

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

APPALACHIAN REGIONAL HEALTHCARE, INC.

and

Case 9-CA-087837

SOUTHERN UNITED NURSES/
NATIONAL NURSES UNITED

MOTION TO TRANSFER CASE TO THE BOARD
AND
MOTION FOR SUMMARY JUDGMENT

NOW COMES THE ACTING GENERAL COUNSEL, by the undersigned Counsel for the Acting General Counsel, pursuant to Section 102.24 of the Board's Rules and Regulations, in order to effectuate the purposes of the Act and avoid unnecessary costs or delay, and moves the Board to:

1. Transfer and continue these proceedings before the Board.
2. Find Respondent's Answer (a true copy of Answer of Respondent Appalachian Regional Healthcare, Inc. to the Complaint is attached hereto as Exhibit A) to the Complaint and Notice of Hearing (a true copy of the charge and the Complaint, respectively, each with Affidavits of Service are attached hereto respectively as Exhibits B and C) raises no litigable issues and summary judgment is therefore appropriate.
3. Find that the allegations in the Complaint are true.

4. Issue a decision, including findings of fact and conclusions of law in accordance with paragraph 3 above, and a remedial order remedying the unfair labor practices for the reasons set forth in the supporting memorandum filed herewith.

Dated at Cincinnati, Ohio this 10th day of December 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Zuzana Murarova". The signature is fluid and cursive, with a large initial "Z" and a long, sweeping underline.

Zuzana Murarova
Counsel for the Acting General Counsel
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

Attachments: Exhibits A, B, and C

UNITED STATES OF AMERICA
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APPALACHIAN REGIONAL HEALTHCARE, INC.

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SOUTHERN UNITED NURSES/NATIONAL
NURSES UNITED

**** * * * * *

**ANSWER OF RESPONDENT APPALACHIAN REGIONAL
HEALTHCARE, INC. TO THE COMPLAINT**

Pursuant to Sections 102.20 and 102.21 of the Rules and Regulations of the National Labor Relations Board Rules, Respondent Appalachian Regional Healthcare, Inc. (“Respondent”) states as follows:

FIRST DEFENSE

Respondent admits the allegations in Paragraph 1 of the Complaint.

SECOND DEFENSE

2(a) Because Respondent is unable to ascertain the meaning of the phrase “all material times,” Respondent denies the allegations set forth in Paragraph 2(a) of the Complaint. Respondent states that it is a corporation with an office and place of business in Lexington, Kentucky, which place of business has been engaged in the operation of hospitals in the Commonwealth of Kentucky and the State of West Virginia providing inpatient and outpatient medical care.

2(b) Respondent admits the allegations contained in Paragraph 2(b) of the Complaint.

2(c) Respondent admits the allegations contained in Paragraph 2(c) of the Complaint.

2(d) Because Respondent is unable to ascertain the meaning of the phrase “all material times,” Respondent denies the allegations set forth in Paragraph 2(d) of the Complaint. Respondent states that it is an employer for purposes of Section 2(2), (6) and (7) of the Act, and further states that it is a healthcare institution within the meaning of Section 2(5) of the Act.

THIRD DEFENSE

Because Respondent is unable to ascertain the meaning of the phrase “all material times,” Respondent denies the allegations set forth in Paragraph 3 of the Complaint. Respondent states that the Union is a labor organization within the meaning of Section 2(5) of the Act, but denies the remaining allegations contained in Paragraph 3 of the Complaint.

FOURTH DEFENSE

4(a) Respondent admits the allegations contained in Paragraph 4(a) of the Complaint.

4(b) Because Respondent is unable to ascertain the meaning of the phrase “all material times,” Respondent denies the allegations set forth in paragraph 4(b) of the Complaint. Further, Respondent states that it has recognized the Union in collective bargaining agreements as the bargaining representative for employees covered by the collective bargaining agreements, and denies the remaining allegations contained in Paragraph 4(b) of the Complaint.

4(c) Because Respondent is unable to ascertain the meaning of the phrase “all material times,” Respondent denies the allegations set forth in paragraph 4(c) of the Complaint. Further, Respondent states that the Union has acted as the exclusive collective bargaining representative of employees covered by the collective bargaining agreements referenced in

Paragraph 4(b) above, and denies the remaining allegations contained in Paragraph 4(c) of the Complaint.

FIFTH DEFENSE

5(a) Respondent admits that the Union requested the information as described by in Paragraph 5(a), but denies that the information requested is necessary or relevant to the Union's performance of its duties, and denies the remaining allegations in Paragraph 5(a) of the Complaint.

5(b) Respondent denies that the information requested by the Union as described in Paragraph 5(b) above is necessary or relevant to the Union's performance of its duties, and denies the remaining allegations in Paragraph 5(b) of the Complaint.

