

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

THE AMERICAN NATIONAL RED CROSS, GREAT  
LAKES BLOOD SERVICES REGION and MID-  
MICHIGAN CHAPTER,

Respondent ANRC – Region  
Respondent ANRC – Chapter,

and

LOCAL 459, OFFICE AND PROFESSIONAL  
EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

Charging Union OPEIU,

and

LOCAL 580, INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS,

Charging Union Teamsters.

Cases 7-CA-52033  
7-CA-52288  
7-CA-52544  
7-CA-52811  
7-CA-53018

Cases 7-CA-52282  
7-CA-52308  
7-CA-52487

**EXCEPTIONS OF RESPONDENTS, THE AMERICAN NATIONAL RED CROSS,  
GREAT LAKES BLOOD SERVICES REGION AND THE AMERICAN NATIONAL  
RED CROSS, MID-MICHIGAN CHAPTER, TO THE ADMINISTRATIVE LAW  
JUDGE’S DECISION AND RECOMMENDED ORDER**

NOW COME the Respondents, the American National Red Cross, Great Lakes Blood Services Region (“Region”) and the American National Red Cross, Mid-Michigan Chapter (“Chapter”), by and through their counsel Axley Brynerson, LLP and Clark Hill PLC, pursuant to Section 102.46 of the National Labor Relations Board’s Rules and Regulations, Series 8, as amended, filing Respondents’ Exceptions to the Decision and Recommended Order of

Administrative Law Judge Jeffrey D. Wedekind issued on May 5, 2011. Respondents except as follows:<sup>1</sup>

**III A.1.a.**

1. To the determination that a preponderance of the evidence supports the allegation that “the Region unlawfully failed and refused to provide OPEIU with information requested on March 17 and 25, 2009, regarding the reduced demand for blood.” (ALJD p. 4, lines 11-15 and p. 5, lines 5-6).

2. To the finding that “the information was clearly relevant to bargaining” as it is contrary to the record evidence. (ALJD p. 5, lines 6-7).

3. To the finding that the Region’s stated reason in its March 27, 2009 response, that the information sought was not relevant because the concessions sought were not related to the current economy or demand for blood products, was not credible. (ALJD p. 5, lines 20-25).

4. To the failure to follow Board law that OPEIU was required to come forward to show the relevance of the information sought where the information was based on OPEIU’s misunderstanding of the Region’s bargaining position and the information was of a financial/competitive nature. (ALJD p. 5, lines 26-27).

5. To the finding that the Region failed to show it has a legitimate and substantial privacy interest in the information requested. (ALJD p. 5, lines 28-29).

6. To the ALJ’s legal conclusion that the Region violated Section 8(a)(5) and (1) by “(a) failing and refusing to provide OPEIU Local 459 with the information it requested on

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<sup>1</sup> In these Exceptions, the Administrative Law Judge will be referred to as “ALJ”; Counsel for the Acting General Counsel will be referred to as “General Counsel”; the Office & Professional Employees International Union, Local 459, AFL-CIO will be referred to as “OPEIU”; Teamsters Local Union No. 580 will be referred to as “Teamsters”; and OPEIU and Teamsters collectively as “Unions”. Citations to the ALJ’s Decision will be referred to as “ALJD” followed by the page number and line numbers specifically referenced.

March 17 and 25, 2009 regarding the reduced demand for blood” because the legal conclusion is erroneous. (ALJD p. 42, lines 15-17).

### **III A.1.c.**

7. To the finding of merit in General Counsel’s allegation that the failure of the Region to include employee names with the healthcare demographic information provided in November 2009, violated Section 8(a)(5) and (1) of the Act. (ALJD p. 9, lines 33-38, lines 48-51).

8. To the finding that the names of employees are relevant demographic information, since the names would include thousands of employees who are not members of collective bargaining units. (ALJD p. 10, lines 5-12).

9. To finding employees’ names relevant to the Teamster’s request for demographic information, despite the fact that the Teamsters never asked any questions about the demographic information supplied. (ALJD p. 10, lines 8-12).

