

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 21

In the Matter of:

Case No. 21-CA-39296

Southern California Permanente  
Medical Group; and Kaiser  
Los Angeles Medical Center,

Employer,

and

National Union Of Healthcare  
Workers,

Union.

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**Place:** Los Angeles, California

**Dates:** October 18, 2010

**Pages:** 1 through 79

**Volume:** 1

OFFICIAL REPORTERS

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**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 21**

	)	
In the Matter of:	)	
	)	
SOUTHERN CALIFORNIA PERMANENTE	)	
MEDICAL GROUP; AND KAISER	)	
LOS ANGELES MEDICAL CENTER,	)	
	)	
Employer,	)	
	)	
and	)	Case No. 21-CA-39296
	)	
NATIONAL UNION OF HEALTHCARE	)	
WORKERS,	)	
	)	
Union.	)	
	)	

The above-entitled matter came on for hearing, pursuant to notice, before **WILLIAM L. SCHMIDT**, Administrative Law Judge, at the National Labor Relations Board, Region 21, 888 South Figueroa Street, Suite 902, Los Angeles, California 90017, on **MONDAY, OCTOBER 18, 2010, at 1:12 p.m.**

**A P P E A R A N C E S****On Behalf of the General Counsel:****ROBERT MACKAY, ESQ.**

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**On Behalf of the Respondents:****JENNIFER L. GOLDBERG, ESQ.**

Kaiser Foundation Health Plan, Inc.  
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**On Behalf of the Employer:****MICHAEL R. LINDSAY, ESQ.**

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**A P P E A R A N C E S (continued)****On Behalf of the Union:****FLORICE OREA HOFFMAN, ESQ.**

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714-282-1179

**RALPH CORNEJO, UNION REPRESENTATIVE  
GABRIEL KRISTAL, UNION REPRESENTATIVE**

National Union of Healthcare Workers  
5801 Christie Avenue, Suite 525  
Emeryville, California 94608



I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	VOIR DIRE	CRT EXAM
Ralph Cornejo	27 48	57	74		48	76

EXHIBITS

<u>EXHIBIT</u>	<u>IDENTIFIED</u>	<u>IN EVIDENCE</u>
<b>Joint</b>		
1	9	10
<b>General Counsel</b>		
1	7	8
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P R O C E E D I N G S

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**JUDGE SCHMIDT:** Let me know when everyone is settled.

MR. LINDSAY: We're ready, and my apologies.

MR. MACKAY: Ready.

MS. HOFFMAN: Ready.

JUDGE SCHMIDT: All right. I gather there's been no changes since we talked on the phone some time ago?

MR. LINDSAY: That's correct, Your Honor.

JUDGE SCHMIDT: All right. Ready? Let's be on the record. This is a formal hearing before the National Labor Relations Board. My name is William L. Schmidt, and I am the Administrative Law Judge designated by the Board to conduct the hearing on its behalf. At this time, I'd like counsel for the parties to enter their appearances for the record, beginning with the general counsel.

MR. MACKAY: Thank you, Your Honor. On behalf of the acting general counsel, Robert Mackay, business address 555 West Beach Street, Room 418, San Diego, California, 92101.

MS. PARKER: And on behalf of the acting general counsel, Lindsay Parker, business address 888 South Figueroa Street, 9th Floor, Los Angeles, California, 90017.

MS. HOFFMAN: Florice Hoffman for the National Union of Health Care Workers. Do you need my business address also?

JUDGE SCHMIDT: Yes.

MS. HOFFMAN: It's 8502 East Chapman Avenue, Suite 353,

1 Orange, California, 92869.

2 JUDGE SCHMIDT: Respondent?

3 MR. LINDSAY: Michael Lindsay of Nixon Peabody, on behalf  
4 of both respondents. My address is 555 West Fifth Street, 46th  
5 Floor, Los Angeles, California.

6 MR. NEULIGHT: Seth Neulight, Nixon Peabody, on behalf of  
7 both of the respondents. My business address is One  
8 Embarcadero Center, 18th Floor, San Francisco, California,  
9 94111.

10 MS. GOLDBERG: Jennifer Goldberg, in-house counsel, Kaiser  
11 Foundation Health Plan. Representing KFHAP and SCPOG, business  
12 address is 393 East Walnut Street, Pasadena, California, 91108.

13 JUDGE SCHMIDT: You're in-house counsel for whom?

14 MS. GOLDBERG: Yes. For Kaiser Foundation Health Plan.  
15 Also representing Southern California Permanente Medical Group.

16 JUDGE SCHMIDT: All right. My apologies to -- I didn't  
17 mean to call the acting general counsel general counsel. And  
18 -- okay. Very well. At this time, General Counsel, why don't  
19 you proceed with the introduction of the formal papers?

20 MR. MACKAY: Yes, Your Honor.

21 JUDGE SCHMIDT: And then we'll take up any preliminary  
22 matters after that.

23 MR. MACKAY: At this time, Your Honor, I'd like to offer  
24 the formal papers marked as General Counsel's Exhibit 1-A  
25 through 1-J. 1-J being an index and description of the

1 documents. The formal papers have been shown to all parties.  
2 At this time, I move for the introduction of General Counsel's  
3 Exhibit 1.

4 JUDGE SCHMIDT: Any objection?

5 MR. LINDSAY: No, Your Honor.

6 JUDGE SCHMIDT: Being no objection, they're received.

7 **(General Counsel Exhibit 1 received into evidence.)**

8 JUDGE SCHMIDT: Anything else, General Counsel, by way of  
9 preliminary matters?

10 MR. MACKAY: I do have some preliminary matters, Your  
11 Honor.

12 JUDGE SCHMIDT: Very well. Proceed.

13 MR. MACKAY: First, just to note on the record, by letter  
14 dated October 1st, 2010, I informed counsel for the Respondents  
15 of some current cases that are pending in Region 21 right now  
16 and of our intent to proceed here today notwithstanding the  
17 fact that there are other pending cases before Region 21, and  
18 obviously that's still our same position as of today.

19 JUDGE SCHMIDT: All right.

20 MR. MACKAY: If I may, Your Honor, a few more preliminary  
21 matters?

22 JUDGE SCHMIDT: Well -- be my guest.

23 MR. MACKAY: Okay. First, I just want to say for the  
24 record that contemporaneous with this, the Board is currently  
25 pursuing Section 10-J injunctive relief in federal court at the

1 same time. As a result of that, we respectfully request that  
2 Your Honor reach a decision in this case as expeditiously as  
3 possible. In addition to that, I would like to offer into  
4 evidence a stipulation that was entered into between the Acting  
5 General Counsel and Respondent's counsel. This stipulation has  
6 been lodged with the Federal District Court, and we are  
7 awaiting the court order on that. I'd like to introduce it  
8 because it makes references to events that may occur during  
9 this hearing, and so I would like to have this into evidence  
10 just in case the -- any issues come up related to them. And I  
11 think I would want to mark this as joint exhibit --

12 MS. PARKER: Two or one?

13 MR. MACKAY: -- Joint Exhibit 1. The last point of  
14 clarification as I show this to the parties. This is an  
15 unsigned copy 1. As soon as I get copies of one containing our  
16 signatures, I will request on the record to replace this one  
17 with that one. And also, while we're awaiting the court's  
18 order, if the Court signs off on this stipulation while we're  
19 still on the record, I'll introduce that one.

20 JUDGE SCHMIDT: All right.

21 **(Joint Exhibit 1 marked for identification.)**

22 MR. MACKAY: I'm going to show this to the parties. And  
23 Your Honor, may I present you with a copy of the stipulation?

24 JUDGE SCHMIDT: Yes.

25 MR. MACKAY: And so I would move for the introduction of

1 Joint Exhibit 1.

2 MR. LINDSAY: No objection.

3 JUDGE SCHMIDT: Okay, there being no objection, Joint  
4 Exhibit 1 is received.

5 **(Joint Exhibit 1 received into evidence.)**

6 MR. MACKAY: And then, I guess as far as preliminary  
7 matters --

8 JUDGE SCHMIDT: What -- wait.

9 MR. MACKAY: Yes, sir.

10 JUDGE SCHMIDT: What am I supposed to discern from this?

11 MR. MACKAY: I think the most relevant point is the fact  
12 that there are witnesses that either the General Counsel may  
13 call, or witnesses that Respondents may call.

14 JUDGE SCHMIDT: Right.

15 MR. MACKAY: And some of the questions they ask may cross  
16 into not only issues that both you and the District Court would  
17 be deciding in terms of whether an unfair labor practice was  
18 committed --

19 JUDGE SCHMIDT: Yeah?

20 MR. MACKAY: -- but some questions may bear on issues more  
21 pertinent to what the District Court is deciding, and it's a  
22 promise from us that we'll respectfully ask that Your Honor  
23 bear with us and allow a few of those questions to come in. We  
24 know that's subject to your --

25 JUDGE SCHMIDT: This is because the plan is to use this

1 transcript in the Federal District Court?

2 MR. LINDSAY: In lieu of discovery, Your Honor.

3 JUDGE SCHMIDT: All right. Okay, that's not a problem  
4 with me. I mean, you -- there should be no problem with me, I  
5 don't think.

6 MR. MACKAY: Okay. So then I think the only other  
7 preliminary matter I have is to ask then for a sequestration  
8 order for the hearing and -- one more thing. Can we go off the  
9 record for a second, Your Honor?

10 JUDGE SCHMIDT: Yes, let's be off the record?

11 MR. LINDSAY: Off the record.

12 MR. MACKAY: The one thing I was also gonna ask for is  
13 some time to review the subpoenaed documents that were produced  
14 today.

15 JUDGE SCHMIDT: Yeah?

16 MR. MACKAY: And my thought was that if I start my case  
17 and introduce some initial documents, and then if I could be  
18 given maybe 15, 20 minutes to review the subpoenaed documents,  
19 at least during that time, Your Honor, you could be reviewing  
20 some of the documents I introduced initially to make good use  
21 of that time.

22 JUDGE SCHMIDT: So you want to go ahead and introduce some  
23 documents and then take a look at what you're getting today?

24 MR. MACKAY: Correct, Your Honor.

25 JUDGE SCHMIDT: That's okay. That's not a problem.

1 MR. LINDSAY: And if it's really good it's because it's  
2 stipulating facts in evidence.

3 MR. MACKAY: And actually, the stipulation may alleviate  
4 the need to do that. I guess while we're off the record, I had  
5 drafted a partial stipulation of facts --

6 JUDGE SCHMIDT: Yeah?

7 MR. MACKAY: -- and it appears that some of those are  
8 gonna be -- the Respondent's going to be agreeable to some of  
9 those, so actually maybe the best thing to do is first go over  
10 those rather than having introduce some documents that may be  
11 coming in through the partial stipulation.

12 JUDGE SCHMIDT: On the record, you mean?

13 MR. MACKAY: Actually, no, if I could be given some time  
14 to talk off the record with the Respondent's counsel about that  
15 stipulation?

