services. The facilities involved herein are Fremont Medical Center located in Yuba City, California, and Rideout Memorial Hospital located in Marysville, California. Rideout Memorial has an emergency room but Fremont Medical Center does not. Fremont Medical Center has a labor and delivery department but Rideout Memorial does not; otherwise, the two facilities offer the same services. The two hospitals are approximately 2-1/2 miles apart.

The Union was certified on September 20, 2006, as the exclusive representative of the Hospital's approximately 450 full-time, regular part-time and per diem registered nurses who provide direct patient care at the Hospitals' above-described locations. As earlier noted, a full description of the unit is set forth elsewhere in this decision.

The parties commenced negotiations for a first collective-bargaining agreement in late November or early December 2006. Labor Representative Glen Sharp, at pertinent times herein, served as chief negotiator for the Union. The parties actively negotiated for a little over a year. A representation petition, Case 20–RD–2448, was filed on October 12, 2007, and remained pending but blocked by unfair labor practice charges (Cases 20–CA–33520, 20–CA–33510, and 20–CA–33586) until the petition was withdrawn on November 21, 2008. It is stipulated that at the January 8, 2008, bargaining session, the Hospital made, in writing, its last, best, and final offer. The parties stipulated the Union thereafter engaged in a strike on March 21, 2008, and made its last offer for the bargaining unit to the Hospital in writing on May 14, 2008. The Hospital in a May 21, 2008 letter rejected the Union's last offer. Thereafter, the Union made information requests and communicated with the Hospital regarding changes in terms and conditions of employment of unit employees, requesting to bargain about such changes and related issues.

The parties stipulated there have been no bargaining sessions held on a collective-bargaining agreement for the unit employees after January 8, 2008, and no strikes after March 21, 2008.

A representation petition, Case 20–RD–2468, was filed on November 17, 2008, and withdrawn on November 21, 2008.

On November 13, 2008, the Hospital received certain evidence it asserts established the Union had lost majority status. On November 14, 2008, the Hospital notified the Union in writing it had been presented with a petition signed by a major-

ity of the unit employees requesting the Hospital withdraw recognition of the Union as the exclusive representative for the unit employees. The signatures on the petition had been utilized in support of the RD petitions referenced herein. The Hospital stated in its November 14, 2008 letter to the Union that faced with actual evidence of the Union's loss of majority status, it was withdrawing recognition from the Union as the exclusive representative of the unit employees "effective immediately."

On November 17, 2008, Hospital CEO Hamilton notified unit employees in writing the Hospital had withdrawn recognition of the Union on November 14, 2008, as their exclusive representative and the Hospital announced the implementation of wage increases and other beneficial enhancements of working conditions.

It is stipulated the number of employees in the unit who met the hours and specified weeks of work requirements immediately preceding November 14, 2008, was 452. It is further stipulated that as of November 14, 2008, 234 employees in the unit had signed the antiunion petition. It is undisputed that of the 234 signatures on the antiunion petition, 112 were 7 months old or older and of those 112 signatures, 72 were over a year old. It is undisputed the Union did not notify the Hospital prior to November 14, 2008, that it had signature cards from 18 unit employees revoking their signatures on the antiunion petition and reaffirming their support for the Union. The Hospital acknowledges it was aware at the time it withdrew recognition the Union was circulating revocation and reaffirmation cards among unit employees. The Government notified the Hospital of the revocation and reaffirmation cards on December 15, 2008, and the Hospital first saw the cards at trial herein.

2. The 18 executed revocation and reaffirmation cards

The question of whether the Union had lost the support of a majority of the unit employees on November 14, 2008, and whether the Hospital could validly withdraw recognition from the Union on that date turns on the validity or authenticity of the 18 executed revocation cards. The Government contends 18 unit employees who had previously signed the antiunion petition had after signing the petition but before November 14, 2008, revoked their signatures on the antiunion petition and reaffirmed their support for the Union. The Hospital contends it was never notified of any revocations or reaffirmations before it withdrew recognition on November 14, 2008.

The Union, fully aware of the antiunion petition and the representation filings, attempted through its organizers and unit employees to shore up its support. For example, Union Organizer Trena Camara testified she came to the Hospital after the representation election to continue to organize and work toward obtaining "a good first collective bargaining agreement." Camara also testified the Union actively sought to have unit employees sign cards reaffirming their support for the Union and revoking their signatures on the antiunion petition. Camara conducted a meeting with certain unit employees on October 1, 2008, at which she gave instructions to employees in soliciting signature cards from their coworkers. She instructed those soliciting signatures to be courteous, never coercive, and to explain in detail what the card means and if a unit employee chose to sign a card have them fill it out legibly, sign, date, and return the card. Although a number of unit employees attended, Camara specifically recalled that Katherine Zubal and Glenda Hrones were present for this instructional meeting.

The signature cards utilized by the Union were green in color, and often referred to as "the green cards." The cards reflect:

> I, _____ (print name) hereby revoke my signature on any card, petition, or other document I may have signed at any time repudiating or disowning support for the California Nurses Association (CNA) as my representative with respect to the terms and conditions of my employment with the Fremont-Rideout Health Group and hereby affirm and/or reaffirm my support for CNA.
>
> Dated: _____ _____
> (signature)

Registered Nurse Rosanna Sanders testified that on about September 30 and October 15, 2008, she created approximately 65 flyers on each occasion to educate nurses in the emergency department and throughout the Hospital what the Union had done for them and why it was a good idea to keep the Union. Sanders placed the flyers in the mailboxes for unit employees as well as on bulletin boards and in employee restrooms.