10. To the finding that the Region failed to carry its burden of showing the employees’ names were properly omitted to preserve privacy, which is contrary to the record evidence. (ALJD p. 10, lines 21-22).

### **III A.2.a.**

11. To the finding that the preponderance of the evidence supports the allegations that “the Region unlawfully implemented a ‘no-fault’ attendance policy in the [OPEIU] Collections and LCD units on November 17, 2008.” (ALJD p. 11, lines 9-16).

12. To erroneously giving credit to the testimony of collective bargaining representative Lance Rhines regarding the implementation by the Region of a new no-fault

attendance policy, where the dates to which Rhines testified do not support the allegations. (ALJD p. 11, lines 46-51).

13. To improper use of the ALJ's own interpretation of Rhines' testimony to "find it more likely that Rhines' memory of dates was simply imprecise due to the passage of time (approximately 2 years) since the event." (ALJD p. 11, lines 50-51).

14. To the finding "that the Region's unilateral decision, in late 2008, to begin consistently and automatically disciplining employees for only three or four instances of unscheduled leave, regardless of the reason, violated Section 8(a)(5)." (ALJD p. 13, lines 17-20).

15. To the ALJ's legal conclusion that the Region violated Section (8)(a) (5) and (1) by "(e) unilaterally implementing a more stringent, no-fault attendance policy covering employees in the Collections and LCD units in November 2008, without providing OPEIU Local 459 notice or an opportunity to bargain over the change and its effects." as it is contrary to the evidence in the record. (ALJD p. 42, lines 31-33).

### **III A.2.b.**

16. To the determination that on April 9, 2009, the Region unilaterally changed its past practice of allowing OPEIU to hold meetings on the premises. (ALJD p. 13, lines 24-26).

17. To ignoring the record evidence cited in the ALJD in finding that a legitimate past practice existed regarding the few occasions when the Region allowed OPEIU to hold meetings on the premises. (ALJD p. 14, lines 10-21).

18. To the finding of the ALJ that the Region unlawfully failed to provide OPEIU with advance notice and an opportunity to bargain "before significantly changing its past practice by summarily denying, without any substantial business justification" OPEIU's request to hold a

meeting on the premises in April 2009, as it is contrary to the record evidence showing the Region has denied such requests in the past. (ALJD p. 14, lines 47-50).

19. To the ALJ's misinterpretation of the law in finding that OPEIU was not required to request bargaining once the Region notified OPEIU that the request was denied. (ALJD p. 14, lines 35-42).

### III A.2.c.

20. To the finding that changes to the retiree medical program effective January 2009 for current employees in the Chapter Clerical/Warehouse unit who were not yet eligible to retire and those employees hired thereafter were announced as a *fait accompli*, not as "proposed" changes as it is contrary to the evidence in the record. (ALJD p. 15, lines 3-6, 28-29).

21. To the finding there is sufficient evidence that the Chapter had no intention of bargaining with OPEIU or changing its mind with respect to changes to the retiree medical program effective January 2009 for Chapter Clerical/Warehouse unit employees. (ALJD p. 15, lines 42-44).

22. To the finding that OPEIU did not waive its right to bargain by not requesting to bargain over the January 2009 change to the retiree medical program for Chapter Clerical/Warehouse bargaining unit employees, despite Rhines' admitted failure to communicate with the Chapter regarding the announced changes to the ANRC retiree medical program as it is contrary to the law. (ALJD p. 16, lines 35-36, p. 17, lines 4-6).

23. To the finding that the Chapter failed to show that OPEIU had clear and unequivocal notice of the alleged violation of the Act more than six (6) months prior to the charge, and thus, the alleged unilateral change violation is not barred by the Section 10(b) limitations period as it is contrary to the record. (ALJD p. 17, lines 42-44).

24. To the finding that the Chapter violated the Act by failing to provide OPEIU with advance notice and an opportunity to bargain over the January 2009 change to the retiree medical program and its effects as it is contrary to the record. (ALJD p. 18, lines 28-30).