16 JUDGE SCHMIDT: Be my guest.

17 MR. MACKAY: And do you have a copy of these? Of that  
18 partial stuff? It's the same as this one here. I didn't bring  
19 a copy. Maybe I've got an extra one.

20 (Off the record)

21 MR. MACKAY: So, I think the game plan would still be back  
22 to following an opening statement and then presenting a few  
23 documents. If I could respectfully request some time to review  
24 the subpoenaed documents?

25 JUDGE SCHMIDT: Yeah, okay. Before we go back on the

1 record, too, you know, I sort of readily agreed that if there's  
2 material that you're giving because it might be of use in the  
3 case that's pending before the Federal District Court, but I --  
4 you know, I do have a tendency to say in kind of an annoyed  
5 fashion to counsel every now and then, "Why do I need to know  
6 this?" So if I happen to slip and forget, simply tell me you  
7 don't need to know it but the other judge involved may need to  
8 know it. So and that way we'll understand -- there will be an  
9 understanding.

10 MR. MACKAY: Okay. Thank you, Your Honor.

11 JUDGE SCHMIDT: Ready?

12 MR. MACKAY: So I'm ready.

13 JUDGE SCHMIDT: Wait. Before we go on the record. Do you  
14 have a place prepared -- there are several people in the  
15 hearing room right now. Do you have a place prepared for  
16 people to go to?

17 MR. MACKAY: I do have witness rooms. And I can show  
18 Respondent's counsel right now a room that he can use for his  
19 witnesses at any time during this hearing.

20 JUDGE SCHMIDT: That would be necessary?

21 MR. LINDSAY: That would be good.

22 JUDGE SCHMIDT: Okay, good.

23 MR. MACKAY: And then I will show the Union a room that  
24 they can use.

25 JUDGE SCHMIDT: I'm gonna read you a statement about

1 sequestration. And when he gets ready then, to make his  
2 opening statement, I'd like for those people that are affected  
3 by what I have to say to leave the room, all right? Are we  
4 ready to go on the record again? Let's be on the record.  
5 Counsel for the Acting General Counsel, you may proceed.

6 MR. MACKAY: Okay, and Your Honor, before I request to  
7 make an opening statement, if we could -- I'd make a motion to  
8 sequester witnesses.

9 JUDGE SCHMIDT: All right. Any objection?

10 MR. LINDSAY: No, Your Honor.

11 MS. HOFFMAN: No objection.

12 JUDGE SCHMIDT: There being no objection, I'm going to  
13 grant the request to sequester witnesses. What that means is,  
14 is that all persons other than a person designated as essential  
15 to the presentation to a party's case who expect to be called  
16 as witnesses in this proceeding will be required to remain  
17 outside the courtroom whenever testimony or other proceedings  
18 are taking place. In addition, during the course of the  
19 hearing they may not discuss with any other witness or any  
20 possible witness the testimony already given or to be given.  
21 The exception to this involves discriminatees and there are  
22 none in this matter, so that that particular exception is  
23 inapplicable here. Also, counsel for a party may not disclose  
24 to any witness the testimony of another witness. The counsel  
25 may, however, inform counsel's own witness of the content of

1 testimony given by an opposing party's witness to prepare to  
2 rebut that witness's testimony. It's the responsibility of  
3 counsel to see that witnesses comply with this rule, separating  
4 the witnesses during the hearing, all right?

5 Now, are you ready for your opening statement?

6 MR. MACKAY: Yes, Your Honor, although I would like to  
7 tell you who I'm designating as my representative.

8 JUDGE SCHMIDT: Oh, I'm sorry. Yes.

9 MR. MACKAY: Ralph Cornejo, the gentleman seated to the  
10 next of -- to the right of Ms. Parker here, will be the  
11 representative.

12 JUDGE SCHMIDT: And does charging party have someone?

13 MS. HOFFMAN: Yes, Gabriel Kristal will be NUHW's reps.

14 JUDGE SCHMIDT: Okay, and Respondent?

15 MR. LINDSAY: Yes, we're designating Maryanne Miller, who  
16 is sitting on the second row back there.

17 JUDGE SCHMIDT: Okay, very good. Are -- would there be --  
18 would you like for her to be up at the table, or --

19 MR. LINDSAY: It would be nice, we just didn't have enough  
20 chairs.

21 JUDGE SCHMIDT: Yeah, can we see if we can find a chair?

22 MR. MACKAY: Yes.

23 JUDGE SCHMIDT: An additional chair for -- let's be off  
24 the record while that's taken care of. And again, before we go  
25 back on the record, the reporter has asked me to sort of remind

1 you that it's wise to speak to the microphone. Courtesies such  
2 as standing up are inapplicable here because of this method of  
3 reporting, because the further you get away from the  
4 microphone, the less likely we are to have a record -- an  
5 accurate record. I give everyone an opportunity to have their  
6 say, and so I would also like to warn you against cross-talk.  
7 If you have something to say, you'll be provided the  
8 opportunity to say it. If you have an objection, wait until  
9 the question has been asked, and then enter your objection.  
10 We'll get through this -- this thing just fine. Let's be on  
11 the record. I take it that all the witnesses have -- all the  
12 individuals who will be testifying in this case except for  
13 those designated as essential by counsel will be -- are now out  
14 of the room. That --

15 MR. MACKAY: Yes, Your Honor.

16 JUDGE SCHMIDT: All right. Counsel for Acting General  
17 Counsel, you may proceed with your opening statement if we're  
18 at that point.

19 MR. MACKAY: Thank Your Honor. Just briefly, most  
20 contractually established terms and conditions of employment  
21 are mandatory subjects of bargaining, and they survive the  
22 nullification of a contract as a result of a change in the  
23 bargaining representative.

24 In this case, the contractually established terms and  
25 conditions of employment involved across-the-board wage

1 increases, tuition reimbursement for continuing education  
2 courses to obtain or maintain licensure, and regular shop  
3 steward training. Following the NUHW's certification on  
4 February 3rd of 2010, in three separate bargaining units,  
5 Respondents eliminated these wages and benefits unilaterally.  
6 And Counsel for the Acting General Counsel submits that that  
7 violates Section 8A1 and 5 as an impermissible unilateral  
8 change. Also, as you'll note, that in addition to the  
9 traditional makeful (phonetic) remedies, we are also seeking an  
10 extension of the certification year, and in support of that,  
11 we'll be presenting some evidence regarding the impact that  
12 this change had on the bargaining unit.

13 JUDGE SCHMIDT: All right. Charging Party, do you have  
14 anything by way of an opening statement?

15 MS. HOFFMAN: No, Your Honor.

16 JUDGE SCHMIDT: All right. Respondent?

17 MR. LINDSAY: We'll reserve.

18 JUDGE SCHMIDT: All right. General counsel, you may  
19 proceed.

20 MR. MACKAY: Okay, first I'd like to offer into evidence,  
21 marked as General Counsel's Exhibit 2, the relevant portions of  
22 the transcript in the underlying representation case in the  
23 matters. The relevant pages reflect a factual stipulation that  
24 was reached by the parties. At this time I move for the  
25 introduction of General Counsel's Exhibit 2.

1 MR. LINDSAY: No objection.

2 JUDGE SCHMIDT: Received.

3 **(General Counsel Exhibit 2 received into evidence.)**

4 MR. MACKAY: I'd marked as General Counsel's Exhibit 3 a  
5 copy of the decision and direction of election that issued in  
6 connection with the same matters. At this time I move for the  
7 introduction of General Counsel's Exhibit 3.

8 MR. LINDSAY: No objection.

9 MS. HOFFMAN: No objection.

10 JUDGE SCHMIDT: Received.

11 **(General Counsel Exhibit 3 received into evidence.)**

12 MR. MACKAY: As General Counsel's Exhibit 4, 5, and 6, I'd  
13 like to introduce copies of the contracts that are referenced  
14 by the factual stipulation and decision and direction of  
15 election. General Counsel's Exhibit 4 will be the contract  
16 involving the Health Care Professionals Unit. General  
17 Counsel's Exhibit 5 will be the contract involving the AFN or  
18 Nurses' Unit. And General Counsel's Exhibit 6 will be the  
19 contract involving the Psych/Social Unit.

20 JUDGE SCHMIDT: If --

21 MR. MACKAY: This -- so at this time I would move for the  
22 introduction of 4, 5, and 6, and I do have copies of these  
23 contracts, which if we need to go off the record, so I can  
24 distribute the copies to the parties, we can do that.

25 JUDGE SCHMIDT: All right, well, we'll be off the record.

1 No greater joy than reading a collective bargaining agreement.

2 General counsel, you've outdone yourself this time, I think.

3 MR. LINDSAY: This time there's three.

4 MR. MACKAY: Okay, thank you for your patience.

5 (Off the record)

6 JUDGE SCHMIDT: All right, you ready?

7 MR. MACKAY: I'm ready.

8 JUDGE SCHMIDT: On the record. You may proceed, General  
9 Counsel.

10 MR. MACKAY: At this time I move for the introduction of  
11 General Counsel's Exhibits 4, 5, and 6.

12 JUDGE SCHMIDT: Any objection?

13 MR. LINDSAY: No objection to their admission. I have an  
14 objection to the way that they were characterized.

15 JUDGE SCHMIDT: Let me hear it.

16 MR. LINDSAY: All right. They were -- there were two.  
17 There was a characterization that these were the ones referred  
18 to in a stipulated statement of facts. There is no stipulated  
19 statement of facts. I presume I was just misspoken. Secondly,  
20 these were the contracts in effect prior to the certification  
21 of NUHW.

22 JUDGE SCHMIDT: Right.

23 MR. LINDSAY: All right.

24 JUDGE SCHMIDT: They were the last agreements in effect  
25 prior to the certification, as I understand it, if we can all

1 agree on that.

2 MR. MACKAY: Yes, Your Honor.

3 JUDGE SCHMIDT: Go ahead.

4 MR. MACKAY: So I moved for the introduction of 4, 5, and  
5 6.

6 JUDGE SCHMIDT: Oh, you did, didn't you? Noting  
7 Respondent's objection, they're received.

8 **(General Counsel Exhibits 4 through 6 received into**  
9 **evidence.)**

10 MR. MACKAY: At this time Your Honor, I'd respectfully  
11 request if we could go off the record and I could have maybe 15  
12 to 20 minutes to review subpoenaed documents.

13 JUDGE SCHMIDT: All right. We'll be off the record.  
14 (Off the record)

15 JUDGE SCHMIDT: Let's be on the record then. Before you  
16 begin, General Counsel, I was just reading what you've labeled  
17 a stipulation in General Counsel's Exhibit 2, which is a  
18 portion of the transcript from the underlying representation  
19 case hearing.

20 And referring to page 26 it says at the conclusion of the  
21 bargaining process what was ratified was both the local  
22 agreement and the national agreement as an addendum to those  
23 local agreements. And I'm looking through or I just picked one  
24 -- randomly picked one. The Kaiser Psych Social chapter, okay  
25 -- agreement.