The Hospital acknowledges being aware of the Union's efforts to have unit employees reaffirm support for the Union. In fact, the Hospital in a flyer dated October 7, 2008, in part, asked unit employees, why the Union was asking for signatures from nurses to reaffirm their support for the Union. The Hospital answered that question in its flyer by suggesting the Union was concerned by nurses who were trying to decertify the Union. The Hospital advised unit employees in the flyer they were under no obligation to sign anything reaffirming their support for the Union. [The flyer of the Hospital was offered by the Government as Exh. 33. I rejected the exhibit inasmuch as Hospital counsel acknowledged the Hospital was aware of the reaffirmation efforts of the Union. The Government asked that I reconsider my ruling and accept the exhibit. I am persuaded the exhibit casts additional light on the card signing events at the time in question. According, I grant the Government's request and accept GC Exh. 33.]

In light of the above, I examine the 18 executed cards. Union Organizer Camara met with certain nurses at the Hospital's Marysville, California location on November 6, 2008. Camara specifically met with registered nurses Antonietta Cabrera and Vivienne Tuekpe and explained the purpose of the signature cards telling them if they signed the cards they would be showing their support for the Union and would be removing their names from the decertification petition. Camara testified both of the nurses signed and dated the cards in her presence and returned the executed cards to her.

Camara testified on cross-examination that others were present when she spoke with Cabrera and Tuekpe. Camara was accompanied by Union Organizer Eleanor Godfrey. Camara stated unit employee Nancy Finlay was present and she believed Nilo Morga was also present.

Union Organizer Godfrey testified she was present on November 6, 2008, and "witnessed the entire process" of Cabrera

and Tuekpe signing the green cards. Godfrey testified, "[W]e told them about these revocation cards and asked if they would like to sign, and they said they did."

Registered Nurse Nancy Finlay testified she worked on November 6, 2008, and was present when Camara and Godfrey spoke with certain unit employees on that date.

The Hospital called Human Resources Compliance Analyst Kim Triplett who identified timecards for Nancy Finlay and Nilo Morga, which Hospital counsel, contends shows neither worked at the Hospital on November 6, 2008.

I am fully persuaded Cabrera's and Tuekpe's cards were executed by them on November 6, 2008, and they were advised of and knew the purpose for the cards at the time they signed and returned the cards to Union Organizer Camara. The timecards of Finlay and Morga do not require, and I do not make, any inference that Cabrera's and Tuekpe's cards are other than valid or that the cards were signed at any time or place other than indicated. Simply stated, I specifically credit Camara's and Godfrey's testimony regarding the signing of the two cards in question.

Registered Nurse Katherine Zubal testified she was trained by Union Representative Sharp to solicit unit employees to sign cards to revoke their signatures on the previously signed decertification petition and reaffirm support for the Union. Zubal solicited four unit employees to sign revocation cards.

Zubal spoke with Mandeep Nijjar on October 1, 2008, at the Hospital asking if she had an interest in signing a card for the Union. According to Zubal, Nijjar accepted a card which she reviewed, dated, signed in Zubal's presence, and returned to Zubal who in turn provided the card to the Union.

I credit Zubal's testimony and find Nijjar's card properly executed and valid. I reject the Hospital's contention Zubal's testimony should be disregarded because she recalled with great detail how individuals signed their cards but exhibited general vagueness with respect to other surrounding circumstances and events. Zubal impressed me as attempting to testify truthfully about the events in question and I credit her testimony.

Zubal spoke with unit employee Helen Santos at the Hospital on October 2, 2008, as Zubal was coming on shift and Santos was going off shift. Zubal said she did not know what Santos' position was on the Union so she explained what the cards were and asked if she wanted to sign one. Santos wanted to think about it because she was uncertain how long she might continue working for the Hospital but nonetheless took one of the cards. Zubal testified before Santos left work she came back and said she had signed the card and gave it to Zubal. Zubal looked at the card and observed it was filled out, dated (October 2, 2008), and signed. I find Helen Santos' card to be valid.

Zubal testified she encountered unit employee Parm Kaur on September 30, 2008, at the Hospital as Kaur was completing her shift for that day. Zubal asked Kaur if she wanted to sign a union card. According to Zubal, Kaur accepted, reviewed, dated, signed in Zubal's presence, and returned the card to Zubal. Zubal said she and Kaur had on several previous occasions discussed the Union. Zubal gave Kaur's executed card to the Union. I find Kaur's card valid.

Registered Nurse Art Orteza testified he overheard unit employees Kristin York and Jane Nu talking about whether York had signed the right form or card for the Union. Orteza said he jumped into the conversation and handed York the proper card which he called a confirmation card and which she called a revocation card. Orteza testified he observed York look at, sign, date (October 26, 2008), and return the card to him which he then gave to the Union. I credit Orteza's undisputed testimony and find York signed and dated the card as described by Orteza and is a valid card.

Registered Nurse Diane DeLange testified she obtained blank union cards from Union Representative Sharp who instructed her to be friendly and nonconfrontational when asking coworkers to reaffirm their support for the Union by signing one of the cards. DeLange solicited card signers in late September and October 2008. DeLange said she specifically met with Nissa Cardenas between shifts at the Hospital on October 28, 2008. DeLange met with Cardenas and others inside the Hospital but moved to the Hospital's parking lot as the work shift changed. DeLange told the employees present she had green cards and asked if they knew what they were for. All present said they did and Cardenas asked for one of the cards to sign. DeLange gave Cardenas a card and watched as Cardenas filled out the card on that date, signed it in her presence, and returned the card to DeLange who gave it to the Union. I credit DeLange's undisputed testimony and conclude she has properly authenticated Cardenas' valid card.

Registered Nurse Darren Cordoza testified he was trained by one of the Union's organizers to solicit signature cards from employees who had signed the decertification petition. Cordoza stated that at work around noon on October 5, 2008, Lila Davalos, a friend of his, stated she had heard he was giving out signature cards confirming support for the Union. Cordoza said Davalos had in the past been antiunion but on this occasion she continued to ask questions giving him the impression she was becoming prounion. Cordoza did not give Davalos a card that day because she asked to meet with him later away from work and talk more. Cordoza said they met again twice on October 17, 2008, first at the Nurses Skills Fair. Cordoza said they went to lunch together and later to Starbucks for coffee where they talked more about the Union. Cordoza testified Davalos seemed more interested in signing a card for the Union at that point. Cordoza testified Davalos explained she had been called in by the Hospital on several grievance procedures and she now recognized the value of having union representation and explained she never wanted to be in a situation like that again without union representation. Cordoza gave Davalos a card which they read through and she signed, dated, and returned the card to him.