25. To the legal conclusion that the Chapter violated Section 8(a)(5) and (1) of the Act by unilaterally changing the retiree medical program in January 2009 by discontinuing the program for both current employees not yet eligible to retire and future hires in the Clerical/Warehouse unit without providing OPEIU prior notice and an opportunity to bargain over the change and its effects, as such conclusion is contrary to evidence in the record as a whole and contrary to law. (ALJD p. 43, lines 16-22).

### **III A.2.d.**

26. To the finding that a preponderance of evidence supports the allegation that the Chapter unlawfully modified the retiree medical program on July 1, 2009 for those employees in the Clerical/Warehouse unit who were currently eligible or nearing eligibility to retire as it is contrary to the evidence in the record and contrary to applicable law. (ALJD p. 18, lines 34-37).

27. To the finding that the July 2009 change to the retiree medical program was announced as a *fait accompli* as it is contrary to the evidence in the record and contrary to applicable law. (ALJD p. 19, lines 26-27).

28. To the finding that the Chapter's defense that OPEIU waived its right to bargain after receiving notice of the July 2009 change when it was announced in October 2008 is without merit based on Rhines' inquiries to Region HR Supervisor Smelser and Chapter COO's admission that she did not know the change applied to unit employees until mid-2010. (ALJD p. 19, lines 23-26).

29. To the finding that the Chapter's Section 10(b) defense is rejected based on Rhines' inquiries to Region HR Supervisor Smelser and Chapter COO's admission that she did not know the change would be applied to unit employees until mid-2010. (ALJD p. 19, lines 29-38, 50).

30. To the finding that the Chapter was not contractually privileged to substitute the Medicare supplement with a private fee-for-service plan effective July 2009. (ALJD p. 21, lines 1-5).

31. To the legal conclusion that the Chapter violated Section 8(a)(5) and (1) of the Act by unilaterally changing the retiree medical program in July 2009 by replacing the Medicare Supplemental Plan with a private fee-for-service plan for employees in the Clerical/Warehouse unit currently eligible or nearing eligibility to retire without providing OPEIU prior notice and an opportunity to bargain over the change and its effects, as such conclusion is contrary to evidence in the record as a whole and contrary to law. (ALJD p. 43, lines 16-17, 24-28).

**III A.2.e.**

32. To the finding that a preponderance of the evidence supports the allegation that the Region and the Chapter violated Section 8(a)(5) and (1) of the Act by unilaterally suspending employer matching contributions to the 401(k) savings plan on May 1, 2009 for the OPEIU bargaining units (LCD, Collections and Clerical/Warehouse) and the allegation that the Region violated Section 8(a)(5) by unilaterally closing the pension plan to new hires on July 1, 2009 for the OPEIU bargaining units (LCD and Collections) without providing OPEIU prior notice and an opportunity to bargain as such finding is not supported by the record or the law. (ALJD p. 21, lines 20-25).

33. To the finding that the Unions did not waive their right to bargain, despite their admitted failure to request bargaining, regarding changes to the 401(k) savings plan on May 1, 2009, and the closure of the pension plan to new hires on July 1, 2009. (ALJD p. 21, lines 30-34).

34. To the finding that Region HR Supervisor Smelser did not provide a copy of the ANRC memo dated April 2, 2009 to OPEIU representative Rhines on April 15, 2009 to provide the statutorily required advance notice and opportunity to bargain, as such finding is not supported by the record. (ALJD p. 22, lines 7-11).

35. To the finding that a preponderance of the objective evidence indicates that any request by the Unions to bargain over the changes to the pension and 401(k) plans would have been futile, and therefore, it was unnecessary for the Unions to make a request to bargain, as such finding is not supported by the record or the law. (ALJD p. 22, lines 25-29).

36. To the finding that it is undisputed that the changes to the pension plan and the 401(k) plan were not “proposal[s]” to make changes, rather, they were announced as a *fait accompli*, as such finding is not supported by the record or the law. (ALJD p. 22, lines 48-51).