1           And I went through the table of contents and I was trying  
2 to locate in there where in here the national agreement starts.

3           MR. MACKAY: Okay. And can I do that with each one for  
4 you? Can I just pull my copies here?

5           JUDGE SCHMIDT: If you don't mind.

6           MR. MACKAY: Sure.

7           JUDGE SCHMIDT: You know, just to help me deal with the  
8 mass of this.

9           MR. MACKAY: And I'm sorry, you have in front of you,  
10 you're holding the Psych Social Chapter one?

11          JUDGE SCHMIDT: Yes.

12          MR. MACKAY: Okay. That's General Counsel's Exhibit 6?

13          JUDGE SCHMIDT: Yes.

14          MR. MACKAY: Okay. So and you will find for each of these  
15 three contracts that the national agreement is essentially the  
16 last part of each of these three contracts. It'll have a title  
17 page saying "National Agreement" and it'll be numbered --

18          JUDGE SCHMIDT: Well --

19          MR. MACKAY: -- consecutively 1 --

20          JUDGE SCHMIDT: Okay.

21          MR. MACKAY: -- et cetera from that point forward.

22          JUDGE SCHMIDT: Oh. I'm sorry. I -- well I guess that's  
23 what I was looking for in this one. I went to the table of  
24 contents in hopes I could find it quickly, but --

25          MR. MACKAY: So if you -- the first 82 pages, right after

1 that 82 page --

2 JUDGE SCHMIDT: Is --

3 MR. MACKAY: You'll see --

4 JUDGE SCHMIDT: Okay. What's --

5 MR. MACKAY: -- what appears to be --

6 JUDGE SCHMIDT: Oh.

7 MS. PARKER: Just a couple pages following page 82 of  
8 the --

9 JUDGE SCHMIDT: Well a couple pages --

10 MR. MACKAY: After 82.

11 JUDGE SCHMIDT: -- following 82.

12 MS. PARKER: Right.

13 JUDGE SCHMIDT: Memorandum on understanding regarding  
14 subcontracting --

15 MR. MACKAY: You've got to keep going.

16 JUDGE SCHMIDT: So there is a -- there is going to be some  
17 kind of a title page?

18 MR. MACKAY: Yes.

19 MS. PARKER: Yes.

20 MR. MACKAY: It'll look like this.

21 JUDGE SCHMIDT: And I'm going to get one of these booklets  
22 in the end.

23 MR. MACKAY: Okay.

24 JUDGE SCHMIDT: But you don't need to do that now. That  
25 same will be in there, too. Right?

1 MR. MACKAY: Yes. And the booklets are there.

2 JUDGE SCHMIDT: Okay.

3 MR. MACKAY: If it would be more help, Your Honor, I think  
4 we have three extra copies of the booklets, if you'd like to  
5 have the booklets in front of you during the hearing.

6 JUDGE SCHMIDT: Okay. If you do, I would appreciate that.  
7 And I'm sorry that you've xeroxed all of this and I -- but I'm  
8 having difficulty locating where the national agreement begins.  
9 Your co-counsel seems to have a title page there that I  
10 just cannot find in my material.

11 MR. MACKAY: So may I approach, Your Honor?

12 JUDGE SCHMIDT: Sure.

13 MR. MACKAY: So then for example if this booklet --

14 JUDGE SCHMIDT: Perfect. That's exactly what I'm looking  
15 for.

16 MR. MACKAY: And then you'll find that.

17 JUDGE SCHMIDT: There's a dividing line between -- yeah.  
18 Okay. All right. Now I can deal with this. Thank you.

19 MR. MACKAY: So these are courtesy copies you can use  
20 during the hearing.

21 JUDGE SCHMIDT: Yeah. All right.

22 And for purposes of this complaint are these terms and  
23 conditions that we're talking about terms and conditions that  
24 were negotiated locally or nationally?

25 MR. MACKAY: Well you'll find that the relevant

1 contractual provisions that establish the terms and conditions  
2 are set forth in the national agreement.

3 JUDGE SCHMIDT: Okay.

4 MR. MACKAY: Although we do take the position that this is  
5 a single integrated contract. It's got the national agreement,  
6 we've got the local agree. I don't think the case turns on  
7 that, whether it's three contracts, two contracts or one  
8 contract within the same one. But it is our position that this  
9 is a single integrated contract that the employees signed.

10 JUDGE SCHMIDT: Well, all right. Then I'll be interested  
11 in reading the regional director's decision. So in determining  
12 how we come up with, what was it, three separate elections?

13 MR. MACKAY: Well we have three bargaining units. And --

14 JUDGE SCHMIDT: Yeah.

15 MR. MACKAY: -- the NUHW was certified as the 9A rep in  
16 the three separate units. And --

17 JUDGE SCHMIDT: Well all right.

18 MR. MACKAY: -- these are the three contracts that were in  
19 place for the three units prior. I know the number three comes  
20 up twice, making things confusing. But there's one contract  
21 for each of the three units. And in front of you, you see the  
22 contract for one unit, the contract for another and the  
23 contract for another.

24 If you look at one of those contracts, the parties use  
25 terms like "local agreement" "master agreement" and "national

1 agreement." Each of those are within each of the contracts.

2 JUDGE SCHMIDT: Okay. As you can tell I'm just beginning  
3 to get enlightened a little bit about this, but you know the  
4 way this -- this takes on something that sounds to me like it  
5 might be parallel to what you would expect to find in the  
6 automobile industry where they have local agreements and then  
7 they have a national agreement. All right. But we're not --  
8 we're apparently dealing with some different duck here, because  
9 I wouldn't expect that if somebody in a Ford Plant in Chicago,  
10 Illinois or St. Paul, Minnesota wanted to supplement the UAW as  
11 a bargaining representative that they would have a -- any kind  
12 of a chance at all of carving out a single unit like that, and  
13 having an election to replace the bargaining representative.

14 So I will get enlightened when I read the regional  
15 director's decision about why that is so, I assume.

16 MR. MACKAY: Although I may be -- I'm sorry. I may be  
17 confused on the question but the unit that was represented  
18 before NUHW was certified --

19 JUDGE SCHMIDT: Right.

20 MR. MACKAY: -- is the same. So there's been no change in  
21 the unit. And that's the contract that applied to the unit.  
22 The national part, the master, the local.

23 JUDGE SCHMIDT: So you know, I -- nobody ever made a claim  
24 here that these units somehow got merged into any kind of a  
25 larger body.

1 MR. MACKAY: No. There's no merger issues. The unit's  
2 pre-February 3rd, 2010, post February 3rd, 2010 are the same.  
3 It's just there's a new union that was voted in. And what  
4 we're saying is, when that happens the contract between the  
5 employer and the predecessor union it is null and void. But  
6 the question is, what are the status quo working conditions  
7 following that change.

8 JUDGE SCHMIDT: Yeah. All right. I -- that part I get.  
9 I just don't know -- I've got -- I need to read more in order  
10 to get up to speed about how we got to that point. So, go  
11 ahead.

12 MR. MACKAY: Okay.

13 JUDGE SCHMIDT: I'll make it -- fumble through it somehow.

14 MR. MACKAY: Okay. Maybe -- okay. Maybe what I can do --  
15 I think to some extent it might be duplicative of what we've  
16 introduced, but with my first witness I think I may introduce  
17 some of that history then. Just to help move things along. If  
18 that's okay with Your Honor.

19 JUDGE SCHMIDT: Well, you know, if it's necessary.

20 MR. MACKAY: Okay. Well at this time Your Honor, then  
21 General Counsel calls Ralph Cornejo.

22 JUDGE SCHMIDT: Please step forward.

23 (Whereupon,

24 **RALPH CORNEJO**

25 having been first duly sworn, was called as a witness herein

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1 and was examined and testified as follows:)

2 JUDGE SCHMIDT: Be seated.

3 **DIRECT EXAMINATION**

4 Q BY MR. MACKAY: Okay. Who are you employed by?

5 A National Union of Healthcare Workers. NUHW.

6 Q And how long have you worked for NUHW?

7 A A little over a year and a half.

8 Q And what is your job title with NUHW?

9 A I'm the director of the Kaiser division.

10 Q And when you refer to Kaiser or use that term, does that  
11 encompass both of the two Respondents involved in this case?

12 A Yes.

13 Q And briefly what are your job duties as NUHW director of  
14 the Kaiser division?

15 A Basically I oversee staff as well as bargain contracts.

16 Q And as part of your responsibilities with NUHW do you  
17 oversee the three bargaining units involved in this case?

18 A I do.

19 Q For purposes of my questions I'm going to refer to them as  
20 the AFN Unit, the Healthcare Professionals Unit, and the Psych  
21 Social Unit. Have you had responsibility since the NUHW was  
22 certified on February 3rd, 2010 the same responsibilities over  
23 these units?

24 A Yes.

25 Q Prior to February 3rd, 2010 was the SEIU UHW the

1 collective bargaining representative for each of these three  
2 units?

3 A Yes.

4 Q Okay. Okay. I'd like to ask you some brief questions  
5 about your previous employment with SEIU UHW. Who did you work  
6 for before NUHW?

7 A SEIU UHW.

8 Q Okay. And for my questions in referring to that  
9 organization I'll try to use SEIU. If you think in any of my  
10 questions I may have inadvertently said the wrong label  
11 organization name, please correct me.

12 What time period did you work for the SEIU?

13 A About 37 years.

14 Q And from approximately 2004 until 2009 what was your job  
15 title with SEIU?

16 A Director of the Kaiser division.

17 Q Did your duties as the SEIU director of the Kaiser  
18 division include overseeing the same three bargaining units  
19 that are involved in this case?

20 A Yes.

21 Q In 2005 did you participate in national bargaining on  
22 behalf of SEIU with the respondents?

23 A Yes.

24 Q Okay. And when did that bargaining take place?

25 A Over the course of 2005 between around March through

1 October. I'm sorry, September.

2 Q Did that bargaining encompass among others the three  
3 bargaining units that are involved in this case?

4 A Yes.

5 Q Did other unions representing other bargaining units also  
6 engage in that bargaining?

7 A Yes.

8 Q Did this group of unions have a name?

9 A It was the coalition of unions.

10 Q Okay. And also -- is it also referred to as the coalition  
11 of Kaiser unions?

12 A Yes.

13 Q Okay. Did that bargaining end in an agreement?

14 A It did.

15 Q What is that agreement referred to?

16 A That national agreement.

17 Q After those negotiations took place, did you participate  
18 in any other bargaining on behalf of, among other units, the  
19 three units involved in this case?

20 A Yes.

21 Q And what was that bargaining called?

22 A The cross regional bargaining.

23 Q Okay. And when did that bargaining take place?

24 A Right after national bargaining.

25 Q And can you explain what cross regional bargaining is or

1 was at that time?

