

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31

**BARSTOW COMMUNITY HOSPITAL-  
OPERATED BY COMMUNITY HEALTH  
SYSTEMS, INC.**

**Charged Party**

**Cases 31-CA-26057**

**and**

**UNITED NURSES ASSOCIATION OF  
CALIFORNIA, UNION OF HEALTH CARE  
PROFESSIONALS, NUHHCE, AFL-CIO**

**Charging Party**

**MOTION TO TRANSFER PROCEEDINGS  
TO THE DIVISION OF JUDGES,  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT AND  
ARGUMENT IN SUPPORT**

Pursuant to Sections 102.54 and 102.56 of the Board's Rules and Regulations, Counsel for the Acting General Counsel files this Motion to Transfer Proceedings to the Division of Judges, Motion for Partial Summary Judgment and Argument in Support. The Acting General Counsel is entitled to partial summary judgment in this case because Respondent Barstow Community Hospital- Operated by Community Health Systems, Inc. ("Respondent") has failed to file an Answer to the Compliance Specification and Notice of Hearing ("Specification") issued on October 31, 2012, that conforms to the requirements set forth in Section 102.56(b) of the Board's Rules and Regulations. *SRC*

*Painting, LLC; and Liquid Systems; James Wierzbicki; Edmund Wierzbick, Constance Wierzbicki; and Erin Wierzbicki, individually*, 356 NLRB No. 74 (January 5, 2011); *Shenandoah Coal Co.*, 312 NLRB 30 (1993); *Aquatech, Inc.*, 306 NLRB 975 (1991); *Honeycomb Plastics Corp.*, 296 NLRB 124 (1989).

In support of this Motion, Counsel for the Acting General Counsel submits the following:

1. On August 18, 2008, the two-member Board issued its Decision and Order in Case 31-CA-26057, adopting, with modifications, the Administrative Law Judge's Decision and directing that the Respondent take certain affirmative actions including offering Lois Sanders ("Sanders") reinstatement to her former job, or if that job no longer exists to a substantially equivalent position without prejudice to her seniority or any other rights or privileges previously enjoyed, making Sanders whole for any loss of earnings and other benefits as a result of the discrimination, and removing from its files, any reference to the unlawful suspension and discharge of Sanders as a result of Respondent's unfair labor practices, in violation of Section 8(a)(1) and (3) of the National Labor Relations Act. A copy of the Board's Decision and Order in 352 NLRB 1052 (2008) is attached and incorporated herein as GC Exhibit 1.

2. On August 26, 2010, the United States Court of Appeals for the Ninth Circuit vacated the Board decision in *Barstow Community Hospital- Operated by Community Health Systems, Inc.*, 352 NLRB 1052 (2008), and remanded it to the Board for further proceedings consistent with the holding in *New Process Steel, L.P. v. NLRB*,

130 S. Ct. 2635 (June 17, 2010). A copy of the Court of Appeals Order is attached and incorporated herein as GC Exhibit 2.

3. On November 8, 2010, the Board issued its Decision and Order in Case 31-CA-26057, which incorporated 352 NLRB 1052 (2008), directing Respondent, its officers, agents, successors, and assigns, to take certain affirmative actions, set forth in the Order in 352 NLRB 1052 (2008), with one modification and an amended remedy, including removing from its files any reference to the unlawful suspension and discharge of Sanders, making Sanders an offer of reinstatement and making her whole for any loss of earnings and other benefits, computed on a quarterly basis from the date of her suspension to the date of a proper offer of reinstatement, less any net interim earnings, as prescribed in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), plus daily compound interest as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), as a result of Respondent's unfair labor practices, in violation of Section 8(a)(1) and (3) of the National Labor Relations Act. A copy of the Board's Decision and Order in 356 NLRB No. 15, (November 8, 2010) is attached and incorporated herein as GC Exhibit 3.

4. On March 26, 2012, the United States Court of Appeals for the Ninth Circuit entered its memorandum enforcing in full the provisions of the Board Order. A copy of the memorandum is attached and incorporated herein as GC Exhibit 4.

5. On October 31, 2012, the Regional Director of Region 31, pursuant to the authority duly conferred upon her by the Board, issued the Specification in Case 31-CA-26057. The Specification was served on Respondent Barstow Community Hospital-

Operated by Community Health Systems, Inc. by certified mail dated October 31, 2012.

Pursuant to Section 102.56 of the Board's Rules and Regulations, the Specification notified Respondent that it must file an Answer within 21 days from the date of the Specification. The Specification notified Respondent that if the Answer fails to deny allegations of the Specification in the manner required under Section 102.56(b), the Board may find those allegations in the Specification to be true and may preclude Respondent from introducing any evidence controverting those allegations. Copies of the Specification and service thereof are attached and incorporated herein as GC Exhibits 5 and 6.

6. On November 27, 2012, Respondent electronically filed an Answer to the Specification. A copy of Respondent's Answer described in this paragraph is attached and incorporated herein as GC Exhibit 7.

7. On December 3, 2012, Respondent was notified via letter that it had failed to file an Answer to the Specification that complied with Section 102.56 of the Board's Rules and Regulations. The letter was also submitted as an attachment in an e-mail to Respondent. Respondent was further advised that a Motion for Partial Summary Judgment would be filed if Respondent failed to file an amended Answer in accordance with Section 102.56 of the Board's Rules and Regulations before the close of business on December 10, 2012. Enclosed with the letter was a copy of Section 102.56 of the Board's Rules and Regulations. Copies of the letter and e-mail described above in this paragraph are attached and incorporated herein as GC Exhibits 8 and 9, respectively.

8. On January 4, 2013, Respondent was again notified via letter that it had failed to file an Answer to the Specification that complied with Section 102.56 of the Board's Rules and Regulations. The letter was also submitted as an attachment in an e-mail to Respondent. Respondent was further advised that a Motion for Partial Summary Judgment would be filed if Respondent failed to file an amended Answer in accordance with Section 102.56 of the Board's Rules and Regulations before the close of business on January 8, 2013. Enclosed with the letter and e-mail was a copy of Section 102.56 of the Board's Rules and Regulations. Copies of the letter and email described above in this paragraph are attached and incorporated herein as GC Exhibits 10 and 11, respectively.

9. Despite having been advised of the consequences, Respondent failed to file an Amended Answer to the Specification that conformed to the requirements of Section 102.56(b) of the Board's Rules and Regulations.

10. Section 102.56(b) of the Board's Rules and Regulations provides as follows:

The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

11. Section 102.56(c) of the Board's Rules and Regulations provides, in relevant part, as follows:

...If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

12. The Answer referenced to in paragraph 6 of this Motion admits paragraph 1 of the Specification. For clarity of the Acting General Counsel's argument, a copy of the Acting General Counsel's arguments in chart form, explaining each allegation in the Specification, Respondent's Answer, Acting General Counsel's legal support, and a conclusion as to the Answer's sufficiency, is attached and incorporated herein as GC Exhibit 12.

13. The Answer referenced to in paragraph 6 of this Motion contains general denials of matters concerning the hours Sanders worked when she was working a night-shift schedule at Barstow Community Hospital prior to her discharge, specifically with respect to paragraph 3(a) and (b); however, Respondent's general denials are insufficient in that they do not reveal any basis under Section 102.56(b) of the Board's Rules and Regulations, for disagreement with the Specification's allegations, these matters are within the knowledge of the Respondent, and no alternative methods of computation were offered by Respondent. *See* GC Exhibit 12.

14. To the extent that Respondent's Answer referenced in paragraph 6 of this Motion contains general denials concerning the wage rate Sanders would have earned had

she not been terminated, the weekly average of hours that Sanders was working prior to her discharge that were subject to a shift differential, and subsequent merit and cost of living wage increases Sanders would have been earned after the date of her termination, specifically with respect to paragraphs 4(a), 4(b), and 4(c) of the Specification, Respondent's denials are insufficient in that they do not reveal any basis under Section 102.56(b) of the Board's Rules and Regulations, for denial of the Specification's allegations, nor do they offer any alternative method of computation. *See* GC Exhibit 12.

15. To the extent that Respondent's Answer referenced to in paragraph 6 of this Motion contains general denials of matters concerning the formulas used to compute Respondent's monetary liability to Sanders; the computation of the Respondent's monetary liability to Sanders; the formulas used to compute Sanders' gross backpay; the computation of Sanders' gross backpay; the formulas used to compute Sanders' interim earnings; the computation of Sanders' interim earnings; the method of computing net backpay; the computation of net backpay; the method of computing interim expenses; the computation of interim expenses; the method of computing medical expenses; the computation of medical expenses; and the total computations of Respondent's liability to make Sanders whole under the Board's Order, specifically with respect to paragraphs 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the Specification, Respondent's denials are insufficient in that they do not reveal any basis under Section 102.56(b) of the Board's Rules and Regulations, for denial of the Specification's allegations, nor do they offer any alternative method of computation. *See* GC Exhibit 12.

16. Respondent's general denials to the Specification's paragraphs referenced to in paragraphs 13, 14, and 15 of this Motion are insufficient denials in that they do not fairly meet the substance of the allegations of the Specification, nor do they reveal any basis under Section 102.56(b) of the Board's Rules and Regulations, for denial of the Specification's allegations, nor do they offer any alternative method of computation.

17. Respondent, having been duly served, has failed to file an Answer to the Compliance Specification and Notice of Hearing that conforms to the requirements of Section 102.56(b) of the Board's Rules and Regulations. Therefore, all allegations relating to the backpay period and the computation of total net backpay must be admitted as true.

18. Based on the foregoing, all allegations in the Compliance Specification and Notice of Hearing, except those relating to the dates of the backpay period set forth in paragraph 2 of the Specification, must be admitted as true. Therefore, no administrative hearing is necessary with respect to all allegations, except for the dates of the backpay period and Respondent's affirmative defenses, and it is appropriate for the Administrative Judge Law to grant this Motion for Partial Summary Judgment covering paragraphs 3 through 13 of the specification pursuant to Sections 102.56(b) and 102.56(c) of the Board's Rules and Regulations without taking evidence or giving Respondent further notice.

17. Accordingly, Counsel for the Acting General Counsel respectfully requests that the Administrative Law Judge grant this Motion to Transfer Proceedings to the Division of Judges and Motion for Partial Summary Judgment.

Dated at Los Angeles, California this 22<sup>nd</sup> day of January 2013.

A handwritten signature in cursive script that reads "Nicole Pereira". The signature is written in black ink and is positioned above a horizontal line.

Nicole Pereira  
Counsel for the Acting General Counsel  
National Labor Relations Board, Region 31  
11150 West Olympic Boulevard, Suite 700  
Los Angeles, CA 90064

# GC Exhibit 1

**Barstow Community Hospital—Operated by Community Health Systems, Inc. and United Nurses Association of California, Union of Health Care Professionals, NUHCE, AFSCME, AFL—CIO.**  
Case 31—CA—26057

August 18, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAMBER AND MEMBER LIEBMAN

On February 23, 2007, Administrative Law Judge Lana H. Parke issued her supplemental decision following the Board's remand of this case.<sup>1</sup> The Respondent filed exceptions and a supporting brief, and the General Counsel and Charging Party each filed an answering brief.

The National Labor Relations Board<sup>2</sup> has considered the decision, the supplemental decision, and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,<sup>3</sup> findings, and conclusions as

<sup>1</sup> On August 29, 2003, Judge Parke issued her original decision in this proceeding. The Respondent filed exceptions and a supporting brief, and the Charging Party filed an answering brief. The Board remanded the case to the judge on September 30, 2006, for further consideration in light of the Board's decisions in *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006); *Croft Metals, Inc.*, 348 NLRB 717 (2006); and *Golden Crest Healthcare Center*, 348 NLRB 727 (2006) (hereinafter *Oakwood Healthcare*, et al.). See *Barstow Community Hospital*, 348 NLRB 957 (2006). On November 20, 2006, the Respondent filed a Motion to Reopen Record. The judge denied the motion and set a date for the parties to file briefs. The Respondent timely filed its brief, titled as Motion for Reconsideration of Motion to Reopen the Record. The General Counsel and the Charging Party each also timely filed briefs.

<sup>2</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

<sup>3</sup> The Respondent excepted to the judge's ruling at the 2003 hearing precluding the Respondent from introducing evidence concerning its affirmative defenses related to the Region's investigation of the unfair labor practice charges. The Respondent, however, fails to state with any degree of particularity, either in its exception or in its supporting brief, on what grounds it believes the judge's ruling should be overturned. Accordingly, we find, in accordance with Sec. 102.46(b)(2), that the Respondent's exception to this ruling should be disregarded. See, e.g., *Holsum de Puerto Rico, Inc.*, 344 NLRB 694, 694 fn. 1 (2005), enfd. 456 F.3d 265 (1st Cir. 2006).

The Respondent also excepted to the judge's denial of its post-remand motion to reopen the record, contending that it should have the opportunity to prove that the authority possessed by discriminatee Lois Sanders in her role as a registered nurse made her a statutory supervisor under the standards articulated in *Oakwood Healthcare*, et al. The exception is without merit. At the original hearing, the Respondent clearly limited the supervisory status issue to whether Sanders was a 2(11) supervisor when working as a relief clinical coordinator. Efforts

modified and to adopt the recommended Order as modified and set forth in full below.<sup>4</sup>

On remand, the judge found that Registered Nurse Lois Sanders was not acting as a statutory supervisor when she temporarily filled in as relief clinical coordinator because she did not have the authority under Section 2(11) of the Act to assign or responsibly direct employees using independent judgment. For the following reasons, we agree.

The "burden of proving supervisory status rests on the party asserting that such status exists." *Oakwood Healthcare*, supra at 694 (quoting *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1047 (2003)). The party seeking to prove supervisory status must establish it by a preponderance of the evidence. *Id.* (citing *Dean & Deluca*, supra at 1047; *Bethany Medical Center*, 328 NLRB 1094, 1103 (1999)).

