

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Washington, D.C.

PRIME HEALTHCARE SERVICES-GARDEN  
GROVE, LLC d/b/a GARDEN GROVE  
HOSPITAL & MEDICAL CENTER

and

Case 21-CA-39031

SERVICE EMPLOYEES INTERNATIONAL  
UNION, UNITED HEALTHCARE  
WORKERS-WEST

COUNSEL FOR THE ACTING GENERAL COUNSEL'S  
BRIEF IN SUPPORT OF LIMITED EXCEPTIONS TO THE  
ADMINISTRATIVE LAW JUDGE'S ORDER

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**I. Issues Presented**

- A. Should the recommended order specify restoring reserve sick leave from July 1, 2008, to the date on which Respondent and the Union reach agreement, or reach legal impasse?
- B. Should the recommended order specify making Service Unit and Professional Unit employees whole for any loss of earnings and other benefits they may have suffered as a result of Respondent's failure to provide the reserve sick leave benefit from July 1, 2008, to the date on which Respondent and the Union reach agreement, or reach legal impasse?

**II. Procedural History**

On February 24, 2010, the Regional Director of Region 21 issued a complaint in the instant case alleging that Respondent violated Section 8(a)(5) of the Act by changing the Service Unit and Professional Unit employees' terms and conditions of employment by eliminating the reserve sick leave benefit. The Honorable Jay R. Pollock, herein called the ALJ, presided over the 2-day hearing and issued his decision on August 4, 2010. The ALJ found that Respondent violated Section 8(a)(5) of the Act when it rescinded the reserve sick leave benefit in April 2009.

**III. Facts and Discussion**

**A. The Recommended Order Should be Modified**

Subsequent to the purchase of Garden Grove Hospital, Respondent began operating Garden Grove Hospital on July 1, 2008. (ALJD 2:21-24). Employees accrued a benefit called reserve sick leave from July 1, 2008 until on or about April 17, 2009. (ALJD 2:31-3:7). On or about April 17, 2009, the Respondent informed employees that

it was rescinding any reserve sick leave employees accrued from July 1, 2008 until April 17, 2009, and would no longer provide that benefit to Service Unit and Professional Unit employees. (ALJD 2:31–3:7). Unit employees then informed the Union of the change. (ALJD 3:6–7). As a result, the ALJ found that Respondent violated Section 8(a)(5) of the Act. (ALJD 7:3–4). While the recommended order required reinstatement of the reserve sick benefit and restored any reserve sick leave accrued during July 1, 2008 until April 17, 2009, the recommended order did not specify restoring reserve sick leave from July 1, 2008, to the date on which Respondent and the Union reach agreement, or reach legal impasse, on ceasing to provide the reserve sick leave benefit.

The Board has long held that “in cases, like here, involving a violation of Section 8(a)(5) based on a respondent's unilaterally altering existing benefits, it is the Board's established policy to order restoration of the *status quo ante* to the extent feasible.” *Allied Products Corp.*, 218 NLRB 1246 (1975); *see also Southwest Forest Industries, Inc., Los Angeles Container Division*, 278 NLRB 228 (1986) (make-whole order restoring the status quo ante is the normal remedy when an employer has made unlawful unilateral changes in its employees' terms and conditions of employment) (*citing Lauren Mfg. Co.*, 270 NLRB 1307 (1984); *Carpenter Sprinkler Co.*, 238 NLRB 974, 986 (1978)).

Therefore, as the authority above requires, employees should receive reserve sick leave from July 1, 2008, to the date on which Respondent and the Union reach agreement, or reach legal impasse, on any change to the reserve sick leave policy. By doing so, the *status quo ante* will be restored as employees will receive a benefit they would have accrued but for Respondent's unfair labor practice. *See Granite Steel Co.*, 167 NLRB 310 (1967); *Sunoco, Inc.*, 349 NLRB 240, 244 (2007); *Southwest Forest Industries, Inc., Los Angeles Container Division*, 278 NLRB 228 (1986).

## **B. The Recommended Order Should Contain a Make Whole Order**

As explained above, the record reveals that Respondent changed the reserve sick leave benefit without first bargaining with the Union. (ALJD 2:31–3:7). Board law has long held that “[i]t is well established that a make-whole order restoring the status quo ante is the normal remedy when an employer has made unlawful unilateral changes in its employees' terms and conditions of employment.” *Southwest Forest Industries, Inc., Los Angeles Container Division*, 278 NLRB 228, 228 (1986) (citing *Lauren Mfg. Co.*, 270 NLRB 1307 (1984); *Carpenter Sprinkler Co.*, 238 NLRB 974, 986 (1978)).

In accordance with such principles, the ALJ’s recommended order required Respondent to make Service Unit and Professional Unit employees whole for any loss of earnings and other benefits they may have suffered as a result of Respondent’s rescinding reserve sick leave from July 1, 2008 until April 17, 2010. (ALJD 8:13–17). Similarly, the ALJ’s recommended order should specifically make Service Unit and Professional Unit employees whole for Respondent’s unlawful conduct in ceasing to provide a reserve sick leave benefit from July 1, 2008 to April 17, 2009, and thereafter until Respondent and the Union reach agreement, or reach legal impasse, on ceasing to provide the reserve sick leave benefit.

## **IV. Conclusion**

Based on all the foregoing, the record demonstrates that the recommended order should be modified to grant the remedy that appropriately corresponds to the ALJ’s findings.

## **V. Remedy**

It is respectfully submitted that beyond the remedy found by the ALJ, the following additional language be added to fully remedy the violations found:

A. To the recommended order

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

(c) Restore the reserve sick leave benefit that employees would have accrued from July 1, 2008, to the date on which Respondent and the Union reach agreement, or reach legal impasse, on any change to the reserve sick leave policy.

(e) Make whole Service Unit and Professional Unit employees for any loss of earnings and other benefits they may have suffered as a result of Respondent's unlawful conduct in ceasing to provide a reserve sick leave benefit from July 1, 2008 to April 17, 2009, and thereafter until Respondent and the Union reach agreement, or reach legal impasse, on any change to the reserve sick leave policy.

Respectfully submitted,



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Daniel A. Adlong  
Counsel for the Acting General Counsel  
National Labor Relations Board  
Region 21

Dated at Los Angeles, California, this 29<sup>th</sup> day of September, 2010

## STATEMENT OF SERVICE

I hereby certify that a copy of **Counsel for the Acting General Counsel's Brief in Support of Limited Exceptions to the Administrative Law Judge's Order** in Case 21-CA-39031 was submitted by E-filing to the Offices of the Executive Secretary of the National Labor Relations Board on September 29, 2010. The following parties were served with a copy of the same document by electronic mail.

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