2 A All of the SEIU locals in the coalition, Local 49, Local  
3 105, 535 and UHW bargained a master agreement which allowed  
4 them to have the same language and certain provisions of the  
5 each of the agreements covering each of those bargaining units.

6 Q Okay. So the national bargaining resulted in a national  
7 agreement, cross regional resulted in what's called the master  
8 agreement.

9 A Correct.

10 Q In 2005 who was the section 9A exclusive collective  
11 bargaining representative for the three units involved in this  
12 case?

13 A SEIU.

14 Q Which local?

15 A UHW.

16 Q In 2005?

17 A Oh in 2005, UHW.

18 Q Okay. Well let me ask you was there another local that  
19 later merged with SEIU UHW?

20 A Yes.

21 Q Okay. What is that local?

22 A 535.

23 Q Okay. So let me ask you in 2005, who was the 9A  
24 representative of these three bargaining units?

25 A 535.

1 Q Okay. 535. In what year did they merge with SEIU UHW?

2 A 2007.

3 Q Okay. In 2005 after the cross regional bargaining did  
4 SEIU local 535 engage in local bargaining with the Respondents  
5 for these three bargaining units?

6 A They did.

7 Q Did that result in an agreement?

8 A Yes.

9 Q What is that agreement referred to?

10 A The local agreement.

11 Q Okay. Now did employees in each of these three bargaining  
12 units vote to ratify these agreements?

13 A Yes.

14 Q If you could for us taking a look at -- let me take one  
15 contract as an example. I'm showing the witness General  
16 Counsel's Exhibit 6. Can you help illustrate for the  
17 Administrative Law Judge where within this document he might be  
18 able to find what you described as the local agreement, the  
19 cross regional agreement and the national agreement?

20 A Okay. So the local agreement will be the first document.  
21 That would be from the small Roman numeral i through page 82.  
22 That would be the local agreement. The master agreement, which  
23 was part of the cross regional bargaining, which would be any  
24 of the areas that are shaded in gray in the local agreement.

25 Q Can you point one out as an example to the Judge?

1 A Sure. I'd just point out page 1.

2 Q Thank you.

3 A And then the following document, after page 82 of the  
4 local agreement is the national agreement.

5 Q And you have in front of you General Counsel's Exhibit 6.  
6 Right?

7 A I do.

8 Q So let me ask you, each of the provisions that you've  
9 described here within this contract they all apply to the psych  
10 social chapter unit. Correct?

11 A That is correct.

12 Q Involved in this case. And similarly if I were to show  
13 you the other contracts all the terms within the document  
14 you're looking at applied to -- for one of them it would be the  
15 AFN unit, and for the other it would be for the Healthcare  
16 unit. Correct?

17 A That's correct.

18 Q I'd like to ask you some questions now about some of the  
19 wages and benefits contained in the national agreement section  
20 of each of --

21 A Sure.

22 Q -- these three contracts.

23 A Sure.

24 Q Let's start with across the board wage increases. Does  
25 the national agreement section of these contracts provide for a

1 across the board wage increases?

2 A Yes.

3 Q Okay. In what section could we find that?

4 A Section 2, Wages and Benefits, A Compensation.

5 Q Okay. When you say section 2A it would be section 2A in  
6 each of the three contracts. Correct?

7 A Right.

8 Q Okay. Is there a reopener provision in the national  
9 agreement section of each of these contracts?

10 A Yes.

11 Q That would encompass across the board wage increases?

12 A yes.

13 Q Okay. Can you tell us what section that is in?

14 A It would be section 3, Scope of the Agreement. And it  
15 would be under D, Duration, Renewal and Reopening.

16 Q In 2008 while you were employed by SEIU, did you  
17 participate in any negotiations pursuant to the reopener  
18 language in these contracts that involved across the board wage  
19 increase for among others, the three bargaining units involved  
20 in this case?

21 A I did.

22 Q Did those negotiations result in the reaching of an  
23 agreement?

24 A Yes.

25 Q I'm showing you what's been marked as General Counsel's

1 Exhibit 7. Do you recognize this document?

2 A I do.

3 Q Can you tell me what it is?

4 A It's the agreement we reached in the reopening of the  
5 contract in 2008.

6 Q And this agreement covered the three bargaining units  
7 involved in this case. Correct?

8 A Yes.

9 MR. MACKAY: Okay. I move for the introduction of General  
10 Counsel's Exhibit 7.

11 MR. LINDSAY: Do you have an executed copy?

12 MR. MACKAY: No. I don't. Oh, let me check something  
13 here, Your Honor.

14 JUDGE SCHMIDT: This will be off the record.

15 (Off the record)

16 JUDGE SCHMIDT: Go ahead, counsel.

17 MR. MACKAY: Okay.

18 Q BY MR. MACKAY: I'm showing you what's going to be marked  
19 as General Counsel's Exhibit 7.

20 A I do.

21 Q And what is it?

22 A It's the agreement we reached as a result of the reopener  
23 for the national agreement.

24 Q And is this an executed copy of that agreement?

25 A It is.

1 Q Okay.

2 MR. MACKAY: I move for the introduction of General  
3 Counsel's Exhibit 7.

4 MR. LINDSAY: No objection.

5 MS. HOFFMAN: No objection.

6 JUDGE SCHMIDT: Received.

7 **(General Counsel Exhibit 7 received into evidence.)**

8 Q BY MR. MACKAY: And can you just point to us briefly where  
9 on the first page of this document there's certain groupings  
10 here and just -- I think it's clear from the document, but I  
11 think it will just assist. Can you tell us where in this  
12 document each of the units would fall and the units involved in  
13 this case. So for example the AFN unit?

14 A The AFN unit would be under Roman numeral number II, the  
15 first paragraph.

16 Q And that's first paragraph because it encompasses  
17 California?

18 A Correct.

19 Q Okay. How about the Healthcare Professionals Unit?

20 A Roman Numeral Number I, the first paragraph.

21 Q And the Psych Social unit.

22 A Roman Numeral Number I, first paragraph.

23 Q Okay. So --

24 JUDGE SCHMIDT: Which paragraph?

25 THE WITNESS: The first paragraph. It reads "Wages for

1 all non-RN partnership employees in California."

2 JUDGE SCHMIDT: Okay.

3 Q BY MR. MACKAY: Okay. Looking at that paragraph Roman  
4 numeral I, the first paragraph, did the Healthcare  
5 Professionals unit receive a three percent across the board  
6 wage increase on October 1st, 2008?

7 A Yes.

8 Q Did they receive a three percent wage increase on October  
9 1st 2009?

10 A Yes.

11 Q Okay. Still looking at that same paragraph, okay. Now  
12 for Psych Social, did the Psych Social unit employees involved  
13 in this case receive a three percent wage increase on October  
14 1st, 2008?

15 A Yes.

16 Q Did they receive a three percent wage increase on October  
17 1st, 2009?

18 A Yes.

19 Q Okay. Scrolling down to Roman Numeral II, the first  
20 paragraph, did the AFN unit employees involved in this case  
21 receive a four percent wage increase on October 1st, 2008?

22 A Yes.

23 Q Did they receive a four percent wage increase on October  
24 1st, 2009?

25 A Yes.

1 JUDGE SCHMIDT: Did you still work for SEIU for 2009?

2 THE WITNESS: January.

3 JUDGE SCHMIDT: January of 2009.

4 THE WITNESS: Only.

5 JUDGE SCHMIDT: Yeah. You worked for SEIU through January  
6 of 2009?

7 THE WITNESS: Correct.

8 JUDGE SCHMIDT: Go ahead, counsel.

9 Q BY MR. MACKAY: Okay. Now let me ask you about the  
10 subject of tuition reimbursement for continuing education  
11 courses to obtain or maintain licensure. Does the national  
12 agreement section in each of these contracts provide for  
13 tuition reimbursement for such things?

14 A Yes.

15 Q Can you tell us in what section within the national  
16 agreement section we would find that?

17 A Section 1. 1D 3C.

18 Q So section 1.D.3.C? And that would be the same section  
19 number in each of the three contracts. Correct?

20 A Correct.

21 Q Pursuant to that section can you describe -- well --

22 JUDGE SCHMIDT: What page are we on?

23 THE WITNESS: Well it would have been on page 29.

24 JUDGE SCHMIDT: All right.

25 THE WITNESS: And it's the last paragraph of that section.

1 It refers to tuition reimbursement. Okay?

2 JUDGE SCHMIDT: Yes. Okay. Got you. It's on page 29 of  
3 the national agreement. All right. Go ahead.

4 Q BY MR. MACKAY: I would propose a stipulation that up and  
5 until February 3rd, 2010 Respondent provided for tuition  
6 reimbursement for continuing education courses pursuant to  
7 those sections -- pursuant to that section of the contract to  
8 each of the three bargaining units?

9 A And continued to do so through March 31st of that year as  
10 well.

11 MR. MACKAY: The stipulation is through February. I think  
12 you'll see the events that he's talking about, about the  
13 additional month coming in shortly through an email. I'd like  
14 to describe why it continued for just a few more weeks.

15 JUDGE SCHMIDT: All right. Well I'll accept the  
16 stipulation as proposed. All right. And I note counsel's  
17 added comments with respect to what happened thereafter.

18 Q BY MR. MACKAY: Okay. Let me ask you now about steward  
19 training, education and development. Does the national  
20 agreement section in each of these contracts provide for  
21 steward training, education and development?

22 A Yes.

23 Q In what section is that located?

24 A It's in Section 1E Number 3. It's on page 31.

25 Q Can you provide for us a brief description of what steward

1 training would be -- what would be encompassed under this  
2 section in terms of what was provided for the three units  
3 involved in this case under the terms of section?

4 A Grievance handling, contract interpretation, trainings on  
5 labor management partnership initiatives, like attendance, work  
6 place safety, reports on those. Those types of things.

7 Q Okay. And would employees receive paid time off to do  
8 training?

9 A Yes.

10 Q Okay. I'd like to ask you some questions now about events  
11 that took place following the NUHW certification on February  
12 3rd, 2010. First, when was NUHW formed?

13 A In late January early February of 2009.

14 Q Oh. And I'm sorry. Before we move on.

15 MR. MACKAY: I would propose a stipulation that up and  
16 until February 3rd of 2010 Respondents provided for regular  
17 steward training as described to each of the three units.

18 MR. LINDSAY: So stipulated.

19 JUDGE SCHMIDT: Received.

20 Q BY MR. MACKAY: Okay. Now returning back, you said NUHW  
21 formed, I'm sorry, in what year?

22 A In early February 2009.

23 Q Are these the first Kaiser bargaining units that NUHW has  
24 ever represented?

25 A Yes.

1 Q Has NUHW ever been a member of the coalition of Kaiser  
2 Unions?

3 A No.

4 Q After the NUHW was certified did the union meet with  
5 representative of Respondents as sort of a meet and greet for  
6 these three bargaining units?