To establish possession of the authority responsibly to direct, the party bearing the burden of proof—here, the Respondent—must present evidence of "actual accountability." *Golden Crest Healthcare*, supra at 731. The Respondent failed to present any evidence that registered nurses were held accountable for their direction of others when acting as relief clinical coordinators. There is no evidence that relief clinical coordinators faced a prospect of material adverse consequences based on the perform-

to inject a new issue after the close of a hearing are normally deemed untimely. *Nursing Center at Vineland*, 318 NLRB 337, 337 (1995). Having earlier failed to argue that Sanders' duties as a registered nurse were supervisory, the Respondent cannot now introduce a new issue that could have been raised and litigated in the original hearing. See *Nursing Center at Vineland*, supra (denying employer's motion to reopen the record to present evidence that discharged employee was a supervisor in light of Supreme Court's intervening decision in *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571 (1994), where employer litigated the supervisory status of another employee and could have presented its arguments about discharged employee at the hearing). Having affirmed the judge's denial of the Respondent's request to reopen the record, we find it unnecessary to pass on the judge's determination that Sanders was not a 2(11) supervisor based on her duties as a registered nurse.

<sup>4</sup> The Respondent excepted to the judge's findings that it violated Sec. 8(a)(3) and (1) by suspending Sanders and Sec. 8(a)(1) by conducting an investigation of Sanders' union activity, because neither violation was alleged in the complaint. We adopt the judge's finding that Sanders' suspension was unlawful, as the issue was closely connected to the complaint allegations and was fully litigated. *Pergament United Sales, Inc.*, 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990). Sanders' suspension arose out of the same events as, and was a precursor to, her discharge, and the Respondent's motivation for both actions is undisputed. Thus, the suspension, like the discharge, stands or falls depending on whether Sanders was a supervisor, an issue the Respondent litigated fully.

Having affirmed the judge's finding that the Respondent unlawfully interrogated Sanders during its investigation, we find it unnecessary to pass on the finding that the investigation was unlawful, as it would not materially affect the remedy in this case.

ance of those they allegedly supervised. That one of the factors included on the registered nurses' evaluation form is how they perform "the role of clinical coordinator as needed" is not sufficient. See *id.* (finding insufficient, to show accountability, evidence that charge nurses were rated on the factor "directs [employees] to ensure quality of care," absent evidence that the rating might have an effect on their terms and conditions of employment). Accordingly, the Respondent has not shown that the relief clinical coordinators possess the authority to responsibly direct employees.<sup>5</sup>

The judge found that, although Sanders may have possessed authority to assign, she did not exercise independent judgment in doing so because any judgment exercised by her was dictated or controlled by the Respondent's detailed instructions and policies. See *Oakwood Healthcare*, supra at 693. However, the Board in *Oakwood Healthcare* also held that the mere existence of guidelines and policies is not necessarily incompatible with the existence of independent judgment. If there is room for discretionary choices by the putative supervisor, and if the degree of discretion exercised rises to the requisite level, a finding of independent judgment is warranted. *Id.* Specifically in the healthcare setting, if an individual weighs the individualized condition and needs of a patient against the skills or special training of the available nursing staff, the resulting assignment involves the exercise of independent judgment. *Id.*

The record contains conflicting testimony on the issue of whether relief clinical coordinators exercise independent judgment in assigning nursing staff. Sanders testified that, in determining the number of nurses needed and where they should be assigned, she followed the nurse-to-patient ratios in the staffing grid, which in turn were based on the Respondent's guidelines and State regulations. Sanders also testified that, in making staffing decisions, she did not consider a patient's acuity or the particular skills or qualifications of the nurses, many of whom she said she did not know beyond their general qualifications as registered nurses.

Testimony from registered nurse Tina Lyle, who also filled in as relief clinical coordinator, as well as from the Respondent's medical/surgical manager, Donna Rollins, conflicted with Sanders' testimony in this regard. Lyle testified that in deciding whether to "float" (temporarily transfer) someone or to call someone in, she would take into account the patient's acuity and the level of experience of the available nurses. Rollins testified that, in

<sup>5</sup> Because the Respondent did not demonstrate that the relief clinical coordinators responsibly direct employees, we need not determine whether they exercise "independent judgment" in this regard. *Golden Crest Healthcare*, supra at 732 fn 14.

deciding whom to call in or float, the relief clinical coordinator has to consider the patients' needs and the experience level of staff members who could be reassigned from one area to another or called in to work to meet those needs.

We need not resolve this testimonial conflict. Even crediting Lyle's and Rollins' testimony, we find the evidence insufficient to sustain the Respondent's burden of proving that relief clinical coordinators exercised independent judgment in assigning nursing staff. The respondent's evidence on this issue lacked sufficient specificity. It was devoid of any examples or details of circumstances showing that a relief clinical coordinator, in assigning nursing staff, actually "weighs the individualized condition and needs of a patient against the skills or special training of available nursing personnel." *Oakwood Healthcare*, supra at 693. Although Section 2(11) requires only possession of authority to carry out an enumerated supervisory function, not its actual exercise, the evidence still must suffice to show that such authority actually exists and that its exercise requires the use of independent judgment. *Avante at Wilson*, 348 NLRB 1056, 1057 (2006); see also *Chevron Shipping Co.*, 317 NLRB 379, 381 fn. 6 (1995) (conclusory statements without supporting evidence do not establish supervisory authority); *Sears, Roebuck & Co.*, 304 NLRB 193, 193 (1991) (same).

In sum, we find that the Respondent has not met its burden of showing that Sanders, when acting as a relief clinical coordinator, exercised independent judgment in assigning nurses to patients and, consequently, has not established that she was a statutory supervisor.<sup>6</sup> We agree with the judge, therefore, that the Respondent unlawfully suspended and discharged Sanders for engaging in union activity while acting as a relief clinical coordinator.

#### AMENDED CONCLUSIONS OF LAW

1. The Respondent violated Section 8(a)(1) of the Act by interrogating Sanders about her union or other protected concerted activities.
2. The Respondent violated Section 8(a)(3) and (1) of the Act by suspending Sanders on August 31, 2002.
3. The Respondent violated Section 8(a)(3) and (1) of the Act by discharging Sanders on September 26, 2002.

<sup>6</sup> Because the Respondent has not established that when filling in as a relief clinical coordinator Sanders exercised sufficient independent judgment to qualify her as a statutory supervisor, we find it unnecessary to rely on the judge's further finding that Sanders was also not a supervisor because her relief clinical coordinator assignments were not "regular and substantial."

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Barstow Community Hospital—Operated by Community Health Systems, Inc., Barstow, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their union or other protected concerted activities.

(b) Suspending any employee for engaging in union or other protected concerted activities.

(c) Discharging any employee for engaging in union or other protected concerted activities.

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

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

(a) Within 14 days from the date of this Order, offer Lois Sanders full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Lois Sanders whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of the judge's initial decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful suspension and discharge, and within 3 days thereafter notify Lois Sanders in writing that this has been done and that the suspension and discharge will not be used against her in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of back pay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Barstow, California, copies of the attached notice marked "Appendix."<sup>7</sup> Copies of the notice, on forms provided by the Regional Director for Region 31,

after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 31, 2002.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

## APPENDIX

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

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

## FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT interrogate employees about their union or other protected concerted activities.

WE WILL NOT suspend employees because they engage in union or other protected concerted activities.

WE WILL NOT discharge employees because they engage in union or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights set forth above, which are guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Lois Sanders full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

<sup>7</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL make Lois Sanders whole for any loss of earnings and other benefits resulting from her suspension and discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to Lois Sanders' unlawful suspension and discharge and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the suspension and discharge will not be used against her in any way.

BARSTOW COMMUNITY HOSPITAL—OPERATED  
BY COMMUNITY HEALTH SYSTEMS, INC.

*Nikki N. Cheaney, Esq.*, for the General Counsel.

*Don T. Carmody, Esq.*, of Woodstock, New York, for the Respondent.

*Minh Nguyen, Esq. (Gilbert & Sackman)*, of Los Angeles, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LANA H. PARKE, Administrative Law Judge. This case was tried in Los Angeles, California, on June 30 and July 1, 2003.<sup>1</sup> Pursuant to charges filed by United Nurses Association of California, Union of Health Care Professionals NUHHCE, AFSCME, AFL-CIO (the Union), the Regional Director of Region 31 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing (the complaint) on March 11, 2003.<sup>2</sup> The complaint alleges that Barstow Community Hospital—Operated by Community Health Systems, Inc. (Respondent) violated Section 8(a)(3) and (1) of the National Labor Relations Act (the Act) by interrogating an employee about her union and/or protected concerted activities and by terminating Lois Sanders (Sanders) because she engaged in union and/or protected concerted activities, and to discourage employees from engaging in such activities.

Respondent essentially denied the complaint allegations and asserted, as affirmative defenses, that Sanders was, at relevant times, a supervisor within the meaning of Section 2(11) of the Act and that it would have terminated Sanders irrespective of her union and/or protected activities.<sup>3</sup>

<sup>1</sup> All dates are in 2002, unless otherwise indicated.

<sup>2</sup> The General Counsel amended the complaint on April 10, 2003, changing certain charge filing and service dates.

<sup>3</sup> Respondent also raised affirmative defenses that the Region failed to conduct its investigation of these matters in compliance with the General Counsel's Memorandum OM 02-36 and the Board's Casehandling Manual and that the Region failed to afford Respondent sufficient time to cooperate in the investigation and produce evidence in its defense. I declined to receive evidence concerning these affirmative defenses. The adequacy of the General Counsel's investigation is not litigable in an unfair labor practice hearing, *Redway Carriers*, 274 NLRB 1359, 1371 (1985), and the Agency's Casehandling Manual provides guidance only and is not binding on General Counsel or the Board. *Starlite Cutting, Inc.*, 280 NLRB 1071 fn. 3 (1986). Evidence regarding these affirmative defenses is not relevant to the unfair labor practice proceeding herein.

On the entire record and after considering the briefs filed by the Charging Party and Respondent<sup>4</sup> and the oral argument of the General Counsel, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, with a facility in Barstow, California (the facility or the hospital), is engaged in the operation of an acute-care hospital. During the calendar year preceding the complaint, a representative period, Respondent derived gross revenues in excess of \$250,000 from the operation of its acute care hospital in Barstow. During that same period, Respondent purchased and received at the facility goods and services valued in excess of \$50,000 directly from points outside the State of California. Respondent admitted and I find it to be an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act. Respondent admitted, and I find the Union to be a labor organization within the meaning of Section 2(5) of the Act.<sup>5</sup>

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Suspension, Interrogation, and Termination of Sanders*

Respondent hired Sanders in May 2001. The position title noted on her position description/evaluation of May 6 is "registered nurse . . . emergency room." Her duties included triaging patients, carrying out doctor orders, and transferring or discharging patients as directed. Her usual shift was from 7 p.m. to 7 a.m., the night shift, although she worked for a time on the day shift. The emergency room (ER) manager and a clinical coordinator (CC) provided ER oversight. When the CC was unavailable, other nurses filled in as assigned. Beginning a month or 2 after employment, Sanders filled in as CC once or twice a week on the night shift.

In early spring, Sanders told some of her coworkers she would contact a union for them so they could do something about their various employment complaints. Thereafter, she contacted various unions to set up a union information meeting for employees. On August 9, Sanders talked to Mary Capolupo (Capolupo), a registered nurse employed by Respondent, about the Union. Thereafter, Capolupo furnished a memorandum,

<sup>4</sup> Respondent filed its brief on the due date but, through the inadvertence of the person charged with filing responsibility during counsel's absence from his office, filed it with the Regional Director of Region 31 rather than the Division of Judges as required. The following day, Counsel rectified the mistake, making proper filings to all parties. The Charging Party also untimely filed its decision with the Division of Judges on August 15, 2003. Thereafter, counsel for the Charging Party provided an affidavit explaining that in her absence her secretary, mistakenly believing the brief was to be mailed on August 12, did not effect timely filing. In light of counsels' detailed explanations of inadvertent errors, their diligent attention to them, and the fact that no undue prejudice has resulted to any party, I have considered Respondent's and the Charging Party's briefs. See *Elevator Constructors Local 2 (United Elevator Services Co.)*, 337 NLRB 426 (2002).

<sup>5</sup> Where not otherwise noted, the findings herein are based on the pleadings, the stipulations of counsel, and/or unchallenged credible evidence.

dated August 9 to Maureen Bodine (Bodine), Respondent's director of nurses, which in pertinent part read:

On the night of 8-9-02 Lois Sanders was clinical coordinator. She came by wing 300 and said oh I didn't know you were working tonight. I said actually I am working OB post partum tonight. I am relieving Brian . . . Lois then said I have something to say to you but I do not know how to say it. Ah! Well, I'll just come out and say it. I said what's that all about. She said have you heard anything about Carol and I trying to bring in the union for the nurses.

She said well what do you think about it? I said you can do what ever you want it's a free country. Lois then said, since you know all the nurses on the floor I thought maybe you could talk to them about the union. . . . She then said maybe I shouldn't be asking you to do this because you might get written up and get in trouble.

On August 31, Bodine telephoned Sanders at home and informed her that Respondent was suspending her pending investigation but declined to explain why. At the hearing, Bodine testified that Respondent suspended Sanders while investigating whether Sanders had engaged in union activities while serving as a CC.

By letter dated September 6, Bodine informed Sanders, in pertinent part, as follows:

This is to inform you that we desire to schedule an investigatory interview with you for the purpose of inquiring into your conduct while recently assigned as a Clinical Coordinator.

We desire to schedule the interview for September 17, 2002 at 2:00 PM.

On September 17, Sanders attended the scheduled investigatory meeting held in Bodine's office. Bodine and Michael Trumble (Trumble), Respondent's director of human resources, were present. Bodine refused to tell Sanders the purpose of the meeting, saying the questions she was about to ask would provide the answer. Bodine queried Sanders from a list of prepared questions. The questions and a summary of Sanders' answers<sup>6</sup> are as follows:

1. Where [sic] you the Clinical Coordinator on the night of 8/9/02? Ms. Sanders said she was.
2. What are the responsibilities of the Clinical Coordinator? Ms. Sanders answered that she had no sense of authority, could not reprimand or discipline, did staffing for the following shift, and dealt with the pharmacy needs, and that she often did the job under protest.
3. During the shift of 8/9/02, did you have any conversations with any employee about Unions or organizing Unions? Ms. Sanders said she did not recall.
4. Did you say anything to anyone about getting written up or getting in trouble in reference to union activities? Ms. Sanders again said she did not recall.