37. To the finding that because the Teamsters’ contracts were not in effect on May 1, 2009 and July 1, 2009 the Region was not contractually required to implement the changes to the 401(k) savings plan and pension plan as such finding is not supported by the law. (ALJD p. 23, lines 26-29).

38. To the finding that the *status quo* defense to the changes to the pension plan for the OPEIU Units (LCD and Collections) and to the changes to the 401(k) savings plan for OPEIU units (LCD, Collections and Clerical/Warehouse) lacks merit, as such finding is not supported by the record or the law. (ALJD p. 23, lines 38-41; p. 25, lines 34, 36-38).

39. To the finding that the 401(k) provisions of the expired Chapter Clerical/Warehouse unit contract did not mandate the Chapter to participate in the current or amended ANRC 401(k) savings plan but simply allowed the Chapter to participate, as such finding is not supported by the record. (ALJD p. 25, lines 22-25).

40. To the mischaracterization of Article 31, Section 2 of the Chapter Clerical/Warehouse unit contract as a reservation-of-discretion provision that does not survive contract expiration and, therefore, that prior unilateral changes implemented under the authority of Article 31, Section 2 do not establish a “past practice” permitting unilateral changes when no contract is in effect such that the Chapter’s *status quo* defense fails. (ALJD p. 25, lines 26-34).

41. To the finding that the Region could choose not to apply the provisions of the 401(k) savings plan and pension plan to its non-unit employees such that its discretion not to apply them to its unit employees is likewise preserved as it is contrary to evidence in the record. (ALJD p. 26, lines 22-23).

42. To the finding that neither the language of Article 31, Section 1 of the Collection and LCD Unit contracts nor the prior changes to the 401(k) savings plan and the pension plan establishes a *status quo* permitting post-contractual changes in May and July 2009 as it is contrary to the evidence in the record and contrary to law. (ALJD p. 26, lines 32-34).

43. To the finding that there is no evidence that the parties intended reservation-of-discretion provisions in the contracts to survive expiration. (ALJD p. 25, lines 31-34; p. 26, lines 27-29).

44. To the legal conclusion that the Region violated Section 8(a)(5) and (1) of the Act by eliminating the pension plan for new hires in the Collections and LCD units in July 2009

without providing OPEIU prior notice and an opportunity to bargain over the change and its effects. (ALJD p. 42, line 1; p. 43, lines 5-7).

45. To the legal conclusion that the Region and Chapter violated Section 8(a)(5) and (1) of the Act by unilaterally suspending matching contributions to the 401(k) savings plan for employees in the Collections, LCD and Clerical/Warehouse units in May 2009 without providing OPEIU prior notice and an opportunity to bargain over the change and its effects, as such conclusion is contrary to the evidence in the record as a whole and contrary to law. (ALJD p. 43, lines 16-17, 30-32).

### **III A.2.g.**

46. To the finding that the Region and Chapter unlawfully implemented a new BenefitsAdvantage health insurance program effective January, 1, 2010 without providing the Unions with a meaningful opportunity to bargain. (ALJD p. 28, lines 27-38).

47. To the finding that the Respondents “did not bargain over the changes in a meaningful manner and in good faith,” which is contrary to the record evidence. (ALJD p. 30, lines 7-8).

48. To the ALJ’s misapplication of the law in finding that the parties had not bargained sufficiently over the 2010 National plan designs. (ALJD p. 29, lines 5-14, 21-26).

49. To the ALJ’s failure to give proper weight to the record evidence that the Unions had sufficient notice of changes to the National plans, that the National plans changed every year and that the changes were announced well in advance of the January 1 implementation of the plans. (ALJD p. 30, lines 5-9).

### **III C.2.**

50. To the determination, against the great weight of the record evidence, that former strikers were entitled to guaranteed hours, since the ALJ found that the evidence established that the employees were not immediately recalled because of the cancellation of blood drives and lack of work resulting from the strike. (ALJD p. 39, lines 9-26).