5(c) Respondent admits that it has not provided the Union with the information as described in Paragraph 5(a), but denies that the information requested is necessary or relevant to the Union's performance of its duties, and denies the remaining allegations in Paragraph 5(c) of the Complaint.

SIXTH DEFENSE

Respondent denies that it has failed or refused to bargain collectively with the Union and further denies that any unfair labor practices occurred, denies its involvement in any purported unfair labor practices, and denies the remaining allegations of Paragraph 6 of the Complaint.

SEVENTH DEFENSE

Respondent denies that it has failed or refused to bargain collectively with the Union and further denies that any unfair labor practices occurred, denies its involvement in any purported unfair labor practices, and denies the remaining allegations of Paragraph 7 of the Complaint.

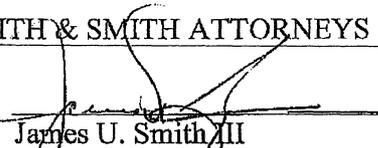
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Respondent reserves the right to amend this Answer at any time prior to the hearing in this proceeding, pursuant to Section 102.23 of the Rules and Regulations of the National Labor Relations Board, as amended, to assert such other and further defenses, including affirmative defenses, as Respondent may have to the Complaint herein.

WHEREFORE, having fully answered, Respondent prays that the Complaint herein be dismissed in its entirety.

Respectfully submitted,

SMITH & SMITH ATTORNEYS

By: 

James U. Smith III
400 North, First Trust Centre
200 South Fifth Street
Louisville, Kentucky 40202
(502) 587-0761

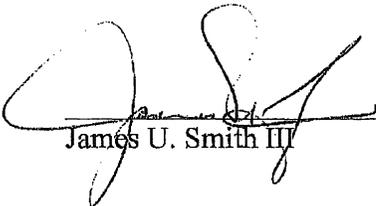
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within and foregoing **ANSWER TO COMPLAINT** was served by First Class U.S. Mail, postage prepaid, on November 14, 2012 upon:

Gary W. Muffley
Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, OH 45202-3271

Irwin H. Cutler
Priddy Cutler Miller & Meade, PLLC
429 W. Muhammad Ali Blvd.
Suite 800
Louisville, KY 40202-2346

Southern United Nurses/National Nurses United
PO Box 4007
Louisville, KY 40204-0007


James U. Smith III

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

APPALACHIAN REGIONAL HEALTHCARE,
INC.

Charged Party

and

SOUTHERN UNITED NURSES/NATIONAL
NURSES UNITED

Charging Party

Case 09-CA-087837

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on August 23, 2012, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

DAN FITZPATRICK
APPALACHIAN REGIONAL
HEALTHCARE, INC.
100 AIRPORT GARDENS RD
HAZARD, KY 41701-9529

August 23, 2012

Date

Laura Smith, Agent of NLRB

Name

Signature

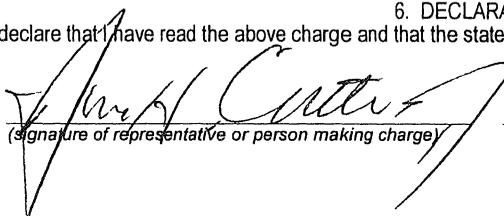
UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case 9-CA-087837	Date Filed August 20, 2012
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INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Appalachian Regional Healthcare, Inc.	b. Tel. No. 606-439-6951
	c. Cell No. 606-424-3440
	f. Fax No.
d. Address (Street, city, state, and ZIP code) 100 Airport Gardens Road Hazard, KY 41701	e. Employer Representative Dan Fitzpatrick
	g. e-Mail dfitzpatrick@arh.org
	h. Number of workers employed Approx 4700
i. Type of Establishment (factory, mine, wholesaler, etc.) Hospitals	j. Identify principal product or service Healthcare
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (5) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) For six months prior to the filing of this Charge, the Employer has refused to provide relevant information to the Charging Party Union, the collective bargaining agent for a unit of its nurses, or has unreasonably delayed providing information.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Southern United Nurses/National Nurses United	
4a. Address (Street and number, city, state, and ZIP code) P.O. Box 4007 Louisville, KY 40204	4b. Tel. No.
	4c. Cell No. 502-415-1846
	4d. Fax No.
	4e. e-Mail parkerjr01@insightbb.com
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) Southern United Nurses/National Nurses United	
6. DECLARATION	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  (signature of representative or person making charge)	Irwin Cutler Jr., Priddy Cutler Miller Meade (Print/type name and title or office, if any)
Address 429 W. Muhammad Ali Blvd., Ste 800, Louisville, KY 40202	Tel. No. 502-632-5270
	Office, if any, Cell No. 502-724-6671
	Fax No. 502-632-5271
	e-Mail cutler@pcmmllaw.com
	8/16/12 (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