<sup>6</sup> Bodine's notations sometimes consist of only a word to denote the answer given. The answers set forth are based on the notations and correlative testimony.

5. Have you ever engaged in Union Activity while assigned as Clinical Coordinator? Ms. Sanders denied doing so.

By letter dated September 26, Bodine notified Sanders, in pertinent part, "[B]ased upon our recent investigation into your conduct while assigned as a Clinical Coordinator, your employment with Barstow Community Hospital is being terminated."

At the hearing, Bodine testified that Respondent terminated Sanders because she was conducting union activity on August 9 while acting in a management position as a "supervisor or clinical coordinator." Bodine said that Sanders' engaging in union activity while acting in the role of management was "against [Respondent's] policy which [was] to remain union-free." Respondent reiterated the basis for Sanders' termination in its brief:

Sanders, while vested with the responsibilities of Clinical Coordinator, sought to enlist Capolupo's assistance in organizing the Hospital's nurses. For this reason, and this reason alone, the Hospital rightfully decided to terminate Sanders' employment.<sup>7</sup>

#### *B. Sanders' Supervisory Status*

As with all ER nurses, Respondent hired Sanders with the expectation that she would fill in as relief CC. Donna Rollins (Rollins), medical surgical manager, testified that Bodine tells all nurse-applicants for the ER that part of their roles will be to act as a clinical coordinator on the night shift in the absence of the CC or the manager, that it is mainly staffing they will be involved in, but they may have to deal with other issues that come up, at which time they may call a manager. As noted above, the position description/evaluation for Sanders signed by Schneider on May 6, states Sanders' position as "registered nurse . . . emergency room." There is no mention of any relief CC position, and Sanders was not regularly scheduled as relief or acting CC. Bonnie Lou Schneider (Schneider), manager of medical surgical department, generally informed her once or twice a week that she was to fill in as CC. Respondent did not require employees to accept the acting CC assignment, and on occasion, Sanders declined to fill in as CC or asked management to find someone else. Respondent paid acting CCs a 10-percent shift differential when they served in that capacity. I find that although Sanders served as an ad hoc acting CC as did other ER nurses, she did not have any regular, established assignment as a relief CC.

When nurses were directed to act as CC, a manager gave the assigned individual a staffing book containing staff guidelines, staffing grids,<sup>8</sup> master schedules, daily assignment sheets, a list of patients' names and rooms, an emergency call list, instructions on how to "stock" the emergency rosters, other pertinent

<sup>7</sup> Respondent does not argue, and there is no evidence, that Sanders' brief discussion with Capolupo occurred on either employee's work-time. Bodine testified that she did not know whether Capolupo or Sanders was on break at the time of the conversation.

<sup>8</sup> The staffing grids set a nurse/patient ratio according to Respondent's guidelines and California regulations. Sanders had nothing to do with establishing Respondent's policies, guidelines, or staffing grids.

information for CCs, and contact phone or pager numbers of all supervisors. Rollins referred to the staffing book as “the brains.” The manager told the nurse what to expect on the shift (e.g. staffing, patient issues, pending admissions, available beds). As noted by Rollins, Respondent “encouraged . . . absolutely” acting CCs to follow Respondent’s written policies. The daily assignment sheets, prepared by the regular CCs, listed names of employees to be called in to work or “cut” (excused from scheduled work) along with Schneider’s suggestions as to which employees were to be called in or excused. As Rollins testified, the notes were sometimes very specific: “These are the people that if you need to call people up these are the order to do it . . . it is their turn.” On the one occasion Rollins could recall giving the book to Sanders, she told Sanders the staffing was already done and reviewed it with her. In assigning the acting CCs, the managers “usually tried to make sure that things were sorted out beforehand.” Respondent’s training for acting CCs consisted of showing them how to use the staffing book, how to read the staffing grid, where to obtain medications, and where the pharmacy keys were kept. When Sanders acted as CC, in addition to her normal nursing work, she performed the following duties, which accounted, at the most, for less than 17 percent of her time.<sup>9</sup>

1. Assessed the need for staff by applying the established staffing grids and “called in” or “called off” staff as required by patient flow, utilizing the employee lists in the staffing book.

2. Obtained necessary medications by going to the facility’s locked pharmacy with security personnel, obtaining and signing for specified medications, and relocking the pharmacy.

3. When physicians determined that patients were to be admitted to the hospital from the emergency room, called the appropriate floor nurses and obtained a patient room number for admittance.

During the periods she filled in as CC, Sanders spent the bulk of her worktime performing nursing duties. Like other acting CCs, she had no authority to discipline employees. Any employee misconduct was to be referred to management. No occasion occurred where she gave permission for any employee to leave work, and she believed she would have to contact management in such a situation. Schneider instructed Sanders that if a problem occurred, she was to call Schneider at home, and Rollins said that if acting CCs encountered any “issues, they would certainly call.”

If staff members called in sick or were otherwise unable to fulfill their shifts, they had to be replaced so as to maintain the grid level or ratio. If patient numbers fluctuated in the course of a shift, nursing personnel had to be called in or released to maintain the appropriate grid level. Acting CCs had the authority to “float”<sup>10</sup> employees from one treatment area to another. Schneider’s description of the process was that the CC might call another department and say, “Who can come over and help us get through this crisis?”

<sup>9</sup> Respondent’s witnesses agreed that the time an acting CC spent on CC duties might be as little as 30 to 40 minutes in a 12-hour shift.

<sup>10</sup> Floating is the temporary assignment of employees to various departments to meet workload demands.

If unscheduled employees had to be called in to work, Sanders either utilized the staff lists in the staffing book or contacted a registry (contract service) to obtain personnel. In utilizing the staffing book, Sanders followed the prepared staffing log, starting with the top name and working down the list.<sup>11</sup> If staffing difficulty occurred, the acting CC could contact Rollins who would then make the calls for them. The acting CC had no authority to order any employee to work; if employees refused to report, the information would be passed on to a manager for determination of disciplinary action.<sup>12</sup> Contract nursing personnel were used when no employees were available to work. In summoning contract help, Sanders contacted the registry as designated by Respondent. If contract personnel were used, Sanders oriented them to the ER by following Respondent’s checklist for ascertaining if they knew emergency procedures.

From the ER, patients were admitted to either the intensive care unit (ICU) or one of the two medical-surgery floors of the hospital, as designated by the attending physician. The system for determining to which of the medical-surgery floors the patient would be admitted was, according to Rollins, generally “pretty routine” and consisted of alternating admissions between the two floors. When, on one occasion, the staff of one floor refused to accept an admission, the acting CC called Rollins who handled the problem.

Although an acting CC needed to deal with the “concerns” of patient family members, physicians, and staff, Rollins knew of no specific occasion where an acting CC had occasion to resolve conflicts among staff. It was “not uncommon” for CCs to call Rollins at home when problems developed or for her to return to the hospital to deal with issues arising during acting-CC stints.

### III. DISCUSSION

When Sanders spoke briefly about union organizing to Capolupo on August 9, she was engaged in protected activity as described in Section 7 of the Act. There is no dispute that Respondent thereafter suspended Sanders pending its investigation of whether she had engaged in union activities as reported by Capolupo.<sup>13</sup> There is no dispute that Respondent, in the course of the investigation, interrogated Sanders about her union activities, and there is no dispute that Respondent fired Sanders on August 26, because she had engaged in union activities. An employer’s investigation undertaken to determine an em-

<sup>11</sup> Sanders’ method of calling in employees was consistent with manager expectations. As Rollins testified, if additional staff was needed, the acting CC looked to “the staffing sheets [to] find out if . . . somebody else . . . could fill that position, and if there wasn’t then [the acting CC] would start calling around other staff members to see who could come in and cover that shift.”

<sup>12</sup> However, if unscheduled staff declined to work, managers generally filled in as needed.

<sup>13</sup> Although the General Counsel did not allege the investigation of Sanders and her corollary suspension as violations of the Act, as the facts surrounding them were admitted by Respondent, were fully and fairly litigated, and as the issues are closely connected to the subject matter of the complaint, I have considered the lawfulness of the investigation and the suspension herein. *Gallup, Inc.*, 334 NLRB 366 (2001); *Letter Carriers Local 3825 Postal Service*, 333 NLRB 343 fn. 3 (2001); *Paris Depot*, 332 NLRB 733 (2000).

ployee's involvement in protected activities is unlawful as are all the disciplinary consequences flowing therefrom. See *Preferred Transportation*, 339 NLRB 1 (2003), citing *Accord Business Products—Division of Kidde, Inc.*, 224 NLRB 840 fn. 3 (1989). It does not matter that the employer may have believed, in good faith, that the statutory employee was a supervisor within the meaning of the Act. See *General Security Services Corp.*, 326 NLRB 312, 313 (1998). Respondent's conduct in investigating Sanders' union activity, suspending her during the pendency of the investigation, interrogating her about her union activity, and firing her is unlawful on its face under Section 8(a)(3) and (1) of the Act.

Respondent defends its conduct on the ground that Sanders lost the protection of the Act when she engaged in union activities because she was, at the time, acting CC and a supervisor within the meaning of Section 2(11) of the Act. Respondent carries the burden of proving supervisory status. *NLRB v Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001); *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1047 (2003) ("The party asserting [supervisory] status must establish it by a preponderance of the evidence [citations omitted]"). I find Respondent has not met its burden of showing that Sanders was or acted as a supervisor at any relevant time hereto.

According to the Board, "An employee's temporary assumption of supervisory duties is not sufficient to establish statutory supervisory status [citations omitted]." *Health Resources of Lakeview*, 332 NLRB 878 (2000). The Board, quoting *Aladdin Hotel*, 270 NLRB 838, 840 (1984), has stated that "[T]he appropriate test for determining the status of employees who substitute for supervisors is whether the part-time supervisors spend a regular and substantial portion of their working time performing supervisory tasks." *St. Francis Medical Center—West*, 323 NLRB 1046 (1997).<sup>14</sup> There is no evidence Sanders exercised or possessed any supervisory authority when she filled in as a CC. Rather, the evidence shows that Sanders followed established written procedures and policies as an acting CC and that she did not exercise independent judgment within the meaning of Section 2(11) of the Act. See *Beverly Health & Rehabilitation*, 335 NLRB 635 (2001) (exercise of only routine authority); *Dean & Deluca, New York, Inc.*, supra (direction and scheduling of employees does not establish an employee as a supervisor). Sanders' responsibility in any disciplinary process was nothing more than reportorial, and there is no evidence she exercised even that limited role. See *Ken-Crest Services*, 335 NLRB 777 (2001). Although Sanders made certain work assignments and called in employees as needed, work assignments made by following plans and schedules of management do not establish statutory supervisory status,<sup>15</sup> neither does requesting off-duty employees to come in to work. *Health Resources of Lakeview*, supra. Sanders oriented registry-nursing employees when they were called in, but such orienta-

tion does not confer supervisory status, especially where orientation consists of referring employees to established procedures and policies. *Chrome Deposit Corp.*, 323 NLRB 961 (1997).

Even assuming Sanders exercised some supervisory authority during those occasions when she acted as a CC, Respondent has not established that Sanders spent a regular and substantial portion of her worktime doing so as required by *Aladdin Hotel*, supra. Sanders was assigned CC responsibility irregularly and when she was, the performance of those responsibilities did not involve a substantial portion of her working time. Accordingly, the evidence does not support Respondent's contention that Sanders was a supervisory employee at any time. Specifically, the evidence does not show that Sanders was a supervisory employee when, on August 9, she discussed union organization with a fellow employee.

Sanders, having been a statutory employee at all relevant times and specifically on August 9 when she engaged in union activity, was entitled to exercise the rights guaranteed by Section 7 of the Act. When Respondent placed Sanders on suspension on August 31, pending its investigation of her union or other concerted protected activities and when Respondent terminated her for having engaged in such activities on September 26, Respondent violated Section 8(a)(3) and (1) of the Act.<sup>16</sup> When Respondent instituted an investigation of Sanders' union or other concerted protected activities between August 9 and September 17, and when Respondent interrogated Sanders about her union or other concerted protected activities on September 17, Respondent violated Section 8(a)(1) of the Act.

#### CONCLUSIONS OF LAW

1. Respondent violated Section 8(a)(1) of the Act by investigating Sander's union or other concerted, protected activities.
2. Respondent violated Section 8(a)(1) of the Act by interrogating Sanders about her union or other concerted, protected activities.
3. Respondent violated Section 8(a)(3) and (1) of the Act by suspending Sanders on August 31, 2002.
4. Respondent violated Section 8(a)(3) and (1) of the Act by terminating Sanders on September 26, 2002.

#### REMEDY

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

Respondent having discriminatorily suspended and terminated Lois Sanders, it must offer her reinstatement and make her whole for any loss of earnings and other benefits, computed on a quarterly basis from date of suspension to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus

<sup>14</sup> I cannot agree with Respondent that the Board's reasoning in *St. Francis* does not apply to this situation because Sanders' "right to vote is not at issue." The Board's analyses of supervisory status are not dependent on issues but apply to all cases commonly

<sup>15</sup> *Dean & Deluca*, supra; *Arlington Electric, Inc.*, 332 NLRB 74 (2000)

<sup>16</sup> As Respondent concedes it disciplined Sanders for her union activities, I agree with Respondent that it is unnecessary to apply the Board's analytical framework for deciding cases turning on employer motivation set forth in *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v Transportation Management Corp.*, 462 U.S. 393 (1983).

interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>17</sup>

#### ORDER

Respondent, Barstow Community Hospital—Operated by Community Health Systems, Inc., Barstow, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from
  - (a) Investigating employees' union or other concerted, protected activities.
  - (b) Interrogating employees about their union or other concerted, protected activities.
  - (c) Suspending any employee for engaging in union or other concerted, protected activities.
  - (d) Terminating any employee for engaging in union or other concerted, protected activities.
  - (e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
  - (a) Within 14 days from the date of this Order, offer Lois Sanders full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.
  - (b) Make Lois Sanders whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of the decision.
  - (c) Remove from its files any reference to Lois Sanders' unlawful suspension and termination and thereafter notify her in writing that this has been done and that the suspension and/or termination will not be used against her in any way.
  - (d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
  - (e) Within 14 days after service by the Region, post at its facility in Barstow, California, copies of the attached notice marked "Appendix."<sup>18</sup> Copies of the notice, on forms provided by the Regional Director for Region 31 after being signed by

<sup>17</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>18</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 9, 2002.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

#### APPENDIX

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

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

#### FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT investigate employees' union or other concerted, protected activities.