51. To the determination that the named former strikers qualified for guaranteed hours under the provisions of the expired contract. (ALJD p. 41, lines 40-41).

52. To the ALJ's legal conclusion that the Region violated Section 8(a)(3), (5) and (1) by "(b) denying guaranteed hours during the same week to 89 employees in the Collections unit who had participated in the strike." (ALJD p. 44, lines 1-2).

#### **Remedy and Order**

53. Respondents take exception to the ALJ's proposed remedy and recommendation that Respondents be ordered to cease and desist from: (a) failing and refusing to timely provide relevant and necessary blood and demographic information requested by OPEIU Local 459 or Teamsters Local 580; (b) unilaterally implementing more stringent attendance policies covering employees in the Collections and LCD units without providing OPEIU Local 459 advance notice and an opportunity to bargain over the changes and their effects on employees; (c) unilaterally changing its past practice of permitting OPEIU Local 459 to hold Union meetings on its premises without providing advance notice and an opportunity to bargain over the change and its effects on employees; (d) unilaterally suspending matching contributions to the 401(k) savings plan for employees in the Collections, LCD and Clerical/Warehouse units without providing OPEIU prior notice and an opportunity to bargain over the change and its effects; (e) unilaterally eliminating the pension plan for new hires in the Collections and LCD units without providing

OPEIU prior notice and an opportunity to bargain over the change and its effects; (f) unilaterally changing the retiree medical program for employees in the Clerical/Warehouse unit without providing OPEIU Local 459 prior notice and an opportunity to bargain over the changes and its effects; (g) unilaterally implementing a new health insurance program for employees in the Collections, LCD, Apheresis, MUA and Clerical/Warehouse units without providing OPEIU Local 459 and Teamsters Local 580 a meaningful opportunity to bargain over the change and its effects; and (h) discriminatorily and unilaterally denying guaranteed hours to employees in the Collections unit because they engaged in a strike or other protected concerted activities and to discourage employees from engaging in such activities, and without providing OPEIU Local 459 prior notice and an opportunity to bargain over the change and its effects. (ALJD p. 45, lines 22-33; p. 46, lines 1-11, 23-26; p. 48, lines 19-32).

54. Respondents take exception to the ALJ's proposed remedy and recommendation that Respondents take the following affirmative action: (a) provide OPEIU Local 459 with the information it requested on March 17<sup>th</sup> and 25<sup>th</sup>, 2009 regarding the reduced demand for blood; (b) provide Teamsters Local 580 with the health insurance demographic information it requested on July 31, 2009, with the employees names included; (c) on request, rescind the unlawful unilateral changes in the Collections, LCD, Apheresis, MUA and Clerical/Warehouse units and restore the status quo ante that existed prior to the changes until such time as the Respondents have bargained with OPEIU and/or the Teamsters to an agreement or impasse; (d) and make whole, with interest, the employees in the Collections, LCD, Apheresis, MUA and Clerical/Warehouse units for any loss of earning and benefits they may have incurred as a result of Respondents' unlawful changes. (ALJD p. 44, lines 16-24, 26-38; p. 45, lines 1, 11-12; p. 46, lines 31-34, 40-47; p. 47, lines 1-3, 10-27; p. 48, l. 36-43).

## Posting

55. Respondents take exception to the ALJ's recommended order that the Region post at its facility in Lansing, Michigan, and otherwise distribute, the attached notice marked "Appendix 1," since the record evidence does not support the ALJ's findings in this regard. (ALJD p. 47, lines 41-46; p. 48, l. 1-9).

56. Respondents take exception to the ALJ's recommended order that the Chapter post at its facility in Lansing, Michigan, and otherwise distribute the attached notice marked "Appendix II." since the record evidence does not support the ALJ's finding in this regard. (ALJD p. 49, lines 1-14).

Dated: June 30, 2011.

Respectfully submitted,

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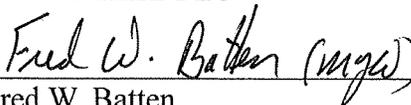
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