7 MR. LINDSAY: Objection, leading.

8 JUDGE SCHMIDT: I'll treat it as a preliminary question.  
9 Go ahead and answer.

10 THE WITNESS: Actually we called it a ground rules setting  
11 meeting. And yes.

12 Q BY MR. MACKAY: And when was the date of that first  
13 meeting?

14 A It was February 12th.

15 Q And where was the meeting held at?

16 A At the Walnut Center which is the headquarters for  
17 Southern California Kaiser.

18 Q And what city is that in?

19 A Pasadena.

20 Q Who was present at this meeting on behalf of the  
21 Respondents?

22 A Maryanne Malzone, Arlene Peasnall, Richard Rosas.

23 Q To the extent you know their job titles, can you tell us  
24 their job titles, too?

25 A Yes. Arlene Peasnall is the vice president of human

1 resources for Southern California. Maryanne Malzone is the  
2 director of labor relations. And Richard Rosas is the senior  
3 representative in labor relations.

4 Q Who was present on behalf of the union?

5 A I was present. Gabe Kristal was present, Jason Campbell.  
6 And quite a large committee of workers.

7 Q Okay. And the two names you mentioned Jason and Gabe;  
8 they are representatives of the union?

9 A Yes.

10 Q Did the union make any proposals at this meeting?

11 JUDGE SCHMIDT: Wait. Can -- something I missed along the  
12 line. This first meeting you said was held on February 12th,  
13 that would be of 2010.

14 THE WITNESS: Yes.

15 JUDGE SCHMIDT: Go ahead.

16 Q BY MR. MACKAY: Did the union make any proposals at this  
17 meeting?

18 A Yes.

19 Q Okay. And what was that?

20 A We asked the employer to extent the current collective  
21 bargain agreements through October 1st of 2010. We also  
22 proposed that the employer continue tuition reimbursement and  
23 the steward training. We asked for the employer to give our  
24 union representatives badges that they normally give to union  
25 representatives and other things.

1 Q Okay. I'm sorry, you said, proposed. What do you mean by  
2 that?

3 MR. LINDSAY: Objection, vague.

4 JUDGE SCHMIDT: Sustained.

5 THE WITNESS: We said to the employer --

6 JUDGE SCHMIDT: Wait.

7 THE WITNESS: Oh, I'm sorry.

8 JUDGE SCHMIDT: Go ahead. Rephrase your question.

9 Q BY MR. MACKAY: Did you talk about the continuing  
10 education courses?

11 A Yes.

12 Q Okay. What specifically did you say at this meeting on  
13 that issue?

14 A That we wanted the employer to continue that benefit. The  
15 reason for it, if I could add.

16 JUDGE SCHMIDT: I don't hear an objection. Go ahead.

17 THE WITNESS: Was that we were getting reports from our  
18 members that managers were telling them that they were no  
19 longer eligible for that benefit.

20 Q BY MR. MACKAY: Did the subject of the regular steward  
21 training come up at this meeting?

22 A Yes.

23 Q Did you say anything with respect to that issue?

24 A Yes. We wanted the employer to continue that as well.

25 Q Did you say that to the employer at this meeting?

1 A Yes.

2 Q Prior to that day had anybody from Kaiser; either of the  
3 respondents indicates to you that those things were going to be  
4 eliminated?

5 A Not at -- no.

6 Q Did you have a second meeting after this first one?

7 A Yes.

8 Q Let me ask you, in response to your statements to them  
9 about the tuition reimbursement and steward training, did  
10 Respondents respond to that?

11 A No. They said they would get back to us.

12 Q Okay. The second meeting, on what date was the second  
13 meeting?

14 A It was February 26th.

15 Q And was that meeting at the same location?

16 A Yes.

17 Q Okay. Were the same representatives for Respondent  
18 present?

19 A Yes.

20 Q Same representatives for the union?

21 A Yes, except some of our committee, of the workers would  
22 have changed a little bit.

23 Q All right. At this meeting did the Respondents provide  
24 any kind of response to you on the issues that you just  
25 testified about occurring at the previous meeting?

1 A Yes.

2 Q And first, do you recall who from the Respondents spoke?

3 Before I ask you what was said.

4 A Arlene Peasnall and Richard Rosas were the main  
5 spokespeople. Specifically remembering which one addressed  
6 each issue, I wouldn't be able to tell you.

7 Q Okay. What was the response that you got?

8 A They said no to the contract extension. That they would  
9 not be giving the two percent increase to our members. They  
10 would not continue the tuition reimbursement, or the stewards  
11 training, or any of the benefits of the national agreement.

12 Q When you say the two percent increase, are you referring  
13 to the one described in General Counsel's Exhibit 7 that was  
14 due on April 1st, 2010?

15 A Yes.

16 Q Did they tell you why?

17 A Yes. They said because we are no longer part of the  
18 coalition of unions.

19 Q Did you say anything in response to that?

20 A Yes. I said, "It seems somewhat inconsistent their  
21 approach." Because the RNs were continuing to receive their  
22 front loaded sick leave. That the -- it appeared that all of  
23 the three units were receiving the health reimbursement  
24 account, which was a product of the 2008 agreement.

25 And the employer was encouraging our members to

1 participate in what they call unit based teams. Which is also  
2 a product of the national agreement.

3 Q When you said those things, what did they say in response?

4 A They said they needed to do more -- and I remember Richard  
5 Rosas said they needed to do more research.

6 Q After this meeting did the union and Respondents exchange  
7 some emails?

8 A Yes.

9 Q I'm showing you what's been marked as General Counsel's  
10 Exhibit 8. Do you recognize this?

11 A Yes.

12 Q Can you tell me what it is?

13 A It's an email from me to Maryanne Malzone. Which is  
14 preceded by an email from her to me.

15 Q Okay.

16 MR. MACKAY: I move for the admission of General Counsel's  
17 Exhibit 8.

18 MR. LINDSAY: No objection.

19 JUDGE SCHMIDT: Received.

20 **(General Counsel Exhibit 8 received into evidence.)**

21 Q BY MR. MACKAY: I'm showing you what's been marked as  
22 General Counsel's Exhibit 9. Do you recognize this document?

23 A Yes.

24 Q Can you tell me what it is?

25 A It's an email to Maryanne Malzone, Arlene Peasnall and

1 Richard Rosas from me.

2 MR. MACKAY: I move for the introduction of General  
3 Counsel's Exhibit 9.

4 MR. LINDSAY: No objection.

5 JUDGE SCHMIDT: Received.

6 **(General Counsel Exhibit 9 received into evidence.)**

7 JUDGE SCHMIDT: Did you offer 8, by the way?

8 MR. MACKAY: I thought I did. Is 8 in?

9 MR. LINDSAY: It is.

10 JUDGE SCHMIDT: Okay. 8's received also, I mean.

11 MR. MACKAY: Thank you, Your Honor.

12 JUDGE SCHMIDT: I don't recall speaking to that.

13 Q BY MR. MACKAY: When was the next meeting that you had  
14 with Respondents?

15 A March 18th.

16 Q And this is still 2010. Correct?

17 A Yes.

18 Q Where was this meeting held?

19 A The same location as the other two meetings.

20 Q Were the same representatives of the Respondents there?

21 A Yes.

22 Q Same representatives of the union?

23 A With the same differentiation of the committee, yes.

24 Q Were you given any documents at this meeting?

25 A Yes.

1 Q I'm showing you what's been marked as General Counsel's  
2 Exhibits 10 and 11. Can you take a look at these documents?  
3 Do you recognize these documents?

4 A I do.

5 Q Can you tell me what they are?

6 A Exhibit 10 is a -- should be three separate documents that  
7 were given to me by Richard Rosas, which I would characterize  
8 as a checklist where the employer stated that --

9 Q Well let me do this -- I'm sorry to interrupt.

10 A Sure.

11 Q First I just want to identify whether these are documents  
12 you were given at this --

13 A Yes.

14 Q -- meeting or not. So let me ask you. General Counsel's  
15 Exhibit 10, were you given this document at that meeting?

16 A Yes.

17 Q And who gave you that document?

18 A Richard Rosas.

19 Q Okay. Do you see Exhibit 11? Were you given this  
20 document at the meeting?

21 A Yes.

22 Q Okay. Who gave you that document?

23 A Arlene Peasnall.

24 Q All right.

25 MR. MACKAY: I move for the introduction of General

1 Counsel's Exhibits 10 and 11.

2 MR. LINDSAY: Voir dire on 10 for a moment. I just want  
3 to --

4 JUDGE SCHMIDT: Go ahead.

5 **VOIR DIRE EXAMINATION**

6 Q BY MS. LINDSAY: When Exhibit -- when General Counsel's  
7 Exhibit -- or proposed Exhibit 10 was given to you it was three  
8 separate documents. Is that correct?

9 A Yes.

10 MR. LINDSAY: With that understanding, Your Honor.

11 **DIRECT EXAMINATION CONINUED**

12

13 Q BY MR. MACKAY: And to further clarify it, one was the AFN  
14 pages for the AFN union, one was the Psych Social pages for the  
15 Psych Social union, and one was for the Healthcare  
16 Professionals union?

17 A That is correct.

18 JUDGE SCHMIDT: Okay. With that clarification, 10 is  
19 received.

20 **(General Counsel Exhibit 10 received into evidence.)**

21 MR. MACKAY: Okay. Did you --

22 JUDGE SCHMIDT: It's the government trying to save money  
23 with staples.

24 Q BY MR. MACKAY: All right. Okay. When you were given  
25 General Counsel's Exhibit 11 did you read that document when

1 you were given it?

2 A Yes.

3 Q Let me ask you, looking now at General Counsel's Exhibit  
4 10 did they provide any type of explanation or description of  
5 what this was, just so you understood what you were being  
6 handed?

7 A Yes. Briefly. They explained that the --

8 JUDGE SCHMIDT: Wait. Wait. You said they. Is there a  
9 person who --

10 THE WITNESS: Oh yes.

11 JUDGE SCHMIDT: -- went about explaining this to you?

12 THE WITNESS: Yes. Richard Rosas explained that --

13 JUDGE SCHMIDT: Okay.

14 THE WITNESS: That the terms and conditions column  
15 indicated those terms and conditions that would remain in  
16 effect while we bargained a new agreement. And the column that  
17 says "Creation of the Collective Bargaining Agreement" CBA,  
18 were those that were not.

19 Q BY MS. MACKAY: And did --

20 JUDGE SCHMIDT: Now wait. Is that all he said about it?

21 THE WITNESS: Basically.

22 JUDGE SCHMIDT: Well -- was there any explanation given to  
23 you as to how this break out was determined?

24 THE WITNESS: There was very little conversation about it.  
25 It -- basically what I said. And that's what they gave us.

1 JUDGE SCHMIDT: Go ahead, General Counsel.

2 MR. MACKAY: Okay. And if we can, Your Honor, I know I'm  
3 sort of peppering you here with papers. Could we take just  
4 maybe two minutes to let you read the document marked General  
5 Counsel's Exhibit 11, March 18th.