WE WILL NOT interrogate employees about their union or other concerted, protected activities.

WE WILL NOT suspend employees because they engage in union or other concerted, protected activities.

WE WILL NOT terminate employees because they engage in union or other concerted, protected activities.

WE WILL NOT in any like or similar manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Lois Sanders full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Lois Sanders whole for any loss of earnings and other benefits resulting from her suspension and termination.

WE WILL remove from our files any reference to the unlawful suspension and termination of Lois Sanders and WE WILL notify her in writing that this has been done and that the suspension and termination will not be used against her in any way.

BARSTOW COMMUNITY HOSPITAL—OPERATED BY  
COMMUNITY HEALTH SYSTEMS, INC.

*Nikki N. Cheaney, Esq.*, for the General Counsel.

*Don T. Carmody, Esq.*, of Woodstock, New York, for the Respondent.

*Cynthia L. Hernandez, Esq. (Gilbert & Sackman)*, of Los Angeles, California, for the Charging Party.

#### SUPPLEMENTAL DECISION

##### REMAND ORDER

By Order dated September 30, 2006, the National Labor Relations Board (the Board) remanded this matter for further consideration in light of its recent decisions in *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006); *Croft Metals, Inc.*, 348 NLRB 717 (2006); and *Golden Crest Healthcare Center*, 348 NLRB 727 (2006), which addressed the meaning of terms “assign,” “responsibly to direct,” and “independent judgment,” as used in Section 2(11) of the Act, under the framework of the Supreme Court’s decision in *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001).

##### The Respondent’s Motion for Reconsideration of Motion to Reopen the Record

The Board’s Order allowed the parties to file briefs on the remand issues and, if warranted, directed reopening the record to obtain evidence relevant to the principles enunciated in *Oakwood Healthcare*, *Croft Metals*, and *Golden Crest*. By motion to reopen record dated November 20, 2006, Respondent sought to reopen the record to present additional testimony and documentary evidence regarding alleged supervisory responsibilities of Lois Sanders (Sanders) whose supervisory status is at issue. By Order dated November 27, I denied Respondent’s motion as unwarranted and set a date for the filing of briefs.<sup>1</sup> All parties have filed timely briefs herein concerning the issue of whether Sanders is a supervisor within the meaning of Section 2(11) of the Act. Although titling its submission as a brief on remand and motion for reconsideration of motion to reopen the record, Respondent has presented argument only on its motion for reconsideration. Respondent asserts that the filing of a brief based upon the record presently developed is pointless:

Thus, inasmuch as the hospital never undertook during the Trial . . . to prove, let alone argue . . . that Ms. Sanders’ responsibilities strictly as a Registered Nurse, irrespective of her role as a Clinical Coordinator, involved the performance of “supervisory” functions, the Record is barren of evidence of Ms. Sanders’ supervisory status strictly in her capacity *qua* Registered Nurse—that is to say, the Record already developed instead only contains evidence and legal argument of Ms. Sanders’ supervisory status as Clinical Coordinator.

Consequently, there is no basis, let alone an insufficient basis, for Barstow to argue from the existing Record that, under the principles articulated by the Board in *Oakwood*, Ms. Sanders’ status as a Registered Nurse, alone, was supervisory.

While it is true, as the Respondent contends, that the primary focus of the parties’ examination in the underlying hearing was on Sanders’ duties as relief CC, it is not true that the record is silent regarding Sanders’ responsibilities as an RN. The record provides pertinent information regarding Sanders’ RN duties in the ER.

During the relevant period, core staffing in the emergency room (ER) of the Respondent’s 40–50 bed acute-care facility consisted of two registered nurses (RN), an ER technician, and two additional staff members who worked part of the daytime ER shifts. The ER manager and a clinical coordinator (CC) had overall responsibility for nursing activities on the ER day shift. On the night shift, a CC provided ER oversight. The CC insured that the hospital ran efficiently and smoothly, dealt with interpersonal employee conflicts, gathered supplies, and handled staffing. In making staffing decisions and assignments, the CC took into account the acuity of patients and the relative skills, experience, and trustworthiness of the available staff. The CCs gave no patient care, although they might fill in as needed for an absent RN. On occasion, the ER registered nurses were called upon to fill in as relief clinical coordinator on the night shift.

At all times relevant, Sanders worked as an RN in the ER. The position title noted on her position description/evaluation of May 6, 2002, was “registered nurse . . . emergency room,” and her position description was summarized as follows: “The Registered Nurse shall be responsible for planning, supervising and evaluating the nursing care of patients and for correlating the nursing process, the medical plan of care and policies.” Sanders usually worked the ER night shift from 7 p.m. to 7 a.m., and her duties included triaging patients, carrying out doctor orders, and transferring or discharging patients as directed. In fulfilling her duties as an RN, Sanders did not make assignments to other workers, evaluate their performance, or discipline them; her only involvement with corrective action was to report problems to the CC or ER manager. Beginning a month or two after employment, Sanders filled in as CC once or twice a week.

Regarding Sanders’ work as an RN, the following is clear from the record: (1) at all relevant times, the Respondent’s ER had a complement of only two RNs who were overseen by a CC; (2) the CC had full oversight responsibility for the ER; (3) the CC was responsible for staffing in the ER; (4) as an RN, Sanders had no responsibility for making work assignments to other employees; and (5) as an RN, Sanders had no responsibility for evaluating the work performance of other employees or disciplining them.

The Board’s decision in *Oakwood Healthcare, Inc.*, *supra*, deals with the issue of whether certain charge nurses are supervisors within the meaning of the Act. In arriving at its conclusions, the Board adopted definitions for the terms “assign,” “responsibly to direct,” and “independent judgment,” as used by Section 2(11) of the Act in denoting supervisory authority.

<sup>1</sup> The original due date of January 4, 2007, for the filing of briefs was extended upon Respondent’s request to January 16, 2007.

As to the term “assign,” the Board construed it to mean designating an employee to perform significant overall duties. Directing an employee to perform discrete tasks within such an assignment, as in giving an ad hoc instruction, is not, in the Board’s view, indicative of supervisory authority to “assign.”<sup>2</sup> With regard to the term “responsibly to direct,” the Board concluded that for an individual’s action to be so described, the directing person “must be accountable for the performance of the task so as to fundamentally align the person with management.”<sup>3</sup> Finally, the Board considered that “independent judgment” is exercised when an individual acts or recommends action free of the control of others, which action rises above the merely routine or clerical.<sup>4</sup>

With the Board’s definitions in mind, it is apparent that Sanders’ performance of RN functions, in and of itself, does not fit the Board’s denotation of supervisory status. The Respondent ceded oversight responsibility in its ER to a CC. The CC, not Sanders, was responsible for staffing the ER, making work assignments, and evaluating the work performance of ER employees. In such a limitedly staffed department as the Respondent’s ER, it is highly improbable that two individuals would possess 2(11) authority to exercise independent judgment in assigning and directing employees. Since clearly the CC possessed such authority, a fortiori, Sanders, when functioning as an RN, did not. Accordingly, the Respondent’s motion for reconsideration of motion to reopen record in order to adduce evidence of Sanders’ RN responsibilities, irrespective of her role as a relief CC, is denied.

Consideration of Underlying Decision in Light of *Oakwood Healthcare, Croft Metals, and Golden Crest*

While the Respondent’s brief on remand appears to concede that the Board’s decisions in *Oakwood Healthcare, Inc.*, *Croft Metals, Inc.*, and *Golden Crest Healthcare Center* would not alter the findings in the underlying decision, the Board’s Order to reconsider those findings dictates further review. In the recent decisions, the Board reiterated that the burden of proving supervisory status rests on the party asserting it. After reconsideration of the underlying findings of fact in light of *Oakwood Healthcare, Inc.*, *Croft Metals, Inc.*, and *Golden Crest Healthcare Center*, I find that the Respondent has failed to meet its evidentiary burden.

The question of Sanders’ supervisory status rests on her work as a relief CC. In *Oakwood Healthcare, Inc.*, supra at 696, the Board addressed the status of individuals who are engaged part of their worktime in supervisory roles and held to its established legal standard that determination of supervisory status in such situations depends on whether the individual spends a regular and substantial portion of worktime performing supervisory functions. As the Board did not modify its standard for assessing the regularity and substantiality of part-time performance of supervisory functions, there is no basis for revising the earlier finding that Sanders served as a relief CC

only on an ad hoc basis and did not have any regular, established assignment as such.

Even assuming Sanders spent a regular and substantial portion of her worktime as relief CC, utilizing the Board’s definitions set forth in *Oakwood Healthcare, Inc.*, and reiterated in *Croft Metals, Inc.*, and *Golden Crest Healthcare Center*, the evidence fails to establish that Sanders exercised independent judgment in assigning or responsibly directing any employee when she served as relief CC. In *Oakwood Healthcare, Inc.*, the Board construed the authority “to assign” to involve the act of designating an employee to a specific place in which to perform his or her work, appointing an employee to a particular time during which to perform that work, or giving an employee significant overall duties or tasks to perform. The authority “responsibly to direct” involves deciding which job shall be undertaken and who shall do it, provided that the direction is both responsible and given with independent judgment. For the direction to be responsible, the person giving the direction must be accountable for the performance of the task under penalty of adverse consequences for improper execution. “Independent judgment” does not exist if directions are dictated or controlled by detailed instructions that do not allow for discretionary choices.<sup>5</sup>

During the periods she filled in as CC, Sanders spent the bulk of her worktime performing nursing duties and was instructed to contact management regarding any nonroutine issues. As relief CC, Sanders was expected to follow a staffing book prepared by higher authority, which contained detailed staff guidelines, staffing grids, master schedules, daily assignment sheets, and other pertinent administrative information and instructions. Sanders assigned admitted ER patients to the nursing staffs of two medical-surgery floors by alternating between the two floors. Any disagreement over patient placement was referred to upper management. Sanders could request help as needed from other departments or call in unscheduled employees but had no authority to affix consequences to any refusal to comply and was not accountable for other employees’ performance of tasks. Any employee misconduct was to be referred to upper management. Clearly, when functioning as a relief CC, Sanders was not free from the control of others but followed the detailed instructions and policies provided in the staffing book and formed no opinions or evaluations by discerning and comparing data. In such circumstances, following the instruction of *Oakwood Healthcare, Inc.*, I find that Sanders did not responsibly direct other employees’ work. While Sanders may, in a broad sense, have assigned work to employees by requesting help, calling in unscheduled employees, and making bed assignments for patients admitted to the hospital from the ER, she did not exercise independent judgment in doing so. Any judgment exercised by Sanders was dictated or controlled by detailed instructions and policies established by a higher authority that did not allow for discretionary choices and, thus, was not “independent.”

<sup>2</sup> *Oakwood Healthcare, Inc.*, supra at 689–690.

<sup>3</sup> *Oakwood Healthcare, Inc.*, supra at 693.

<sup>4</sup> *Id.* at 694–695. The concepts detailed in *Oakwood Healthcare, Inc.* are echoed in *Croft Metals, Inc.*, supra, and *Golden Crest Healthcare Center*, supra.

<sup>5</sup> *Id.* at 689–695.

Accordingly, having reviewed the evidence in the light of the Board's recent decisions construing Section 2(11) of the Act, I find the evidence does not establish that Lois Sanders was a supervisor within the meaning of that section on August 31

and/or September 26, 2002, when Respondent respectively suspended and fired her.

[Recommended Order omitted from publication.]

# GC Exhibit 2

**FILED**

UNITED STATES COURT OF APPEALS

AUG 26 2010

FOR THE NINTH CIRCUIT

MOLLY C DWYER, CLERK  
U S COURT OF APPEALS

NATIONAL LABOR RELATIONS  
BOARD,

Petitioner,

v.

BARSTOW COMMUNITY HOSPITAL-  
OPERATED BY COMMUNITY  
HEALTH SYSTEMS, INC.,

Respondent.

No. 09-70771

NLRB No. 31-CA-26057

ORDER

Before: LEAVY, HAWKINS and THOMAS, Circuit Judges.

Petitioner's motion to remand the case to the National Labor Relations Board ("Board") in light of the decision in *New Process Steel, L.P. v. NLRB*, 130 S. Ct. 2635 (June 17, 2010) is granted. We vacate the Board decision and remand to the Board for further proceedings consistent with the holding in *New Process Steel, L.P.*. The parties' various requests regarding specific processing of the remand are denied.

**VACATED AND REMANDED.**

# GC Exhibit 3

*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, DC 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Barstow Community Hospital – Operated by Community Health Systems, Inc. and United Nurses Association of California, Union of Health Care Professionals, NUHHCE, AFSCME, AFL–CIO.**  
Case 31–CA–26057

November 8, 2010

**DECISION AND ORDER**

BY CHAIRMAN LIEBMAN AND MEMBERS PEARCE  
AND HAYES

On August 18, 2008, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 352 NLRB 1052.<sup>1</sup> Thereafter, the General Counsel filed an application for enforcement in the United States Court of Appeals for the Ninth Circuit. On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. Thereafter, the court of appeals remanded this case for further proceedings consistent with the Supreme Court’s decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.<sup>2</sup>

The Board has considered the judge’s decision and supplemental, and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings, and conclusions and to adopt the recommended Order<sup>3</sup> to the extent and for the reasons stated in the deci-

sion reported at 352 NLRB 1052 (2008), which is incorporated here by reference, except as modified below.<sup>3</sup>

**AMENDED REMEDY**

The Respondent, having discriminatorily suspended and discharged Lois Sanders, must offer her reinstatement and make her whole for any loss of earnings and other benefits, computed on a quarterly basis from the date of her suspension to the date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus daily compound interest as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified in 352 NLRB 1052 and as further modified below, and orders that the Respondent, Barstow Community Hospital – Operated by Community Health Systems, Inc., Barstow, California, its officers, agents, successors, and assigns, shall take the action set forth in the recommended Order as modified.