The Hospital presented a timecard for Davalos that indicated she did not work that day.

I credit Cordoza's testimony regarding the circumstances of Davalos signing a union card on October 17, 2008. I detected no indication from Cordoza, while he was testifying, that in any way indicated a faulty or inaccurate recollection on his part. I am fully persuaded Cordoza and Davalos met, and took the actions, as he testified, on October 17 notwithstanding the fact her timecard seems to reflect she was not working at the time of

the Skills Fair. I note the timecard in question is unclear on its face regarding the number of hours Davalos may have worked that week in question. Simply stated, I do not find the timecard entries on Davalos' timecard to detract from Cordoza's detailed testimony. I find Davalos' reaffirmation card to be authenticated and valid.

Registered Nurse Glenda Hrones testified Paulina Landa asked her for one of the green cards supporting the Union. Hrones gave Landa a card and testified a coworker, Maureen, not further identified, followed through with Landa. Hrones said Landa signed the card in her presence and Maureen later returned the card to Hrones. Hrones said she returned the card to the Union through Heather Avalos.

On cross-examination, Hrones did not recall saying in her pretrial Board affidavit that Landa signed the card in her presence and returned it to her right then rather than as she testified at trial that the card was returned to her by Maureen. Hrones attempted to explain there were two cards from Landa, one she thought might have been misplaced so a second card was signed.

While Hrones' testimony regarding Landa's card is not crystal clear, I am persuaded she saw Landa sign the card as she testified, on October 31, 2008. I find Landa's card valid. Hrones observed other union cards signed by other coworkers and those card signers, as will be set forth hereafter, corroborated Hrones' stated method of getting union cards signed.

Registered Nurse Lissette Willard testified she signed the decertification petition of the Union but "felt intimidated" when she did and thereafter wanted to take some action to revoke her signature. Willard spoke with coworker Maureen Bartlett who told her about the green signature cards, of which she could sign and revoke her signature from the document she signed decertifying the Union. Bartlett gave Willard a card which Willard read, dated, signed, and immediately returned to Bartlett on October 15, 2008. I credit Willard's uncontested testimony and find her card valid.

Registered Nurse Erin Erickson testified coworker Liz Hawkins gave her a card to reaffirm her support for the Union. Erickson read, signed, dated, and returned the card to Hawkins on September 26, 2008. Erickson testified she had signed the decertification petition "out of frustration" but in signing the union card she was reaffirming her support for the Union. I credit Erickson's undisputed testimony and find her card valid.

Registered Nurse Zubal testified she spoke with coworker Brent Penn about the union cards between shifts at the Hospital on September 30, 2008. Penn asked for a card to sign. Zubal testified Penn reviewed the card, signed it in her presence, and returned it to her and she in turn gave the card to the Union. Penn testified he signed a card reaffirming his support for the Union on September 30, 2008. Penn said Zubal did not need to say much about the card because he knew what it was for when he signed it. Penn said he signed the card because of some things that happened to a coworker causing him to conclude it would be better to have a union and have someone behind the employees. I find Penn's card valid.

Registered Nurse Christine Correa testified she was given green signature cards for the Union. She said she spoke with one nurse, Helena Domanski, in the recovery room about signing a card. According to Correa, Domanski had just come back to work from a leave of absence and was disgruntled about "something . . . 'going off'" in the operating room and said, "[T]his is when I feel like we need a union." Correa asked Domanski if she wanted to sign a union card and Domanski looked it over, signed, and returned the card to Correa. Domanski testified she signed, dated (October 1, 2008), and returned the card to Correa "because I like her and I was having some issue[s] with my supervisor." Domanski, on cross-examination, stated she did not sign the card because she wanted the Union.

I credit Domanski's testimony and find she signed her union card on October 1, 2008, in part because she was having issues with her supervisor. I do not find her testimony regarding whether she did or did not want the Union to detract from the validity of her card. She signed the union card, in part, because of concerns with working conditions. I find Domanski's card valid.

Registered Nurse Glenda Hrones testified she was contacted by Aman Johal in October 2008. Johal asked Hrones if she had cards supporting the Union, that four of the nurses would like her to come up to Four Main of the Marysville facility because they wanted to sign the cards. The other three were Mara Rzemieniak, Manisha Sharma, and Gurpreet Gill. Hrones took Johal and the other three nurses' signature cards. Hrones testified the four told her they wanted to sign the cards because they were disappointed with management at the Hospital.

Hrones testified nurses Gurpreet Gill, Aman Johal, Manisha Sharma, and Mara Rzemieniak filled out, signed, and dated the union cards in her presence at the Hospital on October 25, 2008. Sharma testified she signed her card to support the Union because she believed in strength in unity. Gill testified Hrones gave her a card which she read, signed, and returned to Hrones on October 25, 2008. Johal testified she signed the union card because she had a change of mind after having signed the decertification petition. Johal testified that after reading the union card given to her, as best she could recall by Hrones, she signed, dated, and returned the card immediately to Hrones. Rzemieniak testified she dated and signed her card reaffirming support for the Union after she had an opportunity to read it. I credit the testimony of Gill, Johal, Sharma, and Rzemieniak regarding their signing the union cards. Each appeared, as they testified, to be testifying truthfully. I find their cards valid.