6 JUDGE SCHMIDT: Well --

7 MR. MACKAY: It just may help in moving things along.

8 JUDGE SCHMIDT: All right. All right, let's be off the  
9 record for a minute.

10 (Off the record)

11 JUDGE SCHMIDT: Okay. On the record.

12 MR. MACKAY: Thank you, Your Honor.

13 JUDGE SCHMIDT: But this letter poses a question that I  
14 have trouble -- has there been a charge against any of the  
15 coalition unions?

16 MR. MACKAY: On the issue of --

17 JUDGE SCHMIDT: On the issue of the -- well, the -- I  
18 gather there hasn't been.

19 MR. MACKAY: Well I --

20 JUDGE SCHMIDT: This letter, for example says, you know,  
21 the gist of it is, is that the coalition has the right to  
22 decide who belongs and who doesn't belong. And we -- there's  
23 nothing that we can do about that. Kaiser seems to be saying  
24 that. And therefore, since you're not a part of the coalition,  
25 then nothing that's in the national agreement is going to apply

1 to the people that you represent. This seems to be saying that  
2 this -- what's happened here as a result of the coalition  
3 deciding these -- the NUHW can't belong.

4 MR. MACKAY: Right. But the issue of membership in the  
5 coalition is just membership in an organization. What Kaiser's  
6 responsibility is when there's a change in bargaining  
7 representative they have to --

8 JUDGE SCHMIDT: Well okay. I --

9 MR. MACKAY: -- honor the status quo --

10 JUDGE SCHMIDT: All right.

11 MR. MACKAY: -- working conditions.

12 JUDGE SCHMIDT: But the -- there's been no type of claim  
13 made that the coalition of unions violated the act by in -- for  
14 example insisting that Kaiser not grant these benefits to  
15 anyone. And counsel for the charging party has been coming out  
16 her chair over there. You want to speak to this issue?

17 MS. HOFFMAN: Well I do want to speak to it, because there  
18 was a charged filed against SEIU UHW by the union during the  
19 course of the organizing campaign when they said that we would  
20 lose certain benefits, including the raise. And there was a  
21 charge filed in 21CV14867. But the region and the General  
22 Counsel, and the office of appeals said that that was not a  
23 threat. Even though it did come to be true. Which we argue  
24 that that there was -- it was coordinated activity and it  
25 should have been part of this case. But the -- it was

1 dismissed by the office of appeals.

2 MR. MACKAY: Okay. Can I just add, it was dismissed  
3 because it was not considered a threat, even though it was a  
4 misstatement of the law that these terms would not continue.  
5 And you're not going to have a comparable unilateral change  
6 charge to bring against these other unions --

7 JUDGE SCHMIDT: Well I recognize that, but -- well I'm not  
8 here. I'm here as the Administrative Law Judge, not to think  
9 up theories to propound, but, you know, I'm -- I just posed the  
10 question. There's -- there was a charge filed, apparently, in  
11 which the NUHW made a claim against the SEIU UHW with respect  
12 to what's happened here.

13 MS. HOFFMAN: Well it was respect to that actual threat  
14 that if NUHW was --

15 JUDGE SCHMIDT: All right. That's --

16 MS. HOFFMAN: -- certified that they would --

17 JUDGE SCHMIDT: There --

18 MS. HOFFMAN: -- lose certain benefits, including this  
19 raise.

20 JUDGE SCHMIDT: Okay.

21 MS. HOFFMAN: And --

22 MR. LINDSAY: And to be clear that charge was in  
23 connection with the campaign.

24 MS. HOFFMAN: It was in connection with the campaign, but  
25 we argued to --

1 JUDGE SCHMIDT: Well --

2 MS. HOFFMAN: -- the officer of appeals. And to the --  
3 that they should -- that it should not be dismissed and it  
4 should have been consolidated with this case, because it was  
5 actual collusion.

6 JUDGE SCHMIDT: This so --

7 MS. HOFFMAN: Because it became a reality.

8 MS. HOFFMAN: This so called threat that you're talking  
9 about, and what Respondent's counsel just said, simply means  
10 that it occurred during the campaign after it became determined  
11 there was going to be an election.

12 MS. HOFFMAN: Yes. But it's actually continuing conduct  
13 in other elections. That's why we -- that's --

14 JUDGE SCHMIDT: Yeah. You --

15 MS. HOFFMAN: That's -- it's --

16 MS. LINDSAY: But to answer Your Honor's question, there  
17 is -- there was no charge filed against the coalition apart  
18 from the charge that Ms. Hoffman has just described.

19 JUDGE SCHMIDT: All right.

20 MR. LINDSAY: Which was against SEIU only.

21 MS. HOFFMAN: That's correct.

22 MR. LINDSAY: And has been dismissed.

23 JUDGE SCHMIDT: Yeah. Okay. Go ahead. Pardon the  
24 interruption.

25 Q BY MR. MACKAY: All right. So for clarification, when

1 you're looking at General Counsel's Exhibit 10, the contract  
2 sections that you see on the left side for each of the three  
3 bargaining units, those are the contract sections that appear  
4 in what would -- we would be referring to as the local and the  
5 mater agreement. Correct?

6 A That is correct.

7 Q There are no -- none of the national agreement sections  
8 listed on the left side of any of these pages. Correct?

9 A That is correct.

10 Q Okay. So this was -- okay. Okay. So after reading this  
11 letter and then they describe for you what this document is,  
12 did you say anything to them?

13 A That there was a lot of passionate response on the -- many  
14 of the committee members spoke very angrily about the position  
15 that Arlene Peasnall was taking in presenting this letter to  
16 us. The -- it was presented in a way where -- she presented it  
17 as a decision has been made and there was really no discussion.

18 Q Did you take any position at this meeting about whether  
19 the terms from the national agreement should still continue in  
20 effect?

21 A Oh absolutely. In the previous meeting as well as in this  
22 meeting, we absolutely said that all of the agreements in the  
23 national agreement should apply. Yes.

24 Q Okay. Then either prior to this meeting -- let me ask you  
25 this, did Respondents' pay unit employees the April 1st, 2010

1 wage increase that's called for under the memorandum of  
2 agreement introduced as General Counsel's Exhibit 7?

3 A No.

4 Q In any of the three units?

5 A No.

6 Q Has the elimination of the wage increase and the benefits  
7 involved in this case had any impact on the contract  
8 negotiations?

9 A Yes.

10 Q Can you just briefly describe the impact it's had?

11 A Well, following the meeting that we had on March 18th we -  
12 - I was really forced into having the field reps have special  
13 meetings with our members throughout the region, including at  
14 AFN. Because it created a huge problem for us. Our members  
15 anticipated receiving the -- that they would receive the two  
16 percent increase. They did not. So it cost us to really have  
17 a hiatus in bargaining, so that we could do this and meet with  
18 our members try to explain to them what we though was Kaiser's  
19 position, incorrect position. And what we needed to do to res  
20 -- to deal with that issue.

21 Q Was there any hiatus in the bargaining?

22 A Yes.

23 Q Of approximately how long?

24 A About two and a half months?

25 Q And why was there a hiatus?

1 A For the reasons I just explained. It really -- it called  
2 for us to meet with our members. They were pretty much  
3 devastated by Kaiser's position.

4 MR. MACKAY: Just one -- I know we have this witness up  
5 here, but I'd like to do this now just so I don't forget. The  
6 witness testified about the wage increases that were given in  
7 2008 and 2009 to the bargaining unit employees in each of the  
8 three units. I would propose a stipulation that they were  
9 given the wage increases called for in this document and as he  
10 described.

11 MR. LINDSAY: So stipulated.

12 JUDGE SCHMIDT: Received.

13 MR. MACKAY: Okay. I have no further questions, Your  
14 Honor.

15 JUDGE SCHMIDT: Charging party have questions of the  
16 witness?

17 MS. HOFFMAN: No, Your Honor.

18 JUDGE SCHMIDT: All right. Respondent, Cross.

19 MR. LINDSAY: Do you have a declaration from this witness  
20 other than the one that was produced as an attachment to the  
21 pending motion?

22 MR. MACKAY: I do. This is the one that was attached.  
23 This is the declaration he gave me from the underlying case.

24 MS. LINDSAY: Okay. If I can have a few minutes to look  
25 at this second declaration?

1 JUDGE SCHMIDT: Yeah. Let's be off the record.

2 (Off the record)

3 JUDGE SCHMIDT: On the record. We'll take about five  
4 minutes. If you need additional time it'll be provided.

5 MR. LINDSAY: Thank you, Your Honor.

6 JUDGE SCHMIDT: Off the record.

7 (Off the record)

8 JUDGE SCHMIDT: Proceed.

9 **CROSS-EXAMINATION**

10 Q BY MR. LINDSAY: Mr. Cornejo, can you -- I'd like to  
11 direct your attention to General Counsel's Exhibit No. 10 if I  
12 can.

13 A Yes.

14 Q And I believe counsel for the general -- or general  
15 counsel asked you if there was any of the boxes on the  
16 left-hand side that were checked that came from the national  
17 agreement, and I believe your answer was that there were none  
18 on the left side of the agreement, is that -- of the document,  
19 is that correct?

20 A That is correct.

21 Q Is there anything on the right side of the agreement that  
22 comes from the national agreement in any of these documents?

23 A I don't believe so.

1 Q Thank you. What were the -- did you -- you were a witness  
2 at the election, is that correct, in the -- for the -- for the  
3 election of these three units?

4 A A witness?

5 Q Strike that. Were you an observer?

6 A Yeah.

7 Q Okay. Do you recall the margins in the elections in these  
8 -- for these three units?

9 A More or less.

10 Q Okay. What was the margin in the AFN unit?

11 A It was about 95 percent.

12 Q Okay. What was the margin in the psych/social worker  
13 unit?

14 A About 84, 85 percent.

15 Q And what was the margin in the healthcare professional  
16 field?

17 A I believe I was 86 percent.

18 Q Thank you. And just so that the record is clear, NUHW is  
19 not a member of the partnership or the coalition of Kaiser  
20 unions, is that correct?

21 A That's correct.

22 Q And did you at one of the meetings that you had with the  
23 Kaiser individuals, the three meetings you've described here,  
24 state that the NUHW had no desire to become part of that  
25 coalition?

1 A I don't recall saying that.

2 Q Do you recall saying words to that effect?

3 A No.

4 Q Do you recall saying that you were not interested in  
5 bargaining whether or not NUHW would become part of the  
6 coalition?

7 A I don't understand that question.

8 Q Okay. Do you recall saying that you did not have any  
9 proposals to make in connection with whether NUHW would become  
10 part of the coalition of Kaiser unions?