1. Substitute the following for paragraph 2(e).

“(e) Within 14 days after service by the Region, post at its Barstow, California facility, copies of the attached notice marked “Appendix.”<sup>18</sup> Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 31, 2002.”

<sup>1</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

<sup>2</sup> Consistent with the Board’s general practice in cases remanded from the Courts of Appeals, and for reasons of administrative economy, the panel includes the remaining member who participated in the original decision. Furthermore, under the Board’s standard procedures applicable to all cases assigned to a panel, the Board members not assigned to the panel had the opportunity to participate in the adjudication of this case at any time up to the issuance of this decision.

<sup>3</sup> In accordance with our decision in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), we modify the judge’s recommended remedy by requiring that backpay and other monetary awards shall be paid with interest compounded on a daily basis. Also, we shall modify the judge’s recommended Order to provide for the posting of the notice in accord with *J. Picini Flooring*, 356 NLRB No. 9 (2010). For the rea-

sions stated in his dissenting opinion in *J. Picini Flooring*, Member Hayes would not require electronic distribution of the notice.

Dated, Washington, D.C. November 8, 2010

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Wilma B. Liebman, Chairman

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Mark Gaston Pearce, Member

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Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

# GC Exhibit 4

FILED

J-6219

NOT FOR PUBLICATION

MAR 26 2012

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

JACOB/VOL  
31-CA-26057  
356 NLRB No. 15

NATIONAL LABOR RELATIONS  
BOARD,

No. 10-73450

Petitioner,

NLRB No. 31-CA-26057

v.

MEMORANDUM\*

BARSTOW COMMUNITY HOSPITAL-  
OPERATED BY COMMUNITY  
HEALTH SYSTEMS, INC.,

Respondent.

On Petition for Review of an Order of the  
National Labor Relations Board

Submitted March 15, 2012\*\*  
San Francisco, California

Before: McKEOWN and M. SMITH, Circuit Judges, and ROTHSTEIN, Senior  
District Judge.\*\*\*

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision  
without oral argument. See Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Barbara Jacobs Rothstein, Senior District Judge for the  
U.S. District Court for the Western District of Washington, sitting by designation.

The National Labor Relations Board (NLRB) petitions for enforcement of its order finding that Barstow Community Hospital-Operated by Community Health Systems, Inc. (Barstow) violated sections 8(a)(1) and 8(a)(3) of the National Labor Relations Act (NLRA), 29 U.S.C. § 158(a)(1), (3). Because the parties are familiar with the factual and procedural history of this case, we repeat only those facts necessary to resolve the issues raised on appeal. We have jurisdiction under 29 U.S.C. § 160(e). *See NLRB v. Kolkka*, 170 F.3d 937, 939 (9th Cir. 1999). We grant the NLRB's application for enforcement of its order.

Barstow argues that the NLRB abused its discretion in denying Barstow an opportunity to reopen the record to present evidence that Lois Sanders (Sanders) was a supervisor exempt from NLRA protection as a registered nurse. According to Barstow, it had no reason to present this evidence before the NLRB decided three cases in 2006: *Oakwood Healthcare, Inc.*, 348 N.L.R.B. 686 (2006), *Croft Metals, Inc.*, 348 N.L.R.B. 717 (2006), and *Beverly Enterprises-Minnesota, Inc., d/b/a Golden Crest Healthcare Center*, 348 N.L.R.B. 727 (2006) (the *Oakwood Healthcare* trilogy).

In *Kentucky River*, the Supreme Court rejected the NLRB's prior interpretation of the "independent judgment" required for a person to be a supervisor in 2001. *See NLRB v. Ky. River Cmty. Care, Inc.*, 532 U.S. 706, 712-

13, 721 (2001). In the *Oakwood Healthcare* trilogy, the NLRB merely refined the analysis to be applied in assessing supervisory status, applying the Supreme Court's ruling. See *Oakwood Healthcare*, 348 N.L.R.B. at 686; *Croft Metals*, 348 N.L.R.B. at 721; *Golden Crest Healthcare*, 348 N.L.R.B. at 729-30. Because the Supreme Court rejected the NLRB's prior interpretation of "independent judgment" in 2001, before the first hearing before Administrative Law Judge Lana H. Parke (ALJ Parke), we reject Barstow's argument. See *Ky. River*, 532 U.S. at 712-13, 721.

Barstow was on notice of *Kentucky River* long before the *Oakwood Healthcare* trilogy and the initial hearing before ALJ Parke. See *id.* Consequently, Barstow's effort to introduce "new" evidence of Sanders's supervisory status after the initial hearing before ALJ Parke was untimely. See *NLRB v. Cutter Dodge, Inc.*, 825 F.2d 1375, 1381 (9th Cir. 1987); *NLRB v. Don Burgess Constr. Corp.*, 596 F.2d 378, 389 (9th Cir. 1979); *Yesterday's Children, Inc.*, 321 N.L.R.B. 766, 766 n.1 (1996), enforced in relevant part, *Yesterday's Children, Inc. v. NLRB*, 115 F.3d 36 (1st Cir. 1997); *Michael Konig T/A Nursing Ctr. at Vineland*, 318 N.L.R.B. 337, 337 (1995). Thus, we hold that the NLRB did not abuse its discretion in denying Barstow's motion to reopen the record. See *NLRB v. Hanna Boys Ctr.*, 940 F.2d 1295, 1300 (9th Cir. 1991) (explaining that the NLRB "has

considerable discretion” in ruling on a motion to reopen the record and its decision “will not be set aside unless shown to constitute an abuse of discretion”).

Barstow also argues that the NLRB failed to meaningfully review ALJ Parke’s decision before a proper quorum. The NLRB argues that we lack jurisdiction to hear Barstow’s meaningful review claim because Barstow had not first raised it before the NLRB through a motion for reconsideration. This presents a novel question regarding regulatory exhaustion in light of 29 C.F.R. § 102.48(d)(3) (“A motion for reconsideration or for rehearing need not be filed to exhaust administrative remedies”). We need not resolve this jurisdictional question as Barstow’s claim also fails on the merits. *See Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 97 & n.2 (1998) (explaining that unlike Article III jurisdiction, statutory jurisdiction can be presumed to exist when the merits are more easily resolved). Barstow received meaningful review from the panel, which specifically stated that it considered ALJ Parke’s decision and agreed with her for the reasons stated in a prior order. Because Barstow offers no evidence to rebut “[t]he presumption of regularity support[ing] the official acts of public officers,” we reject Barstow’s challenge to the NLRB’s decision-making process. *See United States v. Chem. Found.*, 272 U.S. 1, 14 (1926); *see also NLRB v. Legacy Health Sys.*, 662 F.3d 1124, 1126-27 (9th Cir. 2011) (granting the NLRB’s application for

enforcement when a three-member panel adopted an order issued by a prior two member panel for the reasons set forth in the two member panel's decision).

Substantial evidence supports the NLRB's conclusion that Barstow failed to establish that Sanders was a supervisor in her role as a clinical coordinator. *See Ky. River*, 532 U.S. at 713. Thus, we reject Barstow's argument to the contrary. Because the NLRB correctly applied the law and its factual findings are supported by substantial evidence in the record as a whole, we enforce the NLRB's order. *See Plaza Auto Ctr., Inc. v. NLRB*, 664 F.3d 286, 291 (9th Cir. 2011).

Although not identified as a separate issue in the opening brief, Barstow suggests that the NLRB acted beyond its jurisdiction in awarding a remedy to Sanders. We lack jurisdiction to consider this argument because no evidence in the record suggests that Barstow made this jurisdictional argument to the NLRB. *See Polynesian Cultural Ctr., Inc. v. NLRB*, 582 F.2d 467, 472-73 (9th Cir. 1978).

The Board's application for enforcement of its order is GRANTED.

**GRANTED.**

# GC Exhibit 5

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31

BARSTOW COMMUNITY HOSPITAL –  
OPERATED BY COMMUNITY HEALTH  
SYSTEMS, INC.

and

Case 31-CA-026057

UNITED NURSES ASSOCIATION OF  
CALIFORNIA, UNION OF HEALTH  
CARE PROFESSIONALS, NUHHCE,  
AFL-CIO

**COMPLIANCE SPECIFICATION AND NOTICE OF HEARING**

The National Labor Relations Board, herein called the Board, issued its Decision and Order (356 NLRB No. 15) on November 8, 2010, which incorporated 352 NLRB 1052. On March 26, 2012, the United States Ninth Circuit Court of Appeals granted a judgment enforcing the Board's Order. The Board found that Barstow Community Hospital, Operated by Community Health Systems, Inc., herein called Respondent Barstow, had engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the National Labor Relations Act by *inter alia*, suspending employee Lois Sanders on August 31, 2002, and discharging Sanders on September 26, 2002. The Board directed Respondent Barstow, its officers, agents, successors, and assigns, to take certain affirmative actions, including removing from its files any reference to the unlawful suspension and discharge of Lois Sanders, and offering reinstatement to and making Sanders whole for any loss of pay or other benefits she may have suffered as a

result of Respondent Barstow's unfair labor practices in violation of Section 8(a)(1) and (3) of the Act.

As controversies presently exist over the amount of backpay due Lois Sanders under the Board's Order, the Regional Director of the National Labor Relations Board for Region 31, pursuant to authority duly conferred upon her by the Board, hereby issues this Compliance Specification and Notice of Hearing and alleges as follows:

1. At the time of her suspension on August 31, 2002, and subsequent discharge on September 26, 2002, Lois Sanders, herein called discriminatee Sanders, was employed by Respondent Barstow as a Registered Nurse in Respondent's Emergency Room Department on the night shift.

2. Discriminatee Sanders' backpay period begins September 1, 2002, the day after her suspension on August 31, 2002, and ends on August 8, 2012, the day Respondent Barstow served her with a valid, written offer of reinstatement.

3. (a) An appropriate measure of the earnings that discriminatee Sanders would have received during each calendar quarter of her backpay period is based on the average weekly hours she worked when working a night-shift schedule at Barstow Community Hospital prior to her discharge.

(b) Based on Respondent Barstow's payroll records, Sanders worked a weekly average of 26.28 regular hours, 15.46 overtime hours, and 2.02 double-time hours when she worked a night-shift schedule at Barstow Community Hospital prior to her discharge.

4. (a) Discriminatee Sanders would have been employed by Respondent Barstow as a Registered Nurse from September 1, 2001 through October 8, 2012, and

would have been paid a wage rate of \$21.77 per hour plus shift differentials for night-shift hours, plus subsequent merit and cost-of-living wage increases, September 1, 2002 through August 8, 2012, the date that Respondent Barstow made Sanders a valid offer of reinstatement.

(b) Based on Respondent's payroll records, prior to her discharge and when working a night-shift schedule, discriminatee Sanders worked a weekly average of 36.51 hours that were subject to a shift differential of \$4.77 per hour, plus subsequent merit and cost-of-living increases.

(c) Subsequent merit and cost-of-living wage increases are based on the average wage increases received by Registered Nurses employed by Respondent Barstow in its Emergency Room Department from September 1, 2002 to the present, based on data provided by Respondent.

5. Quarterly Gross Backpay for discriminatee Sanders is the total wages she would have received each calendar quarter, or portions thereof, in each calendar quarter of the backpay period.

6. Quarterly Interim Earnings for discriminatee Sanders is the total earnings she received from other employment during each calendar quarter, or portions thereof, in each calendar quarter of the backpay period.

7. Quarterly Net Backpay is the difference between calendar quarter gross backpay and calendar quarter interim earnings.

8. Quarterly Interim Expenses is the total amount of necessary expenses incurred by discriminatee Sanders related to seeking and holding interim employment that she would not have otherwise incurred, but for her unlawful suspension and

discharge. This amount includes travel expenses and the cost of a pre-employment physical.

9. Quarterly Medical Expenses is the total amount of necessary expenses incurred by discriminatee Sanders to maintain her medical insurance coverage during the period of time after her discharge from Barstow Community Hospital until she received medical insurance coverage from her interim employer.

10. Quarterly Net Backpay and Expenses is the sum of the calendar quarter net backpay, quarterly interim expenses and quarterly medical expenses.

11. The total net backpay due discriminatee Sanders is the sum of the net backpay due in all of the quarters of the backpay period.

12. Specific computations for discriminatee Sanders are set forth in Appendix A. All amounts are rounded to the nearest dollar.

13. Summarizing the facts and calculations specified above, Respondent Barstow is liable for the backpay due discriminatee Sanders as described above. The obligation of Respondent Barstow to make whole discriminatee Sanders under the Board Order will be discharged by payment to her in the amount of \$43,217.00, plus interest accrued to the date of payment pursuant to such Order, minus the tax withholding required by Federal and state laws.<sup>1</sup>

### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Section 102.56 of the Board's Rules and Regulations, it must file an answer to the compliance specification. **The answer must**

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<sup>1</sup> Respondent Barstow will be responsible for determining proper tax withholding, for paying its matching FICA tax contribution on the backpay amount, for submitting proper tax payments and reports to tax authorities, as well as for providing tax reports to the discriminatees to use in filing income tax returns.

**be received by this office on or before November 21, 2012, or postmarked on or before November 20, 2012.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on E-Gov, then click on the E-Filing link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. 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 such answer be signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed. See Section 102.56(a). 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 compliance specification is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature 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 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.

As to all matters set forth in the compliance specification that are within the knowledge of Respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within the Respondent's knowledge, and set forth in detail Respondent's position as to the applicable premises and furnish the appropriate supporting figures.

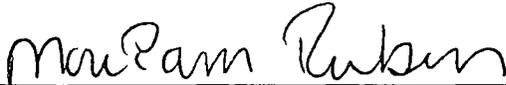
If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the compliance specification are true. If the answer fails to deny allegations of the compliance specification in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, the Board may find those allegations in the compliance specification are true and preclude Respondent from introducing any evidence controverting those allegations.

### **NOTICE OF HEARING**

**PLEASE TAKE NOTICE THAT on February 4, 2013, at 1:00 p.m., at the National Labor Relations Board, Region 31, 11150 W. Olympic Blvd., Suite 700, Los Angeles, California, 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 compliance specification. 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 Los Angeles, California, this 31<sup>st</sup> day of October, 2012.