Registered Nurse Hrones testified she spoke with Maribel Dela Cruz about the green signature card supporting the Union. Hrones testified Dela Cruz "said she wanted to sign the green card, she supported the Union." Hrones testified she later received Dela Cruz' signed card from nurse Beth Borremeo. Registered Nurse Dela Cruz testified she read and signed a card reaffirming her support for the Union on October 27, 2008. Dela Cruz first testified about a "lot of viciousness going on" at the Hospital and that nurses might be fired so she signed the card. On cross-examination, Dela Cruz said she signed the reaffirmation card for the Union because she could get fired if she did not. However, when thereafter recalled as a witness, Dela Cruz explained she decided to sign the card reaffirming her support for the Union because she had a bad work experi-

ence with a different hospital and decided to support the Union. Dela Cruz also testified that when she previously signed the decertification petition she did so because she was told if she did not she might be fired. Dela Cruz explained the comments about being fired referred to what might happen if she failed to sign the decertification petition not if she failed to sign the card reaffirming her support for the Union.

Although Dela Cruz at times appeared to be confused as she testified, I am, nevertheless, persuaded she did so truthfully. I find her card valid.

I am fully persuaded the 18 cards signed by the unit employees, as outlined above, revoking their signatures on the prior antiunion decertification petition are valid. I find the cards were signed by the 18 unit employees on the dates reflected thereon, and that the cards clearly expressed the unit employees were reaffirming their support for the Union. There is absolutely no showing that those soliciting signatures for the cards misrepresented the purpose or use to be made of the cards.

3. Withdrawal of recognition

Having found the 18 reaffirmation of the union cards valid, I turn to the issue of whether the Hospital lawfully withdrew recognition from the Union on November 14, 2008. First, I note it is clear, as set forth herein, the Hospital had before it, as of November 13, 2008, a petition reflecting 51.8 percent of the unit employees no longer desired to have the Union as their exclusive representative. It is also clear the Hospital announced its withdrawal of recognition of the Union effective November 14, 2008, based on the antiunion petition. It is also clear the Union did not present the Hospital with the 18 reaffirmation cards prior, or near in time, to the Hospital's announced withdrawal of recognition.

The Board in *Levitz Furniture Co. of the Pacific*, 333 NLRB 717 (2201), carefully outlined whether and under what circumstances an employer may lawfully withdraw recognition unilaterally from an incumbent union. In *Levitz,* supra at 717, the Board stated:

> We therefore hold that an employer may unilaterally withdraw recognition from an incumbent union only where the union has actually lost the support of the majority of the bargaining unit employees.
>
> Under our new standard, an employer can defeat a post withdrawal refusal allegation if it shows, as a defense, the union's actual loss of majority status.

The Board continued in *Levitz,* supra at 723:

> In our view, there is no basis in either law or policy for allowing an employer to withdraw recognition from an incumbent union that retains the support of a majority of the unit employees, even on a good-faith belief that majority support has been lost. Accordingly, we shall no longer allow an employer to withdraw recognition unless it can prove that an incumbent union has, in fact, lost majority status.

The Board in *Levitz,* supra at 723, also observed:

> The fundamental policies of the Act are to protect employees' right to choose or reject collective-bargaining representatives, to encourage collective bargaining, and to promote stability in bargaining relationships. If employees' exercise of the right to choose union representation is to be meaningful, their choices must be respected by employers. That means that employers must not be allowed to refuse to recognize unions that are, in fact, the choice of a majority of their employees. It also means that collective-bargaining relationships must be given an opportunity to succeed without continual baseless challenges. These considerations underlie the presumption of continuing majority status.

The Board in *Levitz,* supra at 725, emphasized:

> that an employer with objective evidence that the union has lost majority support—for example, a petition signed by a majority of the employees in the bargaining unit—withdraws recognition at its peril. If the union contests the withdrawal of recognition in an unfair labor practice proceeding, the employer will have to prove by a preponderance of the evidence that the union had, in fact, lost majority support at the time the employer withdrew recognition. If it fails to do so, it will not have rebutted the presumption of majority status, and the withdrawal of recognition will violate Section 8(a)(5) [footnote omitted].
>
> We think it entirely appropriate to place the burden of proof on employers to show actual loss of majority support.

The Board summed up its holdings in *Levitz,* supra at 725:

> . . . unless an employer has proof that the union has actually lost majority support, there is simply no reason for it to withdraw recognition unilaterally.

Did the Hospital demonstrate it had knowledge of an actual loss of majority status for the Union at the time it withdrew recognition from the Union on November 14, 2008? The evidence clearly establishes it did not. Of the 234 signatures on the petitions, 18 were revoked prior to the withdrawal of recognition. Subtracting those 18 signatures from the 234 on the anti-union petition results in only 216 valid signatures remaining. This is clearly less than 50 percent [47.8 percent] of the 452-employee bargaining unit.

Although the Hospital was aware the Union was attempting to gather revocations of the disaffection signatures, the Hospital did not ask for and was not offered proof of the revocations at the time it withdrew recognition. Did the Union have any obligation or burden to advise the Hospital of the 18 reaffirmation signature cards prior to the Hospital's withdrawing recognition or immediately after the Hospital announced its withdrawal? I find the Union had no burden nor was it obligated, in any way, to notify or advise the Hospital of the 18 cards in its possession which were executed prior to the withdrawal of recognition by the Hospital. I note the Hospital learned of the number of signatures on the antiunion petition one day and the very next day announced it was withdrawing recognition of the Union as the unit employees' exclusive representative. The Union had no time to respond even if it had desired to do so. In *HQM of Bayside, LLC*, 348 NLRB 758, 759 (2006), the Board stated:

> The Union does not have to demonstrate conclusively to the employer prior to withdrawal of recognition that it still has

> majority status. Rather, it is the employer's burden to show an actual loss of the union's majority support at the time of the withdrawal of recognition. [Footnote omitted.]