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<p>In the Matter of</p> <p>APPALACHIAN REGIONAL HEALTHCARE, INC.</p> <p>and</p> <p>SOUTHERN UNITED NURSES/ NATIONAL NURSES UNITED</p>	<p>Case 9-CA-087837</p>
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Date of Mailing October 30, 2012

AFFIDAVIT OF SERVICE OF COMPLAINT AND NOTICE OF HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by certified mail upon the following persons, addressed to them at the following addresses:

<p>DAN FITZPATRICK APPALACHIAN REGIONAL HEALTHCARE, INC. 100 AIRPORT GARDENS RD HAZARD, KY 41701-9529</p> <p><u>BY REGULAR MAIL:</u></p> <p>W. KEVIN SMITH, ATTORNEY SMITH & SMITH ATTORNEYS 400 NORTH, FIRST TRUST CENTRE 200 SOUTH FIFTH STREET LOUISVILLE, KY 40202</p>	<p><u>BY REGULAR MAIL CONTINUED:</u></p> <p>IRWIN H CUTLER, Jr., ATTORNEY PRIDDY CUTLER MILLER & MEADE, PLLC 429 W MUHAMMAD ALI BLVD STE 800 LOUISVILLE, KY 40202-2346</p> <p>SOUTHERN UNITED NURSES/NATIONAL NURSES UNITED PO BOX 4007 LOUISVILLE, KY 40204-0007</p> <p>***** National Labor Relations Board Washington, D.C. 20570</p>
<p>Subscribed and sworn to before me this ____ day of _____ 2012</p>	<p>Designated Agent NATIONAL LABOR RELATIONS BOARD</p>

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

APPALACHIAN REGIONAL HEALTHCARE, INC.

and

Case 9-CA-087837

SOUTHERN UNITED NURSES/
NATIONAL NURSES UNITED

COMPLAINT
AND
NOTICE OF HEARING

This Complaint and Notice of Hearing, which is based on a charge filed by Southern United Nurses/National Nurses United (the Union), is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq., (the Act) and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board), and alleges that Appalachian Regional Healthcare, Inc., (Respondent) has violated the Act by engaging in the following unfair labor practices:

1. The charge was filed by the Union on August 20, 2012, and a copy was served by regular mail on Respondent on August 23, 2012.
2. (a) At all material times, Respondent, has been a corporation, with an office and place of business in Lexington, Kentucky and has been engaged in the operation of hospitals in the Commonwealth of Kentucky and the State of West Virginia providing inpatient and outpatient medical care.
 - (b) During the past 12 months, Respondent, in conducting its operations described above in paragraph 2(a), derived gross revenues in excess of \$250,000.

(c) During the past 12 months, Respondent, in conducting its operations above in paragraph 2(a), purchased and received at its Lexington, Kentucky facility, goods valued in excess of \$50,000 from outside the Commonwealth of Kentucky.

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

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

4. (a) The employees of Respondent, herein collectively called the Units, as described in Article 3, Recognition of the Bargaining Units, specifically Beckley, Harlan, Hazard, McDowell, South Williamson, Summers, and Whitesburg, of the collective-bargaining agreement between Respondent and the Union, which is effective May 7, 2011 through August 9, 2014, constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

(b) Since at least 2008, and at all material times, Respondent has recognized the Union as the collective-bargaining representative of the Units. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from May 1, 2011 to April 30, 2014.

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

5. (a) Since about February 13, 2012, by letter, and renewed about June 8, 2012 and July 18, 2012, the Union has requested that Respondent furnish the Union with the rates of pay for 36 unit nurses as well as rates of pay and hours worked during the affected time period for

nine of the unit nurses to calculate amounts owed to them pursuant to a grievance settlement. (A copy of the letter is attached hereto as Exhibit A.)

(b) The information requested by the Union, as described above in paragraph 5(a), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Units.

(c) Since about February 23, 2012, Respondent has failed and refused to furnish the Union with the information requested by it as described above in paragraph 5(a).

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

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

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be received by this office on or before **November 13, 2012**, or postmarked on or before **November 12, 2012**.

Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

An answer may also be filed electronically through the Agency's website. *To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.* The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after

12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

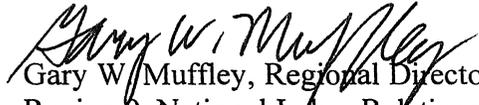
Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant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

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on December 13, 2012, 9 a.m. at a place to be scheduled in Lexington, Kentucky, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to

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

Dated at Cincinnati, Ohio this 30th day of October 2012.


Gary W. Muffley, Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

Attachments