  
Mori Pam Rubin, Regional Director  
National Labor Relations Board  
Region 31  
11150 West Olympic Blvd., Suite 700  
Los Angeles, CA 90064-1825

Attachments: Appendix A  
Form NLRB-4668  
Form NLRB 4338

**APPENDIX A**

Case Name: Barstow Community Hospital

Case Number: 31-CA-26057

Backpay period:

Claimant: Lois Sanders

9/1/2002-8/8/2012

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2002	3	7/6						
2002	3	7/13						
2002	3	7/20						
2002	3	7/27						
2002	3	8/3						
2002	3	8/10						
2002	3	8/17						
2002	3	8/24						
2002	3	8/31						
2002	3	9/7	1,339			60		
2002	3	9/14	1,339					
2002	3	9/21	1,339					
2002	3	9/28	1,339					
2002	3	Total	5,356	3,113	2,243	60	-	2,303
2002	4	10/5	1,339				743	
2002	4	10/12	1,339				743	
2002	4	10/19	1,339				743	
2002	4	10/26	1,339					
2002	4	11/2	1,339					
2002	4	11/9	1,339					
2002	4	11/16	1,339					
2002	4	11/23	1,339					
2002	4	11/30	1,339					
2002	4	12/7	1,339					
2002	4	12/14	1,339					
2002	4	12/21	1,339					
2002	4	12/28	1,339					
2002	4	Total	17,408	13,683	3,725	-	2,229	5,954
2003	1	1/4	1,339					
2003	1	1/11	1,339					
2003	1	1/18	1,339					
2003	1	1/25	1,339					
2003	1	2/1	1,339					
2003	1	2/8	1,339					
2003	1	2/15	1,339					
2003	1	2/22	1,339					
2003	1	3/1	1,339					
2003	1	3/8	1,339					
2003	1	3/15	1,339					
2003	1	3/22	1,339					

## APPENDIX A

Case Name: Barstow Community Hospital

Case Number: 31-CA-26057

Backpay period:
-----------------

9/1/2002-8/8/2012
-------------------

Claimant: Lois Sanders

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2003	1	3/29	1,339					
2003	1	Total	17,408	15,970	1,438	-	-	1,438
2003	2	4/5	1,339					
2003	2	4/12	1,339					
2003	2	4/19	1,339					
2003	2	4/26	1,339					
2003	2	5/3	1,339					
2003	2	5/10	1,354					
2003	2	5/17	1,374					
2003	2	5/24	1,374					
2003	2	5/31	1,374					
2003	2	6/7	1,374					
2003	2	6/14	1,374					
2003	2	6/21	1,374					
2003	2	6/28	1,374					
2003	2	Total	17,667	15,970	1,697	-	-	1,697
2003	3	7/5	1,374					
2003	3	7/12	1,374					
2003	3	7/19	1,374					
2003	3	7/26	1,374					
2003	3	8/2	1,374					
2003	3	8/9	1,374					
2003	3	8/16	1,374					
2003	3	8/23	1,374					
2003	3	8/30	1,374					
2003	3	9/6	1,374					
2003	3	9/13	1,374					
2003	3	9/20	1,374					
2003	3	9/27	1,374					
2003	3	Total	17,861	15,970	1,891	-	-	1,891
2003	4	10/4	1,374					
2003	4	10/11	1,374					
2003	4	10/18	1,374					
2003	4	10/25	1,374					
2003	4	11/1	1,374					
2003	4	11/8	1,374					
2003	4	11/15	1,374					
2003	4	11/22	1,374					
2003	4	11/29	1,374					
2003	4	12/6	1,374					
2003	4	12/13	1,374					
2003	4	12/20	1,374					
2003	4	12/27	1,374					
2003	4	Total	17,861	15,970	1,891	-	-	1,891

**APPENDIX A**

Case Name: Barstow Community Hospital

Case Number: 31-CA-26057

Backpay period:

9/1/2002-8/8/2012

Claimant: Lois Sanders

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2004	1	1/3	1,374					
2004	1	1/10	1,374					
2004	1	1/17	1,374					
2004	1	1/24	1,374					
2004	1	1/31	1,374					
2004	1	2/7	1,374					
2004	1	2/14	1,374					
2004	1	2/21	1,374					
2004	1	2/28	1,374					
2004	1	3/6	1,374					
2004	1	3/13	1,374					
2004	1	3/20	1,374					
2004	1	3/27	1,374					
2004	1	Total	17,861	18,729	-	-	-	-
2004	2	4/3	1,374					
2004	2	4/10	1,374					
2004	2	4/17	1,374					
2004	2	4/24	1,374					
2004	2	5/1	1,374					
2004	2	5/8	1,381					
2004	2	5/15	1,397					
2004	2	5/22	1,397					
2004	2	5/29	1,397					
2004	2	6/5	1,397					
2004	2	6/12	1,397					
2004	2	6/19	1,397					
2004	2	6/26	1,397					
2004	2	Total	18,030	18,729	-	-	-	-
2004	3	7/3	1,397					
2004	3	7/10	1,397					
2004	3	7/17	1,397					
2004	3	7/24	1,397					
2004	3	7/31	1,397					
2004	3	8/7	1,397					
2004	3	8/14	1,397					
2004	3	8/21	1,397					
2004	3	8/28	1,397					
2004	3	9/4	1,397					
2004	3	9/11	1,397					
2004	3	9/18	1,397					
2004	3	9/25	1,397					
2004	3	Total	18,161	18,729	-	-	-	-
2004	4	10/2	1,397					

**APPENDIX A**

Case Name: Barstow Community Hospital

Case Number: 31-CA-26057

Backpay period:

Claimant: Lois Sanders

9/1/2002-8/8/2012

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2004	4	10/9	1,397					
2004	4	10/16	1,397					
2004	4	10/23	1,397					
2004	4	10/30	1,397					
2004	4	11/6	1,397					
2004	4	11/13	1,397					
2004	4	11/20	1,397					
2004	4	11/27	1,397					
2004	4	12/4	1,397					
2004	4	12/11	1,397					
2004	4	12/18	1,397					
2004	4	12/25	1,397					
2004	4	Total	18,161	18,729	-	-	-	-
2005	1	1/1	1,397					
2005	1	1/8	1,397					
2005	1	1/15	1,397					
2005	1	1/22	1,397					
2005	1	1/29	1,397					
2005	1	2/5	1,397					
2005	1	2/12	1,397					
2005	1	2/19	1,397					
2005	1	2/26	1,397					
2005	1	3/5	1,397					
2005	1	3/12	1,397					
2005	1	3/19	1,397					
2005	1	3/26	1,397					
2005	1	Total	18,161	19,160	-	-	-	-
2005	2	4/2	1,397					
2005	2	4/9	1,397					
2005	2	4/16	1,397					
2005	2	4/23	1,397					
2005	2	4/30	1,409					
2005	2	5/7	1,485					
2005	2	5/14	1,516					
2005	2	5/21	1,516					
2005	2	5/28	1,516					
2005	2	6/4	1,516					
2005	2	6/11	1,516					
2005	2	6/18	1,516					
2005	2	6/25	1,516					
2005	2	Total	19,092	19,160	-	-	-	-
2005	3	7/2	1,516					
2005	3	7/9	1,516					
2005	3	7/16	1,516					

**APPENDIX A**

Case Name: Barstow Community Hospital  
 Case Number: 31-CA-26057

Backpay period:	
9/1/2002-8/8/2012	

Claimant: Lois Sanders

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2005	3	7/23	1,516					
2005	3	7/30	1,516					
2005	3	8/6	1,516					
2005	3	8/13	1,516					
2005	3	8/20	1,516					
2005	3	8/27	1,516					
2005	3	9/3	1,516					
2005	3	9/10	1,516					
2005	3	9/17	1,516					
2005	3	9/24	1,516					
2005	3	Total	19,703	19,160	543	-	-	543
2005	4	10/1	1,516					
2005	4	10/8	1,516					
2005	4	10/15	1,516					
2005	4	10/22	1,516					
2005	4	10/29	1,516					
2005	4	11/5	1,516					
2005	4	11/12	1,516					
2005	4	11/19	1,516					
2005	4	11/26	1,516					
2005	4	12/3	1,516					
2005	4	12/10	1,516					
2005	4	12/17	1,516					
2005	4	12/24	1,516					
2005	4	12/31	1,516					
2005	4	Total	21,219	20,634	585	-	-	585
2006	1	1/7	1,516					
2006	1	1/14	1,516					
2006	1	1/21	1,516					
2006	1	1/28	1,516					
2006	1	2/4	1,516					
2006	1	2/11	1,516					
2006	1	2/18	1,516					
2006	1	2/25	1,516					
2006	1	3/4	1,516					
2006	1	3/11	1,516					
2006	1	3/18	1,516					
2006	1	3/25	1,516					
2006	1	4/1	1,516					
2006	1	Total	19,703	19,885	-	-	-	-
2006	2	4/8	1,516					
2006	2	4/15	1,516					
2006	2	4/22	1,516					
2006	2	4/29	1,516					

**APPENDIX A**

Case Name: Barstow Community Hospital

Case Number: 31-CA-26057

Backpay period:

Claimant: Lois Sanders

9/1/2002-8/8/2012

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2006	2	5/6	1,516					
2006	2	5/13	1,557					
2006	2	5/20	1,557					
2006	2	5/27	1,557					
2006	2	6/3	1,557					
2006	2	6/10	1,557					
2006	2	6/17	1,557					
2006	2	6/24	1,557					
2006	2	7/1	1,557					
2006	2	Total	20,034	19,885	149	-	-	149
2006	3	7/8	1,557					
2006	3	7/15	1,557					
2006	3	7/22	1,557					
2006	3	7/29	1,557					
2006	3	8/5	1,557					
2006	3	8/12	1,557					
2006	3	8/19	1,557					
2006	3	8/26	1,557					
2006	3	9/2	1,557					
2006	3	9/9	1,557					
2006	3	9/16	1,557					
2006	3	9/23	1,557					
2006	3	9/30	1,557					
2006	3	Total	20,241	19,885	356	-	-	356
2006	4	10/7	1,557					
2006	4	10/14	1,557					
2006	4	10/21	1,557					
2006	4	10/28	1,557					
2006	4	11/4	1,557					
2006	4	11/11	1,557					
2006	4	11/18	1,557					
2006	4	11/25	1,557					
2006	4	12/2	1,557					
2006	4	12/9	1,557					
2006	4	12/16	1,557					
2006	4	12/23	1,557					
2006	4	12/30	1,557					
2006	4	Total	20,241	19,885	356	-	-	356
2007	1	1/6	1,557					
2007	1	1/13	1,557					
2007	1	1/20	1,557					
2007	1	1/27	1,557					
2007	1	2/3	1,557					
2007	1	2/10	1,557					

**APPENDIX A**

Case Name: Barstow Community Hospital

Case Number: 31-CA-26057

Backpay period:

9/1/2002-8/8/2012

Claimant: Lois Sanders

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2007	1	2/17	1,557					
2007	1	2/24	1,557					
2007	1	3/3	1,557					
2007	1	3/10	1,557					
2007	1	3/17	1,557					
2007	1	3/24	1,557					
2007	1	3/31	1,557					
2007	1	Total	20,241	20,031	210	-	-	210
2007	2	4/7	1,557					
2007	2	4/14	1,557					
2007	2	4/21	1,557					
2007	2	4/28	1,557					
2007	2	5/5	1,557					
2007	2	5/12	1,594					
2007	2	5/19	1,600					
2007	2	5/26	1,600					
2007	2	6/2	1,600					
2007	2	6/9	1,600					
2007	2	6/16	1,600					
2007	2	6/23	1,600					
2007	2	6/30	1,600					
2007	2	Total	20,578	20,031	547	-	-	547
2007	3	7/7	1,600					
2007	3	7/14	1,600					
2007	3	7/21	1,600					
2007	3	7/28	1,600					
2007	3	8/4	1,600					
2007	3	8/11	1,600					
2007	3	8/18	1,600					
2007	3	8/25	1,600					
2007	3	9/1	1,600					
2007	3	9/8	1,600					
2007	3	9/15	1,600					
2007	3	9/22	1,600					
2007	3	9/29	1,600					
2007	3	Total	20,799	20,031	768	-	-	768
2007	4	10/6	1,600					
2007	4	10/13	1,600					
2007	4	10/20	1,600					
2007	4	10/27	1,600					
2007	4	11/3	1,600					
2007	4	11/10	1,600					
2007	4	11/17	1,600					
2007	4	11/24	1,600					

## APPENDIX A

Case Name: Barstow Community Hospital

Case Number: 31-CA-26057

Backpay period:

Claimant: Lois Sanders

9/1/2002-8/8/2012

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2007	4	12/1	1,600					
2007	4	12/8	1,600					
2007	4	12/15	1,600					
2007	4	12/22	1,600					
2007	4	12/29	1,600					
2007	4	Total	20,799	20,031	768	-	-	768
2008	1	1/5	1,600					
2008	1	1/12	1,600					
2008	1	1/19	1,600					
2008	1	1/26	1,600					
2008	1	2/2	1,600					
2008	1	2/9	1,600					
2008	1	2/16	1,600					
2008	1	2/23	1,600					
2008	1	3/1	1,600					
2008	1	3/8	1,600					
2008	1	3/15	1,600					
2008	1	3/22	1,600					
2008	1	3/29	1,600					
2008	1	Total	20,799	20,615	183	-	-	183
2008	2	4/5	1,600					
2008	2	4/12	1,600					
2008	2	4/19	1,600					
2008	2	4/26	1,600					
2008	2	5/3	1,600					
2008	2	5/10	1,626					
2008	2	5/17	1,645					
2008	2	5/24	1,645					
2008	2	5/31	1,645					
2008	2	6/7	1,645					
2008	2	6/14	1,645					
2008	2	6/21	1,645					
2008	2	6/28	1,645					
2008	2	Total	21,139	20,615	523	-	-	523
2008	3	7/5	1,645					
2008	3	7/12	1,645					
2008	3	7/19	1,645					
2008	3	7/26	1,645					
2008	3	8/2	1,645					
2008	3	8/9	1,721					
2008	3	8/16	1,752					
2008	3	8/23	1,752					
2008	3	8/30	1,752					
2008	3	9/6	1,752					