11 A Proposals to whom?

12 Q Proposals to the representatives of management who were  
13 there present at the time.

14 A I'm sorry, I'm not understanding your question.

15 Q My question is, is at any of the three meetings that you  
16 had with the Kaiser individuals -- and we are talking about the  
17 February 12th, February 26th and March 18th meetings to be  
18 clear -- did you make any statements to them about any position  
19 that NUHW had has to whether or not it would become or not  
20 become a member of the Kaiser partnership of unions?

21 A No.

22 Q Okay. You testified that you made an initial proposal to  
23 Kaiser at the ground rules meeting I think is the way you  
24 termed it, that Kaiser would continue -- Kaiser should continue

1 the contract, the collective bargaining agreements, through  
2 October of 2010. Was that correct?

3 A That's correct.

4 Q And then you also addressed the specific issues the  
5 counsel for the general counsel raised with you, is that  
6 correct?

7 A That's correct.

8 Q Okay. Can I direct your attention to any one of the three  
9 contracts that have been marked as General Counsel's either 4,  
10 5 or 6?

11 A I have --

12 Q That's fine.

13 A -- the psych/social.

14 Q That's fine. Can I direct your attention to the national  
15 agreement portion of that agreement.

16 A Yes.

17 Q Is there any provision in there that contains a  
18 recognition clause?

19 A The normal recognition clause that we would see in a local  
20 agreement, nothing like that.

21 Q All right. So is there anything in the national agreement  
22 that would apply to a specific group of workers outside of the  
23 coalition of unions?

24 MR. MACKAY: Objection. I think that is going to be the  
25 legal issue that you're going to be decided. It doesn't matter

1 -- one, I'd say the document is going to speak for itself in  
2 terms of provisions, but I do have a relevancy objection. It  
3 doesn't matter what the parties put or write into a contract  
4 about whether these things will remain the employee's status  
5 quo working conditions. Whether conditions survive or not  
6 depend on if they're a mandatory subject of bargaining, if they  
7 had been applied to the unit up and until then. So I don't --

8 JUDGE SCHMIDT: Is there any objection or a speech?

9 MR. MACKAY: Well, I think that this is going to come up  
10 quite a bit, and my only concern is I just don't want to have  
11 foregone raising this argument.

12 MS. HOFFMAN: My objection is that it calls for a legal  
13 conclusion from the witness if he's asking -- the way his  
14 question was asked.

15 JUDGE SCHMIDT: I'm going to overrule the objection at  
16 this time.

17 You may answer.

18 THE WITNESS: Ask the question again.

19 UNIDENTIFIED SPEAKER: Can I have it read back?

20 THE REPORTER: Would you prefer to play it back so you can  
21 hear it or you'll try to -- just to read the question back?

22 JUDGE SCHMIDT: Do you have the question?

23 THE REPORTER: I do.

24 JUDGE SCHMIDT: Go ahead.

1 THE REPORTER: I'm sorry, I'm just right at the objection.

2 Give me one second.

3 JUDGE SCHMIDT: All right.

4 (Reporter reads back previous question)

5 THE REPORTER: And then there's the objection.

6 THE WITNESS: It neither says outside or inside of the  
7 coalition.

8 JUDGE SCHMIDT: Okay. Well, then if I can -- let me  
9 pursue that just a little bit. This coalition, to your  
10 knowledge, was there any representative of any Kaiser employees  
11 that was not in this coalition?

12 THE WITNESS: No.

13 JUDGE SCHMIDT: Go ahead.

14 Q BY MR. LINDSAY: Are the -- is the pharmacist field in  
15 the coalition?

16 A No.

17 Q Do they represent Kaiser employees?

18 A Yes.

19 Q Is that a union that is not part of the coalition but does  
20 represent Kaiser employees?

21 A That is correct.

22 Q Is operating engineers 501 under -- covered by the  
23 coalition?

24 A No.

1 Q Does operating engineers 501 cover Kaiser employee --  
2 represent Kaiser employees?

3 A Yes.

4 Q Then there are unions outside the coalition that represent  
5 Kaiser employees, is that correct?

6 A Yes.

7 Q Let me -- you were involved in the negotiations of both  
8 the national agreement and the local as well as the cross-  
9 regional agreements, correct?

10 A Yes.

11 Q Was there a separate vote held on the national agreement  
12 by those employees covered by it?

13 A No.

14 Q Was there a separate vote held on the local agreements by  
15 each of the employees held -- covered by it?

16 A No.

17 Q Was there a single vote for everything?

18 A Yes.

19 Q And who conducted that vote?

20 A It was done by locals.

21 Q So each of the three locals involved in this case  
22 conducted a separate vote for each of the individual contracts,  
23 is that correct?

24 A That is correct.

1 Q At the first meeting that you had with Kaiser, I believe  
2 it was February 12th, was there a discussion about the PSPs?

3 A There may have been. I don't recall specifically.

4 Q Do you recall a discussion as to whether or not the  
5 employees would be paid the PSP sums in 2010 for the 2009  
6 performance?

7 A There may have been.

8 Q Do you recall?

9 A I don't recall.

10 Q Do you recall in that meeting asking for access for the  
11 union to the Kaiser facilities?

12 A What we asked for was badges for the union reps.

13 Q And did you ask for access for the stewards to supervise  
14 the performance for the operations as well?

15 A I don't recall.

16 Q At the second meeting when Ms. Peasnell informed you that  
17 Kaiser would not agree to extend the three agreements, do you  
18 recall what you said in response?

19 A No.

20 Q Did you discuss the time -- any mechanism for paying union  
21 stewards for -- in this second meeting for the time that they  
22 would spend engaged in representational activities?

23 A No.

24 Q For my own benefit, the psych/social workers are salaried  
25 employees, is that correct?

1 A That is correct.

2 Q And the healthcare professionals are salaried employees as  
3 well?

4 A They are.

5 Q And the AFN unit is -- are hourly?

6 A Right.

7 Q So for the salaried employees, whatever time they spend  
8 during the day they're paid for, is that correct?

9 A That is correct.

10 Q And it is -- has -- for -- strike that.

11 Do you have any knowledge as to how the registered nurses  
12 have been paid for time spent serving as union stewards at  
13 Kaiser after your February and March meetings with Kaiser?

14 A As stewards?

15 Q As stewards.

16 A Not steward training?

17 Q As stewards.

18 A No, I'm not familiar.

19 Q Okay. So you're unaware as to whether or not Kaiser pays  
20 the registered nurses -- or the AFN nurses for the time they're  
21 spending as stewards?

22 A No, I'm not aware.

23 Q At this second meeting, and I believe counsel for the  
24 general counsel -- on behalf of the general counsel -- I'm  
25 doing that too -- had raised -- the issue of payment for the

1 continuing education benefits came up at the second meeting, is  
2 that correct?

3 A That's correct.

4 Q And these are the continuing education benefits that are  
5 the subject of the charge, is that correct?

6 A Yes.

7 Q And an -- and Kaiser has announced its position that those  
8 benefits were gone as of the certification, is that correct?

9 A That is correct.

10 Q And I believe an employee by the name of -- I'm going to  
11 get this wrong -- Turusew Wilson, is that correct -- raised the  
12 issue in the second meeting?

13 A Turusew Gebedu-Wilson --

14 Q Thank you.

15 A -- spoke on that subject, yes.

16 Q And she requested that Kaiser extend those benefits to a  
17 date in the future, is that correct?

18 A As I recall, she said, if folks have already submitted  
19 requests will you honor those requests.

20 Q And what did Kaiser say at that point?

21 A I think they were going to take that under advisement.

22 Q And then that is what led to the later correspondence in  
23 General Counsel's Exhibit 8, is that correct?

24 A Yes.

1 Q So Kaiser changed its position based on the request of the  
2 worker at this meeting then, correct?

3 MR. MACKAY: Objection, vague as to "changed its  
4 position."

5 JUDGE SCHMIDT: Well, as I -- yeah. As I understood the  
6 position they took when the question was asked was they'd take  
7 it under advisement.

8 MR. LINDSAY: Okay. Let me -- let me fix that then.

9 JUDGE SCHMIDT: All right.

10 Q BY MR. LINDSAY: When Kaiser first met with you at the  
11 meeting on February 26, did it announce -- did Kaiser  
12 representatives announce a position that they were going to take  
13 with respect to the educational benefits?

14 A No -- they said the position that they are taking. That  
15 is --

16 Q And what was the --

17 A -- folks would not get tuition reimbursement, stewards  
18 would not be paid for training, and none of the national  
19 agreement applied to our members.

20 Q Okay. I was only asking about the continuing education  
21 benefits. And what did they say with respect to their position  
22 at the beginning of that meeting on February 26, 2010 with  
23 respect to the continuing education benefits?

24 A The continuing education benefits would no longer apply to  
25 our members.

1 Q All right. And then after the issue that was raised by  
2 Ms. Wilson, Kaiser said they would take it under submission, is  
3 that correct?

4 A That is correct.

5 Q And then Kaiser responded to you by email dated March 4,  
6 2010, is that correct?

7 A That's correct.

8 Q And showing General Counsel's Exhibit No. 8. Is that  
9 correct?

10 A That's correct.

11 Q All right. With respect to the healthcare reimbursement  
12 accounts, did Kaiser tell you what -- at any meeting what it  
13 was going to do with respect to those accounts?

14 A They said none of the national benefits applied to our  
15 members.

16 Q Did they tell -- did you ask them what they were going to  
17 do with respect to the healthcare reimbursement accounts?

18 A At those initial three meetings?

19 Q At any of those three meetings.

20 A No.

21 Q Did Kaiser tell you what it was going to do with respect  
22 to the healthcare reimbursement accounts at any of those three  
23 meetings?

24 A They did not.

1 Q Do you have an understanding as to what Kaiser did with  
2 respect to the healthcare reimbursement accounts at any of  
3 those three meetings?

4 A They did not.

5 Q Do you have an understanding as to what Kaiser did with  
6 respect to the healthcare reimbursement accounts?

7 A At least in two of the units, yes.

8 Q And what is that understanding?

9 A Last Thursday I learned that they're going to apply the  
10 healthcare reimbursement account to the healthcare  
11 professionals and in an earlier meeting -- don't remember the  
12 date -- to the psych/social workers as well.

13 Q Have you ever learned what Kaiser was going to do with  
14 respect to the AFN employees and the healthcare reimbursement  
15 accounts?

16 A No.

17 Q To your recollection, there was no discussion of the  
18 healthcare reimbursement accounts at any of those three  
19 meetings in February or March, 2010?

20 A There were discussions.

21 Q As to what Kaiser was going to do?

22 A No.

23 Q Based on your understanding of the national agreement, is  
24 Kaiser obligated to pay union stewards for the time they spend

1 representing employees in corrective action under the national  
2 agreement?