Examining the issue further, first I note, as earlier explained, the evidence the Hospital relied on in withdrawing recognition did not demonstrate the Union's actual loss of majority status because 18 of those signing the antiunion petitions had revoked their signatures and reaffirmed their support for the Union before the Hospital's withdrawal of recognition. Second, the Union was under no obligation to notify the Hospital, even if it had time and an opportunity, of its continued majority status by way of the reaffirmation cards it had obtained. The Hospital's withdrawal of recognition herein was at its peril. The Union contested the withdrawal of recognition and the Hospital failed to prove, at trial, by a preponderance of the evidence, the Union had in fact lost majority support at the time it withdrew recognition. Accordingly, I find the Hospital has not rebutted the Union's majority status, and its withdrawal of recognition on November 14, 2008, violates Section 8(a)(5) and (1) of the Act. The Hospital must recognize and bargain with the Union.

The Government argues the antiunion petition is also further invalid and may not be relied upon by the Hospital to establish a loss of majority status because 112 of the signatures predate November 14, 2008, by at least 7 months and of those 112 signatures, 72 were more than a year old. The Government argues Board law precludes such "stale" signatures from being relied upon to support a withdrawal of recognition.

The Hospital argues the Board has never adopted a time rule of "staleness," in the absence of changed circumstances, be it 7 months, a year, or more, to invalidate a disaffection petition signature.

I note the facts underlying the staleness issue are not in dispute and the parties addressed the issue in their posttrial briefs. I nevertheless find it unnecessary to reach the staleness of signatures' issue inasmuch as the Hospital never demonstrated a loss of majority status of the Union even including the signatures the Government contends were too stale to count.

4. The unilateral changes

As fully set forth elsewhere herein, it is alleged at paragraph 8 of the complaint the Hospital, without notice to the Union, and without an opportunity for the Union to bargain with the Hospital, unilaterally granted a wage increase, reduced health premiums for unit employees, waived 100 percent of health insurance deductible for unit employees, established a 403(b) matching funds program, and implemented a paid time-off cash-out policy of up to 80 hours per year.

Hospital CEO Hamilton, on November 17, 2008, sent a memorandum to all unit employees stating a majority of the unit employees had spoken and as a result thereof the Hospital had withdrawn "recognition of CNA as your collective bargaining representative, effective November 14, 2008." CEO Hamilton continued, "We are gratified that nurses have chosen a relationship that allows us to work together—collectively and individually—to our mutual benefit." CEO Hamilton continued:

> As you know, changes to the terms and conditions of employment were, until now, subject to the outcome of collective bargaining negotiations. Although we only recently received your petition we are already looking to the future. Precisely how we proceed from here must be carefully considered, as CNA has already announced that they will not accept your decision and will attempt to invalidate it. However, in order to maintain our competitiveness with other comparable area hospitals, we are implementing wage increases and benefit enhancements. Details are attached.

On November 18, 2008, the Hospital provided unit employees the details in a memorandum advising them specifically of changes it was implementing. The memorandum captioned "Wages, Benefits and Programs Available to Eligible Nurses" announced, in part: two 5-1/2-percent wage increases; it was matching 33-1/3 cents on the dollar, up to the first 3 percent of a unit employee's contribution to their 403(b); it was reducing unit employees' contributions for health premiums by 50 percent; it was waiving 100 percent of health insurance deductibles for unit employees; and, it was implementing a policy of cashing out paid time off, up to 80 hers per calendar year for unit employees.

The Hospital acknowledges it implemented the above changes in question on or after November 17, 2008, but contends, in its posttrial brief, the facts establish, with respect to each of the above-described changes, the Union not only had notice, but did in fact "thoroughly bargain with the [Hospital] to the point of impasse, regarding the terms of every change implemented."

With regard to the wage increases the Hospital asserts the increases were exactly as proposed by both the Hospital and Union and were contained in the Hospital's last, best, and final offer to the Union. The Hospital asserts the other changes at issue here were also set forth in its last, best, and final offer.

The Hospital, as noted elsewhere herein, made its last, best, and final offer to the Union on January 8, 2008. On May 14, 2008, the Union responded to the Hospital's last, best, and final offer with a "significantly modified" proposal of its own. The Union's cover letter with its lengthy proposal stated in part:

> This modified proposal is made in a good faith effort to resolve our remaining differences and as a renewed request for the [Hospital] to return to the bargaining table and negotiate a settlement which will benefit RNs, patients and the community.

The Hospital in a May 21, 2008 letter to the Union, acknowledged the Union's counterproposal and expressed appreciation for the Union's accepting the Hospital's proposals regarding education leave and Safe Floating, as well as certain other movements by the Union, but added:

> Apart from those changes, however, the [Hospital] sees little if anything in the latest document that is changed from CNA's previous proposals. It is abundantly clear that CNA has not agreed to the [Hospital's] Last, Best & Final Offers, and that, in addition to all the other outstanding fundamental differences, there are other remaining differences too numerous to recount in this letter. Thus, while your proposal did reflect some movement, it hardly resolves the remaining differences.

The Government and Hospital stipulated there have been no bargaining sessions held on a collective-bargaining agreement for the unit employees since January 8, 2008.

The Hospital asserts and the Government, in its posttrial brief, appears to concede the parties, were at impasse on the above changes. The Hospital argues that having reached a legitimate impasse in all areas after engaging in good-faith bargaining it was free to lawfully implement the proposals contained in its last, best and final offer regardless of the Union's status, and therefore could have effected the very changes alleged in the instant charges even absent clear proof that the Union had lost its majority status by November 2008.

The Government argues that because the Hospital could not lawfully withdraw recognition from the Union, the changes to unit employees' terms and conditions of employment implemented since the withdrawal are unlawful.