**APPENDIX A**

Case Name: Barstow Community Hospital

Case Number: 31-CA-26057

Backpay period:

Claimant: Lois Sanders

9/1/2002-8/8/2012

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2008	3	9/13	1,752					
2008	3	9/20	1,752					
2008	3	9/27	1,752					
2008	3	Total	22,208	20,615	1,593	-	-	1,593
2008	4	10/4	1,752					
2008	4	10/11	1,752					
2008	4	10/18	1,752					
2008	4	10/25	1,752					
2008	4	11/1	1,752					
2008	4	11/8	1,752					
2008	4	11/15	1,752					
2008	4	11/22	1,752					
2008	4	11/29	1,752					
2008	4	12/6	1,752					
2008	4	12/13	1,752					
2008	4	12/20	1,752					
2008	4	12/27	1,752					
2008	4	Total	22,774	20,615	2,158	-	-	2,158
2009	1	1/3	1,752					
2009	1	1/10	1,752					
2009	1	1/17	1,752					
2009	1	1/24	1,752					
2009	1	1/31	1,752					
2009	1	2/7	1,752					
2009	1	2/14	1,752					
2009	1	2/21	1,752					
2009	1	2/28	1,752					
2009	1	3/7	1,752					
2009	1	3/14	1,752					
2009	1	3/21	1,752					
2009	1	3/28	1,752					
2009	1	Total	22,774	22,456	317	-	-	317
2009	2	4/4	1,752					
2009	2	4/11	1,752					
2009	2	4/18	1,752					
2009	2	4/25	1,790					
2009	2	5/2	1,796					
2009	2	5/9	1,796					
2009	2	5/16	1,796					
2009	2	5/23	1,796					
2009	2	5/30	1,796					
2009	2	6/6	1,796					
2009	2	6/13	1,796					
2009	2	6/20	1,796					

**APPENDIX A**

Case Name: Barstow Community Hospital

Case Number: 31-CA-26057

Backpay period:

Claimant: Lois Sanders

9/1/2002-8/8/2012

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2009	2	6/27	1,796					
2009	2	Total	23,208	22,456	751	-	-	751
2009	3	7/4	1,796					
2009	3	7/11	1,796					
2009	3	7/18	1,796					
2009	3	7/25	1,796					
2009	3	8/1	1,796					
2009	3	8/8	1,796					
2009	3	8/15	1,796					
2009	3	8/22	1,796					
2009	3	8/29	1,796					
2009	3	9/5	1,796					
2009	3	9/12	1,796					
2009	3	9/19	1,796					
2009	3	9/26	1,796					
2009	3	Total	23,346	22,456	889	-	-	889
2009	4	10/3	1,796					
2009	4	10/10	1,796					
2009	4	10/17	1,796					
2009	4	10/24	1,796					
2009	4	10/31	1,796					
2009	4	11/7	1,796					
2009	4	11/14	1,796					
2009	4	11/21	1,796					
2009	4	11/28	1,796					
2009	4	12/5	1,796					
2009	4	12/12	1,796					
2009	4	12/19	1,796					
2009	4	12/26	1,796					
2009	4	Total	23,346	22,456	889	-	-	889
2010	1	1/2	1,796					
2010	1	1/9	1,796					
2010	1	1/16	1,796					
2010	1	1/23	1,796					
2010	1	1/30	1,796					
2010	1	2/6	1,796					
2010	1	2/13	1,796					
2010	1	2/20	1,796					
2010	1	2/27	1,796					
2010	1	3/6	1,796					
2010	1	3/13	1,796					
2010	1	3/20	1,796					
2010	1	3/27	1,796					
2010	1	Total	23,346	22,614	732	-	-	732

**APPENDIX A**

Case Name: Barstow Community Hospital

Case Number: 31-CA-26057

Backpay period:

Claimant: Lois Sanders

9/1/2002-8/8/2012

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2010	2	4/3	1,796					
2010	2	4/10	1,796					
2010	2	4/17	1,796					
2010	2	4/24	1,809					
2010	2	5/1	1,840					
2010	2	5/8	1,840					
2010	2	5/15	1,840					
2010	2	5/22	1,840					
2010	2	5/29	1,840					
2010	2	6/5	1,840					
2010	2	6/12	1,840					
2010	2	6/19	1,840					
2010	2	6/26	1,840					
2010	2	Total	23,759	22,614	1,145	-	-	1,145
2010	3	7/3	1,840					
2010	3	7/10	1,840					
2010	3	7/17	1,840					
2010	3	7/24	1,840					
2010	3	7/31	1,840					
2010	3	8/7	1,840					
2010	3	8/14	1,840					
2010	3	8/21	1,840					
2010	3	8/28	1,840					
2010	3	9/4	1,840					
2010	3	9/11	1,840					
2010	3	9/18	1,840					
2010	3	9/25	1,840					
2010	3	Total	23,925	22,614	1,311	-	-	1,311
2010	4	10/2	1,840					
2010	4	10/9	1,840					
2010	4	10/16	1,840					
2010	4	10/23	1,840					
2010	4	10/30	1,840					
2010	4	11/6	1,840					
2010	4	11/13	1,840					
2010	4	11/20	1,840					
2010	4	11/27	1,840					
2010	4	12/4	1,840					
2010	4	12/11	1,840					
2010	4	12/18	1,840					
2010	4	12/25	1,840					
2010	4	Total	23,925	22,614	1,311	-	-	1,311
2011	1	1/1	1,840					

**APPENDIX A**

Case Name: Barstow Community Hospital

Case Number: 31-CA-26057

Backpay period:

Claimant: Lois Sanders

9/1/2002-8/8/2012

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2011	1	1/8	1,840					
2011	1	1/15	1,840					
2011	1	1/22	1,840					
2011	1	1/29	1,840					
2011	1	2/5	1,840					
2011	1	2/12	1,840					
2011	1	2/19	1,840					
2011	1	2/26	1,840					
2011	1	3/5	1,840					
2011	1	3/12	1,840					
2011	1	3/19	1,840					
2011	1	3/26	1,840					
2011	1	Total	23,925	22,654	1,271	-	-	1,271
2011	2	4/2	1,840					
2011	2	4/9	1,840					
2011	2	4/16	1,840					
2011	2	4/23	1,840					
2011	2	4/30	1,840					
2011	2	5/7	1,854					
2011	2	5/14	1,887					
2011	2	5/21	1,887					
2011	2	5/28	1,887					
2011	2	6/4	1,887					
2011	2	6/11	1,887					
2011	2	6/18	1,887					
2011	2	6/25	1,887					
2011	2	Total	24,261	22,654	1,607	-	-	1,607
2011	3	7/2	1,887					
2011	3	7/9	1,887					
2011	3	7/16	1,887					
2011	3	7/23	1,887					
2011	3	7/30	1,887					
2011	3	8/6	1,887					
2011	3	8/13	1,887					
2011	3	8/20	1,887					
2011	3	8/27	1,887					
2011	3	9/3	1,887					
2011	3	9/10	1,887					
2011	3	9/17	1,887					
2011	3	9/24	1,887					
2011	3	Total	24,525	22,654	1,871	-	-	1,871
2011	4	10/1	1,887					
2011	4	10/8	1,887					
2011	4	10/15	1,887					

**APPENDIX A**

Case Name: Barstow Community Hospital

Case Number: 31-CA-26057

Backpay period:

Claimant: Lois Sanders

9/1/2002-8/8/2012

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2011	4	10/22	1,887					
2011	4	10/29	1,887					
2011	4	11/5	1,887					
2011	4	11/12	1,887					
2011	4	11/19	1,887					
2011	4	11/26	1,887					
2011	4	12/3	1,887					
2011	4	12/10	1,887					
2011	4	12/17	1,887					
2011	4	12/24	1,887					
2011	4	12/31	1,887					
2011	4	Total	26,411	24,397	2,014	-	-	2,014
2012	1	1/7	1,887					
2012	1	1/14	1,887					
2012	1	1/21	1,887					
2012	1	1/28	1,887					
2012	1	2/4	1,887					
2012	1	2/11	1,887					
2012	1	2/18	1,887					
2012	1	2/25	1,887					
2012	1	3/3	1,887					
2012	1	3/10	1,887					
2012	1	3/17	1,887					
2012	1	3/24	1,887					
2012	1	3/31	1,887					
2012	1	Total	24,525	22,528	1,997	-	-	1,997
2012	2	4/7	1,887					
2012	2	4/14	1,887					
2012	2	4/21	1,887					
2012	2	4/28	1,920					
2012	2	5/5	1,934					
2012	2	5/12	1,934					
2012	2	5/19	1,934					
2012	2	5/26	1,934					
2012	2	6/2	1,934					
2012	2	6/9	1,934					
2012	2	6/16	1,934					
2012	2	6/23	1,934					
2012	2	6/30	1,934					
2012	2	Total	24,982	22,528	2,454	-	-	2,454
2012	3	7/7	1,934					
2012	3	7/14	1,934					
2012	3	7/21	1,934					
2012	3	7/28	1,934					

**APPENDIX A**

Case Name: Barstow Community Hospital

Case Number: 31-CA-26057

Backpay period:

Claimant: Lois Sanders

9/1/2002-8/8/2012

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2012	3	8/4	1,934					
2012	3	8/11	1,105					
2012	3	8/18						
2012	3	8/25						
2012	3	9/1						
2012	3	9/8						
2012	3	9/15						
2012	3	9/22						
2012	3	9/29						
2012	3	Total	10,773	10,028	745	-	-	745

Totals	40,928	60	2,229	43,217
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**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO  
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

*(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)*

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8 1/2 by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board: No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

**Sec. 102.56 Answer to compliance specification.**

(a) *Filing and service of answer; form.*—Each respondent alleged in the specification to have compliance obligations shall, within 21 days from the service of the specification, file an original and four copies of an answer thereto with the Regional Director issuing the specification, and shall immediately serve a copy thereof on the other parties. The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the mailing address of the respondent.

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

(d) *Extension of time for filing answer to specification.*—Upon the Regional Director's own motion or upon proper cause shown by any respondent, the Regional Director issuing the compliance specification and notice of hearing may by written order extend the time within which the answer to the specification shall be filed.

(e) *Amendment to answer.*—Following the amendment of the specification by the Regional Director, any respondent affected by the amendment may amend its answer thereto.

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
NOTICE

Case 31-CA-026057

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Barstow Community Hospital, operated  
by Community Health Systems, Inc.  
Attn: Michael Trumble  
555 South 7th Avenue  
Barstow, CA 92311

Bryan T. Carmody, Esq.  
134 Evergreen Lane  
Glastonbury, CT 06033-3706

Kaitlin Brundage, Esq.  
62 Ledgewood Road  
West Hartford, CT 06107

United Nurses Association of California  
Attn: Union Representative  
300 South Park Avenue, Suite 840  
Pomona, CA 91766

Ryan Spillers, Esq.  
Cynthia L. Hernandez, Esq.  
Gilbert & Sackman  
3699 Wilshire Blvd., Suite 1200  
Los Angeles, CA 90010

# GC Exhibit 6

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31**

**BARSTOW COMMUNITY HOSPITAL**

**and**

**Case 31-CA-026057**

**UNITED NURSES ASSOCIATIONS OF  
CALIFORNIA UNION OF HEALTH CARE  
PROFESSIONALS, NUHHCE, AFSCME, AFL-CIO**

**AFFIDAVIT OF SERVICE OF: Compliance Specification and Notice of Hearing  
(with forms NLRB-4338 and NLRB-4668 attached)**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on October 31, 2012, I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

**CERTIFIED MAIL**

Barstow Community Hospital, operated  
by Community Health Systems, Inc.  
Attn: Michael Trumble  
555 South 7th Avenue  
Barstow, CA 92311

**CERTIFIED MAIL**

United Nurses Association of California  
Attn: Union Representative  
300 South Park Avenue, Suite 840  
Pomona, CA 91766

**CERTIFIED MAIL**

Bryan T. Carmody, Esq.  
134 Evergreen Lane  
Glastonbury, CT 06033-3706

**CERTIFIED MAIL**

Ryan Spillers, Esq.  
Cynthia L. Hernandez, Esq.  
Gilbert & Sackman  
3699 Wilshire Blvd., Suite 1200  
Los Angeles, CA 90010

**CERTIFIED MAIL**

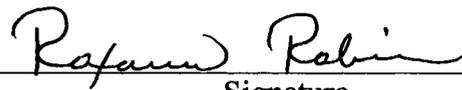
Kaitlin Brundage, Esq.  
62 Ledgewood Road  
West Hartford, CT 06107

October 31, 2012

Date

Roxanne Robinson,  
Designated Agent of NLRB

Name



Signature

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
NOTICE

Case 31-CA-026057

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

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- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Barstow Community Hospital, operated  
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Attn: Michael Trumble  
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Ryan Spillers, Esq.  
Cynthia L. Hernandez, Esq.  
Gilbert & Sackman  
3699 Wilshire Blvd., Suite 1200  
Los Angeles, CA 90010

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO  
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

*(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues )*

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

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Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8 1/2 by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board: No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

# GC Exhibit 7



(3)(a) Barstow denies the allegations set forth by Paragraph (3)(a) of the Specification.

(3)(b) Barstow denies the allegations set forth by Paragraph (3)(b) of the Specification.

(4)(a) Barstow denies the allegations set forth by Paragraph (4)(a) of the Specification, except admits that the Hospital made Ms. Sanders a valid offer of reinstatement, though not on the date referenced by the Specification. Barstow's offer of reinstatement was made on August 3, 2012.

(4)(b) Barstow denies the allegations set forth by Paragraph (4)(b) of the Specification.

(4)(c) Barstow denies the allegations set forth by Paragraph (4)(c) of the Specification.

(5) Barstow denies the allegations set forth by Paragraph (5) of the Specification.

(6) Barstow denies the allegations set forth by Paragraph (6) of the Specification.

(7) Barstow denies the allegations set forth by Paragraph (7) of the Specification.