3 A I don't know.

4 Q Do you know what the source of that -- do you know whether  
5 Kaiser is obligated to make such payments?

6 A I do not know.

7 Q Okay.

8 MR. LINDSAY: I'm going to ask that the witness -- well,  
9 strike that.

10 Q BY MR. LINDSAY: Earlier in this matter you provided a  
11 declaration to the National Labor Relations Board in connection  
12 with this charge, not with -- in connection with the -- I'm  
13 sorry -- election with --

14 MR. LINDSAY: What's the word I'm thinking of, Counsel?

15 MR. MCKAY: Representation case.

16 MR. LINDSAY: The representation case. Thank you. Thank  
17 you.

18 Q BY MR. LINDSAY: In connection with the charge, is that  
19 correct?

20 A Yes.

21 Q The last --

22 MR. LINDSAY: I ask that he be shown a copy of his  
23 declaration. The --

24 MS. HOFFMAN: The affidavit from the case, right?

25 MR. LINDSAY: The affidavit for this case.

1 MS. HOFFMAN: Just want to make sure there's nothing  
2 written on it.

3 MR. LINDSAY: This is just as --

4 MS. HOFFMAN: Yeah.

5 MR. LINDSAY: Okay. That's fine.

6 MS. HOFFMAN: That's the original.

7 MR. LINDSAY: Thank you.

8 Q BY MR. LINDSAY: May I take -- may I ask you to take a  
9 moment to look at that declaration just -- specifically I want  
10 to direct your attention to page 7 of that declaration. I  
11 would specifically direct your attention to 8, 9 and -- 8  
12 through 10 of that declaration. Can you read that statement in  
13 your declaration.

14 A Starting with line 8?

15 Q Starting with, "This checklist is attached."^^

16 JUDGE SCHMIDT: Wait.

17 THE WITNESS: "This checklist" --

18 JUDGE SCHMIDT: Wait. Wait. What are we doing? Is this  
19 -- are you attempting to show you an inconsistent statement,  
20 refresh his recollection of what?

21 MR. LINDSAY: I'm going to show an inconsistent statement  
22 when he reads this and that will be it. All right?

23 JUDGE SCHMIDT: Go ahead.

24 THE WITNESS: "So this checklist is attached as Exhibit 7.  
25 Once the employer handed me the letter and the checklist the

1 parties did not discuss the letter or the checklist, but I did  
2 point out a few inconsistencies. It seemed that these  
3 documents were the employer's position and the matter was not  
4 up for discussion."

5 Q BY MR. LINDSAY: Let me direct your attention to page 5 of  
6 this declaration, lines 1 through 5 on page 5.

7 A Uh-huh.

8 Q Would you read those lines, please, beginning with "I  
9 pointed out".

10 A "I pointed out to the employer representatives that they  
11 were being inconsistent as far as the terms of the national  
12 agreement they were continuing to apply and those they were  
13 choosing not to apply. I pointed out to them that the RN unit  
14 was still getting frontloaded sick leave as provided for by the  
15 national and that all employees were still receiving the  
16 healthcare reimbursement account as provided for by the  
17 national."

18 Q And this was -- time period turn back to the previous  
19 page, this was at the February 26, 2010 meeting, is that  
20 correct?

21 A Yes.

22 Q So at that time you knew that the employer was providing  
23 the healthcare reimbursement --

24 A No. What we --

25 Q -- account --

1 A What we --

2 Q -- as provided to the national?

3 A No. What we said in the meeting was that on the check  
4 stubs of the workers it separated the sick leave into two  
5 separate accounts, one that would apply for the HRA and one  
6 that would not. All we could guess was that it did -- that  
7 they were applying the healthcare reimbursement account at that  
8 time, but Kaiser never said yes, we are doing it or no, we're  
9 not doing it. They just never answered the question.

10 Q I guess my question is, is this -- so you believe your  
11 testimony is consistent with what you've said today, that you  
12 only just learned of that with respect to the units in the past  
13 week?

14 A For sure.

15 Q All right. Thank you.

16 What was the date on which Kaiser representatives told you  
17 that the employees would not be receiving the 2 percent pay  
18 increase?

19 A It was the second meeting.

20 Q February 26, 2010?

21 A Yes.

22 Q And the effective date of that across-the-board pay  
23 increase was April 1, 2010?

24 A One of the pay periods close to April 1, yes.

25 MR. LINDSAY: Nothing further.

1 JUDGE SCHMIDT: Redirect, General Counsel?

2 MR. MACKAY: Briefly. May I have just two minutes?

3 JUDGE SCHMIDT: Yes. Let's be off the record. Signify  
4 when you're ready.

5 (Off the record)

6 MR. MACKAY: Okay, Your Honor.

7 JUDGE SCHMIDT: Go ahead.

8 **REDIRECT EXAMINATION**

9 Q BY MR. MACKAY: After February 3rd, 2010, Mr. Cornejo, did  
10 you take the position with Kaiser that you thought the terms  
11 and conditions of the national agreement do continue in effect?

12 A Yes.

13 Q Those other unions that were not members of the coalition  
14 that Counsel asked you about, those unions existed at the time  
15 that you engaged in that national bargaining in 2005, correct?

16 A Yes.

17 Q Okay. And they didn't participate in that bargaining?

18 A They did not.

19 Q And they were not signatory to any contract with  
20 Respondents with respect to that national agreement, correct?

21 A Correct.

22 Q Kaiser on this issue of extending the continuing education  
23 benefits to March 1st, 2010, did they ever state a willingness  
24 to not eliminate it from that point forward?

25 A No.

1 Q Did you ever ask Respondents why they're continuing to  
2 apply the health retirement account benefit as opposed to these  
3 other provisions from the national agreement that they are not?

4 MR. LINDSAY: Objection, vague.

5 JUDGE SCHMIDT: Overruled. You may answer.

6 THE WITNESS: The first time I asked them that question  
7 was last Thursday.

8 Q BY MR. MACKAY: And what was their response to that?

9 A "I don't know." That was Bill Blank (phonetic). He's the  
10 representative for the group of folks that we were bargaining  
11 for on Thursday.

12 Q Okay. And when you say "I don't know," you're saying that  
13 that was his answer?

14 A Uh-huh.

15 JUDGE SCHMIDT: Your answer is yes?

16 THE WITNESS: Yes. Oh, I'm sorry. Yes.

17 Q BY MR. MACKAY: Has Kaiser ever -- has -- have  
18 representatives of Respondents ever stated a willingness to  
19 bargain over the issue of whether those terms and conditions  
20 that have been the subject of this case that have been  
21 eliminated -- to bargain over the decision to eliminate them?

22 A No.

23 MR. MCKAY: Nothing further, Your Honor.

24 JUDGE SCHMIDT: Charging Party?

25 MS. HOFFMAN: Nothing further.

COURT EXAMINATION

1

2 Q BY JUDGE SCHMIDT: Are you familiar with the reasons -- or  
3 reason or reasons that underlie the establishment of this  
4 bargaining separate national, regional and local agreements?

5 A Originally --

6 Q Well --

7 A Oh, I'm sorry.

8 Q -- first of all --

9 A Yes.

10 Q -- your answer is yes?

11 A Yes.

12 Q Okay. Why is it then, to your knowledge?

13 A To my knowledge, Kaiser and all the various locals that  
14 were involved in the coalition in 2000 agreed to bargain a  
15 national agreement where certain provisions that they would  
16 agree to for all the various locals throughout the country  
17 would apply to the various bargaining units. Not all, just  
18 some of the things. One of the things was across-the-board  
19 increases. That's the only place across-the-board increases  
20 were ever bargained were in the national negotiations.

21 Then there was an agreement in 2005 that Kaiser and the  
22 SEIU locals would actually come together and reach a master  
23 agreement where they would try to find out -- find provisions  
24 that would be in common for all the various SEIU locals. And  
25 we did that in 2005. And in agreement you'll see that -- on

1 page 71 the various bargaining units that are included in the  
2 master agreement under SEIU.

3 Then in the past where we just had national and then local  
4 bargaining in 2000, in 2005 we had national, cross-regional,  
5 and then local bargaining. Once local bargaining was concluded  
6 and then the contract would be ratified. But it would be the  
7 national agreement that would determine across-the-board  
8 increases for all of the various locals. Not the local  
9 bargaining.

10 Q When I read these agreements will I find separate wage  
11 rates set out for different classifications?

12 A Yes.

13 Q And are those bargained locally or not?

14 A The across-the-board increases are bargained nationally.  
15 What happens is that the national agreement -- in national  
16 bargaining, they would give directives the various locals as to  
17 whether or not they could bargain special adjustments for  
18 certain classifications. For instance, in 2005, a national  
19 bargaining day allowed for special adjustments for radiology  
20 techs and clinical lab scientists -- I don't remember -- a few  
21 other classifications. But it was all directed by national  
22 then.

23 JUDGE SCHMIDT: General Counsel, any questions as a result  
24 of mine?

25 MR. MACKAY: None, Your Honor.

1 JUDGE SCHMIDT: Charging Party?

2 MS. HOFFMAN: None.

3 JUDGE SCHMIDT: Respondent?

4 MR. LINDSAY: No, Your Honor.

5 JUDGE SCHMIDT: Thank you. You may be excused.

6 Want to take about 10 minutes at this point?

7 MR. MACKAY: That would be great, Your Honor.

8 JUDGE SCHMIDT: All right.

9 MR. LINDSAY: Thank you.

10 JUDGE SCHMIDT: This will be off the record.

11 (Off the record)

12 JUDGE SCHMIDT: Let's be on the record.

13 s a result of an off-the-record discussion, we're going to  
14 be in recess until 9:00 a.m. tomorrow morning in order to  
15 permit counsels for the acting General Counsel to review  
16 several documents that have been provided to them today.  
17 Several boxes, from the appearance in the hearing room, is  
18 probably the more apt description.

19 We'll be in recess till 9:00 a.m., same place.

20 MR. LINDSAY: Thank you, Your Honor.

21 MS. HOFFMAN: Thank you.

22 **(Whereupon, at 3:51 p.m., the hearing in the**  
23 **above-entitled matter was adjourned, to be reconvened on**  
24 **Tuesday, October 19th, 2010 at 9:01 a.m.)**

25

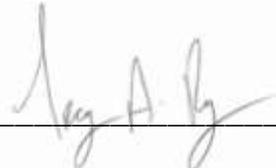
**CERTIFICATION**

1  
2 This is to certify that the attached proceedings before the  
3 National Labor Relations Board (NLRB), Region 21,  
4 Case 21-CA-39296, Kaiser Foundation Hospitals; Southern  
5 California Permanente Medical Group; Kaiser Foundation Health  
6 Plan, Inc., at the National Labor Relations Board, Region 21,  
7 888 South Figueroa Street, Suite 902, Los Angeles, California  
8 90017, on Monday, October 18, 2010, at 1:12 a.m., was held  
9 according to the record, and that this is the original,  
10 complete, and true and accurate transcript that has been  
11 compared to the reporting or recording, accomplished at the  
12 hearing, that the exhibit files have been checked for  
13 completeness and no exhibits received in evidence or in the  
14 rejected exhibit files are missing.

15

16

17



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18

Troy Ray

19

Official Reporter

20

21

22

23

24

25

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