First, it is clear the Hospital, after it had withdrawn recognition from the Union, implemented the above outlined changes on or about November 17, 2008. Second, the Hospital gave no advance notice to the Union of its implementation of the changes. Third, I assume, without deciding, based on the Government conceding the point, that the parties were at impasse in negotiations as of May 2008. In light of all the facts, I am persuaded the Hospital may not unlawfully withdraw recognition from the Union and then attempt to have its unilateral actions after withdrawal of recognition be justified because the parties were at impasse before the unlawful withdrawal of recognition. Once the Hospital unlawfully destroyed its bargaining relationship with the Union by withdrawing recognition from the Union, it forfeited any good-faith impasse implementation of its proposals privilege. Stated differently, and in agreement with Government counsel, once the Hospital entered into a bad-faith posture by its unlawful withdrawal of recognition on November 14, 2008, the Hospital lost its privilege to unilaterally implement the terms of its last, best, and final offer. Accordingly, I find the Hospital violated Section 8(a)(5) and (1) of the Act when on November 17, 2008, it unilaterally implemented the changes addressed above without notice to, or bargaining with the Union, regarding the changes and the effects of the changes.

It is alleged at paragraph 8(b) of the complaint that from an unknown date in December 2008 through an unknown date in January 2009 the Hospital implemented, without affording the Union an opportunity to bargain with it about the effects of its new emergency department protocols, its reinstatement of a rapid medical evaluation process, and the adding of an intake nurse assignment in the interview area of the emergency department lobby. The parties stipulated that after the withdrawal of recognition the Hospital implemented emergency department changes through protocols, reinstated a rapid medical evaluation process, and added an intake nurse assignment to the department.

Hospital Director of Emergency Services Booth notified Union Representative Sharp in writing on November 11, 2008, the Hospital intended to implement the changes in question in the emergency department. Booth advised Sharp, "While these changes primarily relate to the classification of patients and initiation of assessment procedures, there will likely be an impact on the working conditions of bargaining unit nurses." Booth requested that Sharp:

> Please advise me at your earliest opportunity if you would like to meet to negotiate over the potential impact of the changes. As the ED Medical Staff is eager to implement these changes, I would appreciate your efforts to advise me of your wishes by Wednesday, November 19, 2008.

The Union responded in writing on November 17, 2008, expressing a desire to negotiate regarding the changes, requested information related to the changes, and suggested meeting dates for negotiations.

On November 18, 2008, Director of Emergency Services Booth notified the Union that in view of the fact the Hospital had withdrawn recognition of the Union on November 14, 2008, "we will not be negotiating with CNA regarding the proposed changes in the Emergency Department and will not be providing the information requested."

Union Representative Sharp testified regarding areas he would have sought effects bargaining on would have been how the Hospital came about deciding the new assignments, whether new work duties were added to the department, whether the new assignments were made by seniority or some other method and whether any bargaining unit work was taken away or eliminated by the changes.

Emergency Department Registered Nurse Sanders testified that prior to the new protocols being implemented on December 20, 2008, the nurses followed standing orders related to emergency room patient care. Sanders testified that pursuant to the standing orders the charge nurse would order certain procedures such as "some blood work, diagnostics such as x-rays, that sort of thing." Sanders stated that pursuant to the newly implemented protocols "initiatives are a little more comprehensive, they entail the diagnostics, the x-rays, the blood work, whether or not someone gets an IV, whether or not they get oxygen, whether or not they get a Foley catheter placed, whether or not their urine samples are required, much more indepth." According to Sanders, the staff nurses still clear procedures with the charge nurse but are called upon to make determinations and recommendations on a much wider range of procedures.

Emergency Department Registered Nurse Sanders testified that about January 26, 2009, an intake registered nurse position was added in the lobby of the emergency department. The intake nurse does "a quick registration that entails name and what they're there for." The intake nurse looks over the patient and "immediately" makes a determination as to the level of acuity for the patient. If the intake nurse determines a high acuity for the patient, the intake nurse escorts the patient immediately to a higher acuity level of the emergency department. Sanders testified that prior to this change, a patient came to the lobby of the emergency department proceeded to register and then waited until called to the triage nurse who took the patient's vitals and then decided what level of acuity the patient warranted. Sanders testified that when the intake nurse position was established, the Hospital did not add a new registered nurse to the emergency department. Sanders testified the triage process also changed in that under the new procedures a nurse prac-

titioner or physician's assistant was now involved in the process and "also writes initial orders of what they think would best address the patients' issues . . . ." Prior to this change, nurse practitioners and physician's assistants had not been involved at this point in the emergency department.

First, the Hospital asserts it notified the Union of the anticipated emergency department changes and offered to meet and negotiate the impact of the changes. Second, the Hospital argues there was no impact on unit employees asserting nothing actually changed involving their hours or working conditions.

It is clear the Hospital gave notice to the Union about the changes in the emergency department and offered to bargain about the effects thereof. The Hospital even asked the Union to inform it if the Union wished to negotiate the effects and to respond by a certain date. The Union timely notified the Hospital it desired to negotiate regarding the effects but the very next day the Hospital declined in writing to do so stating it had withdrawn recognition of the Union. I find the Hospital clearly did not fulfill its obligations regarding effects bargaining. I reject the Hospital's assertion the changes did not impact the working conditions of the unit employees. First, I note when the Hospital notified the Union of the changes even it recognized the "likely" impact on the working conditions of the unit employees. Union Representative Sharp alluded to various concerns he would have been raised in negotiations, such as, whether additional and/or new duties were being added to the unit employees; whether seniority applied in selecting the Intake nurse; and, whether any work duties were removed from the emergency department. It is clear the duties of the staff nurses in the emergency department changed with respect to triage procedures. It appears triage employees were required to make additional decisions and undertake greater actions than before with regard to patient care. These changes are substantial and material and impact the terms and conditions of employment of unit employees. The Hospital was and is required to bargain about the effects of these changes and I so find. The Hospital's refusal to do so violates Section 8(a)(5) and (1) of the Act.

It is alleged at paragraph 8(c) of the complaint that the Hospital, since about November 18, 2008, and, contrary to its past practice, has prohibited union representatives from accessing the Hospital's property and facilities.

The parties stipulated that after the withdrawal of recognition, the Hospital implemented changes to the Union's access to the sidewalk on the Hospital's property at G Street and in the cafeteria. Union Organizer Camara testified, without contradiction, that prior to the withdrawal of recognition, the Union's representatives were allowed access to the sidewalks in front of the Hospital and specifically to the cafeteria at the Hospital. Camara stated that after the withdrawal of recognition, the Union was "moved out of being in front of the Hospital and out to H Street."

The Hospital acknowledges it prohibited nonemployee union solicitors from access to G Street on and after November 19, 2008. The Hospital acknowledges it prohibited union representatives from soliciting and distributing literature in the cafeterias after the withdrawal of recognition but did allow union representatives to come to its cafeterias for food or drink as it would any other nonemployee.

The Hospital argues the unit employees have no right to have union representatives on the premises to speak with them, distribute literature to them or meet with them, and, the Union has no derivative right under Section 7 of the Act to such access.

I find the Hospital violated the Act by changing its *past practice* of allowing union representatives access to its sidewalks and cafeterias after its withdrawal of recognition. I need not address access issues beyond that the Hospital changed its established practice without notice to, or bargaining with, the Union. I find the Hospital's actions violate Section 8(a)(5) and (1) of the Act.

5. Affirmative bargaining order

My recommended affirmative bargaining order will vindicate the Section 7 rights of the unit employees who were denied the benefits of collective bargaining by the Hospital's withdrawal of recognition on November 14, 2008.

Because the Hospital committed unfair labor practices, an affirmative bargaining order is necessary. I note the Hospital committed unfair labor practices before and after its withdrawal of recognition on November 14, 2008. The unfair labor practices before the withdrawal of recognition are set forth in Judge John J. McCarrick's decision *The Fremont-Rideout Health Group et. al. and California Nurses Association, AFL–CIO*, JD(SF)–05–09 involving the same parties herein. Judge McCarrick found the Hospital violated Section 8(a)(1), (3), and (5) of the Act beginning August 24, 2007, and concluding February 29, 2008. Among Judge McCarrick's findings, which are on appeal to the Board, are: (1) A removal of scheduling duties from bargaining unit employees without providing notice and opportunity to bargain; (2) Direct dealing with bargaining unit employees by soliciting their interest in having Saturday shifts staffed as regular shifts rather than on-call shifts; (3) Refusing to provide information regarding written discipline of a unit employee; and (4) Installing a hidden surveillance camera without notice or opportunity to bargain.

The unfair labor practices after withdrawal include unilateral changes to unit employees' benefits and union access to its facilities without notice and bargaining and changes in the emergency department without bargaining regarding the effects of the changes. In light of these circumstances, it is necessary to restore the status quo ante and require the Hospital to bargain with the Union for a reasonable time so the unit employees' Section 7 rights can be vindicated. During this time of bargaining, the unit employees can assess the Union's effectiveness as their exclusive representative and decide whether their best interests are served by having the Union continue to represent them.

My recommended bargaining order will reinstate the Union to its position as the unit employees chosen representative, a position the Union held before the Hospital's unlawful actions. This restoration serves the purposes of the Act by enhancing industrial peace and bringing about good-faith meaningful collective bargaining.

I am persuaded an alternative remedy would be totally inadequate to correct the Hospital's withdrawal of recognition

and refusal to bargain with the Union because it would destroy the efforts of the unit employees to have their chosen representative bargain for them toward a labor agreement.

I find an affirmative bargaining order is absolutely essential to remedy the violations found herein.

On the basis of the above findings of fact, partial conclusions of law, the record as a whole and Section 10(c) of the Act, I make the following

ADDITIONAL CONCLUSIONS OF LAW

1. The Hospital violated Section 8(a)(5) and (1) of the Act since November 14, 2008, by failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time and per diem Registered Nurses in positions requiring a Registered Nurse (RN) license and who provide direct patient care and are employed by Respondent at and out of Fremont Medical Center located at 970 Plumas Street, Yuba City, CA and/or Rideout Memorial Hospital located at 726 Fourth Street, Marysville, California; excluding all non-professional employees, non-Registered Nurses, Traveler Registered Nurses, Registry Registered Nurses, Care Coordinators (discharge planning), Physician's Assistants (PAs), RN Clinical Systems Analysts, RN Program Coordinators in Cardiac Rehab, RN Focus Review Patient Account Nurse Auditors, RN Focus Review Medical Records Analysts, ICU Outcome Coordinators, RN Education Coordinators, Clinical Nurse Specialists, Infection Control Nurses, RN midwives, managerial employees, confidential employees, guards and supervisors as defined in the Act.

2. The Hospital violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union on November 14, 2008.

3. The Hospital violated Section 8(a)(5) and (1) of the Act by unilaterally:

(a) Granting two 5-1/2-percent wage increases to unit employees.

(b) Reducing unit employee's contributions for health premiums by 50 percent.

(c) Waiving 100 percent of health insurance deductibles for unit employees.

(d) Matching by 33-1/3 cents on the dollar up to the first 3 percent of a unit employee's contribution to their 403(b).

(e) Implementing a policy of cashing out paid time off, up to 80 hours per calendar year for unit employees.

4. The Hospital violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union regarding the effects of changes implemented in the emergency department, which changes were:

(a) Implementing new emergency department protocols.

(b) Reinstating a rapid medical evaluation process.

(c) Adding an intake nurse assignment in the interview area of the emergency department lobby.

5. The Hospital violated Section 8(a)(5) and (1) of the Act by, since on or about November 18, 2008, and contrary to its past practice, prohibiting union representatives from accessing the Hospital's properties and facilities.

6. The unfair labor practices described above are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found the Hospital has engaged in certain unfair labor practices, I find it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found the Hospital unlawfully withdrew recognition of the Union, and thereafter unlawfully refused to bargain with the Union as the exclusive representative of the unit employees, I recommend the Hospital be ordered to recognize and bargain collectively, upon request, with the Union as the exclusive representative of the Hospital's unit employees with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document.

Having found, as specifically set forth above, the Hospital made unilateral changes in the terms and conditions of employment of its unit employees, I recommend the Hospital, if requested by the Union, rescind any unilateral changes to wages, benefits, and conditions of employment implemented since the withdrawal of recognition on November 14, 2008. Nothing in this recommendation shall be construed to require the Hospital to withdraw any benefits previously granted, unless requested by the Union.

Having found the Hospital unlawfully, and contrary to its past practice, prohibited union representatives from accessing the Hospital's properties and facilities, it is recommended the Hospital be ordered to restore access to the Union's representatives to the extent permitted prior to November 18, 2008.

Having found the Hospital unlawfully refused to bargain about the effects of changes made to the emergency department, it is recommended the Hospital be ordered to bargain about the effects of such changes.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, The Fremont-Rideout Health Group d/b/a Fremont Medical Center and Rideout Memorial Hospital, Yuba City and Marysville, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with the Union as the exclusive representative of its employees in the unit described below.

(b) Withdrawing recognition from the Union as the exclusive representative of its employees in the following unit:

> All full-time and regular part-time and per diem Registered Nurses in positions requiring a Registered Nurse (RN) license

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

and who provide direct patient care and are employed by Respondent at and out of Fremont Medical Center located at 970 Plumas Street, Yuba City, CA and/or Rideout Memorial Hospital located at 726 Fourth Street, Marysville, California; excluding all non-professional employees, non-Registered Nurses, Traveler Registered Nurses, Registry Registered Nurses, Care Coordinators (discharge planning), Physician's Assistants (PAs), RN Clinical Systems Analysts, RN Program Coordinators in Cardiac Rehab, RN Focus Review Patient Account Nurse Auditors, RN Focus Review Medical Records Analysts, ICU Outcome Coordinators, RN Education Coordinators, Clinical Nurse Specialists, Infection Control Nurses, RN midwives, managerial employees, confidential employees, guards and supervisors as defined in the Act.

(c) Unilaterally: changing wages, health insurance contributions, health insurance deductibles, matching contributions to employees' 403(b) plans, and cashing out paid time off.

(d) Refusing to bargain with the Union about the effects of its implementing new emergency department protocols, reinstating rapid medical evaluation processes, and adding an intake nurse assignment in the interview area of the emergency department.

(e) Prohibiting, contrary to its past practice, union representatives from accessing the Hospital's properties and facilities.

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

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

(a) Recognize and, on request, bargain in good faith with the California Nurses Association, AFL–CIO as the exclusive representative of the Hospital's employees in the unit, described above, with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document.

(b) If the Union requests: cancel the two wage increases unlawfully granted the unit employees; reinstate the 50-percent reduction of unit employees' contributions for health premiums; rescind the 100-percent waiver of health insurance deductibles for unit employees; rescind the matched contributions to the unit employees' 403(b) plans; rescind the policy of cashing out paid time off, up to 80 hours per calendar year for unit employees; and, upon the Union's request, bargain regarding the effects of implementing new emergency department protocols, reinstating a rapid medical evaluation process, and adding an intake nurse assignment in the emergency department.

(c) Reinstate access by union representatives to the Hospital's properties and facilities to the extent permitted before November 18, 2008.

(d) Within 14 days after service by the Region, post at its Yuba City, California, and its Marysville, California facilities copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Hospital's authorized representative, shall be posted by the Hospital immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Hospital 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 Hospital has gone out of business or closed the facilities involved in these proceedings, the Hospital shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Hospital at any time since November 14, 2008.

(e) 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 the Hospital has taken to comply.

Dated, Washington, D.C. April 28, 2009

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to recognize and bargain in good faith with California Nurses Association, AFL–CIO as the exclusive representative of our employees in the following appropriate unit:

All full-time and regular part-time and per diem Registered Nurses in positions requiring a Registered Nurse (RN) license and who provide direct patient care and are employed by us at and out of Fremont Medical Center located at 970 Plumas Street, Yuba City, CA and/or Rideout Memorial Hospital located at 726 Fourth Street, Marysville, California; excluding all non-professional employees, non-Registered Nurses, Traveler Registered Nurses, Registry Registered Nurses, Care Coordinators (discharge planning), Physician's Assistants (PAs), RN Clinical Systems Analysts, RN Program Coordinators in Cardiac Rehab, RN Focus Review Patient Account Nurse Auditors, RN Focus Review Medical Records Analysts, ICU Outcome Coordinators, RN Education Coordinators, Clinical Nurse Specialists, Infection Control Nurses, RN midwives, managerial employees, confidential employees, guards and supervisors as defined in the Act.

[5] 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."

WE WILL NOT unilaterally grant wage increases, reduce contributions for health premiums, waive health insurance deductibles, match a certain percentage of employee contributions to their 403(b) plans, cash out paid time off up to 80 hours per calendar year, or other terms and conditions of employment without notifying the Union and giving it an opportunity to bargain about these changes.

WE WILL NOT prohibit union representatives from accessing our property.

WE WILL NOT implement new emergency department protocols, reinstate a rapid medical evaluation process, or add an intake nurse assignment in the emergency department without bargaining with the Union about the effects of such changes.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL recognize and, on request, bargain collectively with the Union as the exclusive representative of our employees in the above unit with respect to wages, hours, and other terms and conditions of employment, and, if an agreement is reached, embody it in a signed document.

WE WILL, on the Union's request, cancel and/or rescind the wage increases, reduced contributions for health premiums, waiver of health insurance deductibles, matching a certain percentage of employee contributions to 403(b) plans, cashing out paid time off up to 80 hours per calendar year, and WE WILL, upon request of the Union, bargain with the Union about the effects of our having implemented new emergency department protocols, reinstating a rapid medical evaluation process, and adding an intake nurse assignment in the emergency department.

WE WILL reinstate our past practice of allowing union representatives to access our property.

THE FREMONT-RIDEOUT HEALTH GROUP D/B/A
FREMONT MEDICAL CENTER AND RIDEOUT MEMORIAL
HOSPITAL