(8) Barstow denies the allegations set forth by Paragraph (8) of the Specification.

(9) Barstow denies the allegations set forth by Paragraph (9) of the Specification.

(10) Barstow denies the allegations set forth by Paragraph (10) of the Specification.

(11) Barstow denies the allegations set forth by Paragraph (11) of the Specification.

(12) Barstow denies the accuracy of the calculations set forth by Appendix A and denies the calculations are based upon an appropriate method of calculating Ms. Sanders' backpay.

(13) Barstow denies the allegations set forth by Paragraph (13) of the Specification.

#### **AFFIRMATIVE DEFENSES**

(14) Ms. Sanders forfeited any entitlement to backpay.

(15) Upon information and belief, Ms. Sanders has not disclosed the entirety of her interim earnings.

(16) Ms. Sanders did not mitigate her damages.

(17) As part of seeking Barstow's compliance with the Board's Order, the Board has violated the agency's Compliance Manual, as amended, together with the agency's Rules and Regulations and the National Labor Relations Act, as amended.

(18) The Board's Decision in Kentucky River Medical Center, 356 NLRB No. 8 (2010), is not valid.

WHEREFORE, Barstow Community Hospital respectfully requests that the Compliance Specification be dismissed in its entirety.

Dated: Glastonbury, Connecticut  
November 27, 2012

Respectfully submitted,

Kaito Bundage for BTC

Bryan T. Carmody, Esq.  
Attorney for Respondent  
134 Evergreen Lane  
Glastonbury, Connecticut 06033  
(203) 249-9287  
bryancarmody@bellsouth.net

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31

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BARSTOW COMMUNITY HOSPITAL –  
OPERATED BY COMMUNITY HEALTH  
SYSTEMS, INC.

and

UNITED NURSES ASSOCIATION OF  
CALIFORNIA, UNION OF HEALTH  
CARE PROFESSIONALS, NUHHC,  
AFL-CIO

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: Case No. 31-CA-26057  
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**SWORN VERIFICATION OF ANSWER**

LAURA ELLIOTT, being duly sworn, deposes and says that I am the Human Resources Director of Barstow Community Hospital, that I have read the contents of this Answer to Compliance Specification, dated November 27, 2012, that I am familiar with the contents of this Answer to Compliance Specification and the factual premises on the bases of which this Answer to Compliance Specification is being filed, and that, to the best of my information, knowledge and belief, the contents of this Answer to Compliance Specification are correct and true.



Laura Elliott

Subscribed and sworn to before me  
This 27<sup>th</sup> day of November, 2012, at Barstow, California

*[Faint, illegible text, possibly a signature or stamp]*

---

Notary Public

# CALIFORNIA JURAT WITH AFFIANT STATEMENT

- See Attached Document (Notary to cross out lines 1-6 below)  
 See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

\_\_\_\_\_  
Signature of Document Signer No. 1

\_\_\_\_\_  
Signature of Document Signer No. 2 (if any)

State of California

County of San Bernardino

Subscribed and sworn to (~~or affirmed~~) before me on this

27<sup>th</sup> day of November, 2012, by

(1) Laura Elliott  
Name of Signer

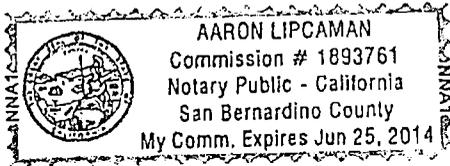
proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) *ff*

(and

(2) \_\_\_\_\_  
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature Aaron Lipcaman  
Signature of Notary Public



Place Notary Seal Above

## OPTIONAL

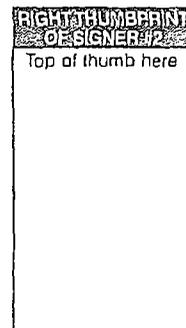
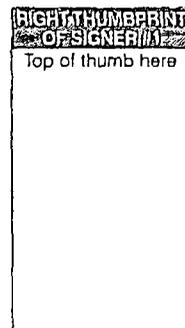
*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document*

### Further Description of Any Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_



UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31

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BARSTOW COMMUNITY HOSPITAL -  
OPERATED BY COMMUNITY HEALTH  
SYSTEMS, INC.

:  
:  
: Case No. 31-CA-26057  
:  
:

and

UNITED NURSES ASSOCIATION OF  
CALIFORNIA, UNION OF HEALTH  
CARE PROFESSIONALS, NUHHCE,  
AFL-CIO

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**CERTIFICATE OF SERVICE**

The Undersigned, Bryan T. Carmody, Esq., being an Attorney duly admitted to the practice of law, does hereby certify, pursuant to 28 U.S.C. § 1746, that the Answer of Barstow Community Hospital to the Compliance Specification issued in the above-captioned case was e-filed on Tuesday, November 27, 2012 with the following through the website of the National Labor Relations Board ([www.nlr.gov](http://www.nlr.gov)):

Mori Pam Rubin  
Regional Director  
National Labor Relations Board, Region 31  
11150 West Olympic Blvd., Suite 700  
Los Angeles, CA 90064-1825

The Undersigned does hereby further certify that, on November 27, 2012, a copy of the Answer was served upon the Charging Party by e-mail and overnight carrier, as follows:

Ryan Spillers, Esq.  
Gilbert & Sackman  
3699 Wilshire Blvd., Suite 1200  
Los Angeles, CA 90010  
rspillers@gslaw.org

Dated: Glastonbury, Connecticut  
November 27, 2012

Respectfully submitted,

  
Kaito Brindgo for BTC

Bryan T. Carmody, Esq.  
Attorney for Respondent  
134 Evergreen Lane  
Glastonbury, Connecticut 06033  
(203) 249-9287  
bryancarmody@bellsouth.net

# GC Exhibit 8



United States Government  
NATIONAL LABOR RELATIONS BOARD

Region 31

11150 W. Olympic Blvd., Suite 700

Los Angeles, CA 90064-1824

Telephone: (310) 235-7351

Facsimile: (310) 235-7420

Direct Dial: (310) 235-7368

Nicole.Pereira@nlrb.gov

December 3, 2012

Kaitlin Brundage  
62 LedgeWood Road  
West Hartford, CT 06107

Re: Barstow Community Hospital-  
Operated by Community Health  
Systems, Inc.  
Case No. 31-CA-26057

Dear Ms. Brundage,

Please be advised that the Answer to the Compliance Specification of Respondent Barstow Community Hospital- Operated by Community Health Systems, Inc., does not comply with the requirements of Section 102.56(b) and (c) of the Board's Rules and Regulations, and is therefore deficient. More specifically, Respondent's Answer disputes the figures contained in Appendix A of the Specification, but does not set forth in detail Respondent's position as to the applicable premises and does not furnish Respondent's own supporting figures, as is required.

Section 102.56(b) provides, in pertinent part: "As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures."

Section 102.56(c) provides, in pertinent part: "If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation."

I have attached a copy of the entire Section 102.56 for your convenience. Unless Respondent submits an Answer which complies with Section 102.56(b) and (c) by December 10, 2012, Counsel for the Acting General Counsel will move for partial summary judgment concerning those portions of the Compliance Specification pertaining to the computation of backpay (which include Paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and Appendix A).

Counsel for the Acting General Counsel may also make a motion at the hearing to the Administrative Law Judge for these portions of the Compliance Specification to be deemed by the Board to be admitted as true.

If you have any questions regarding this matter, please call me at (310)235-7368.

Very truly yours,

A handwritten signature in black ink that reads "Nicole Pereira". The signature is written in a cursive style with a long horizontal line extending to the right.

Nicole Pereira  
Counsel for the Acting General Counsel

law judge, as appropriate. Issuance of a compliance specification shall not be a prerequisite or bar to Board initiation of proceedings in any administrative or judicial forum which the Board or the Regional Director determines to be appropriate for obtaining compliance with a Board order.

**Sec. 102.55** *Contents of compliance specification.*

(a) *Contents of specification with respect to allegations concerning the amount of backpay due.*—With respect to allegations concerning the amount of backpay due, the specification shall specifically and in detail show, for each employee, the backpay periods broken down by calendar quarters, the specific figures and basis of computation of gross backpay and interim earnings, the expenses for each quarter, the net backpay due, and any other pertinent information.

(b) *Contents of specification with respect to allegations other than the amount of backpay due.*—With respect to allegations other than the amount of backpay due, the specification shall contain a clear and concise description of the respects in which the respondent has failed to comply with a Board or court order, including the remedial acts claimed to be necessary for compliance by the respondent and, where known, the approximate dates, places, and names of the respondent's agents or other representatives described in the specification.

(c) *Amendments to specification.*—After the issuance of the notice of compliance hearing but prior to the opening of the hearing, the Regional Director may amend the specification. After the opening of the hearing, the specification may be amended upon leave of the administrative law judge or the Board, as the case may be, upon good cause shown.

**Sec. 102.56** *Answer to compliance specification.*

(a) *Filing and service of answer; form.*—Each respondent alleged in the specification to have compliance obligations shall, within 21 days from the service of the specification, file an original and four copies of an answer thereto with the Regional Director issuing the specification, and shall immediately serve a copy thereof on the other parties. The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the mailing address of the respondent.

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or

without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

(d) *Extension of time for filing answer to specification.*—Upon the Regional Director's own motion or upon proper cause shown by any respondent, the Regional Director issuing the compliance specification and notice of hearing may by written order extend the time within which the answer to the specification shall be filed.

(e) *Amendment to answer.*—Following the amendment of the specification by the Regional Director, any respondent affected by the amendment may amend its answer thereto.

**Sec. 102.57** *Extension of date of hearing.*—Upon the Regional Director's own motion or upon proper cause shown, the Regional Director issuing the compliance specification and notice of hearing may extend the date of the hearing.

**Sec. 102.58** *Withdrawal.*—Any compliance specification and notice of hearing may be withdrawn before the hearing by the Regional Director upon his or her own motion.

**Sec. 102.59** *Hearing; posthearing procedure.*—After the issuance of a compliance specification and notice of hearing, the procedures provided in sections 102.24 to 102.51 shall be followed insofar as applicable.

# GC Exhibit 9

**Pereira, Nicole**

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**From:** Pereira, Nicole  
**Sent:** Monday, December 03, 2012 9:26 AM  
**To:** 'Kaitlin Brundage'  
**Subject:** 31-CA-26057, Barstow Community Hospital  
**Attachments:** LTR.31-CA-26057.Request for Revised Answer.pdf

Kaitlin,

Attached is a letter regarding the Respondent's answer in the Barstow Community Hospital Case.

Please don't hesitate to contact me with any questions.

Thanks,  
Nicole



United States Government  
NATIONAL LABOR RELATIONS BOARD

Region 31

11150 W. Olympic Blvd., Suite 700

Los Angeles, CA 90064-1824

Telephone: (310) 235-7351

Facsimile: (310) 235-7420

Direct Dial: (310) 235-7368

Nicole.Pereira@nlrb.gov

December 3, 2012

Kaitlin Brundage  
62 LedgeWood Road  
West Hartford, CT 06107

Re: Barstow Community Hospital-  
Operated by Community Health  
Systems, Inc.  
Case No. 31-CA-26057

Dear Ms. Brundage,

Please be advised that the Answer to the Compliance Specification of Respondent Barstow Community Hospital- Operated by Community Health Systems, Inc., does not comply with the requirements of Section 102.56(b) and (c) of the Board's Rules and Regulations, and is therefore deficient. More specifically, Respondent's Answer disputes the figures contained in Appendix A of the Specification, but does not set forth in detail Respondent's position as to the applicable premises and does not furnish Respondent's own supporting figures, as is required.

Section 102.56(b) provides, in pertinent part: "As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures."

Section 102.56(c) provides, in pertinent part: "If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation."

I have attached a copy of the entire Section 102.56 for your convenience. Unless Respondent submits an Answer which complies with Section 102.56(b) and (c) by December 10, 2012, Counsel for the Acting General Counsel will move for partial summary judgment concerning those portions of the Compliance Specification pertaining to the computation of backpay (which include Paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and Appendix A).

Counsel for the Acting General Counsel may also make a motion at the hearing to the Administrative Law Judge for these portions of the Compliance Specification to be deemed by the Board to be admitted as true.

If you have any questions regarding this matter, please call me at (310)235-7368.

Very truly yours,

A handwritten signature in black ink that reads "Nicole Pereira". The signature is written in a cursive style and extends to the right with a long horizontal line.

Nicole Pereira  
Counsel for the Acting General Counsel

# GC Exhibit 10



United States Government  
NATIONAL LABOR RELATIONS BOARD

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11150 W. Olympic Blvd., Suite 700

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Facsimile: (310) 235-7420

Direct Dial: (310) 235-7368

Nicole.Pereira@nlrb.gov

January 4, 2013

Kaitlin Brundage, Esq.  
62 Ledgewood Road  
West Hartford, CT 06107

Brian T. Carmondy, Esq.  
134 Evergreen Lane  
Glastonbury, CT 06033-3706

Re: Barstow Community Hospital-  
Operated by Community Health  
Systems, Inc.  
Case No. 31-CA-26057

Dear Ms. Brundage and Mr. Carmondy,

This letter is to follow up on my letter sent previously on December 3, 2012. Please be advised that the Answer to the Compliance Specification of Respondent Barstow Community Hospital- Operated by Community Health Systems, Inc., does not comply with the requirements of Section 102.56(b) and (c) of the Board's Rules and Regulations, and is therefore deficient. More specifically, Respondent's Answer disputes the figures contained in Appendix A of the Specification, but does not set forth in detail Respondent's position as to the applicable premises and does not furnish Respondent's own supporting figures, as is required.

Section 102.56(b) provides, in pertinent part: "As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures."

Section 102.56(c) provides, in pertinent part: "If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required

by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.”

I have attached a copy of the entire Section 102.56 for your convenience. Unless Respondent submits an Answer which complies with Section 102.56(b) and (c) by 5:00 p.m. on Tuesday, January 8, 2013 Counsel for the Acting General Counsel will move for partial summary judgment concerning those portions of the Compliance Specification pertaining to the computation of backpay (which include Paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and Appendix A).

If you have any questions regarding this matter, please call me at (310)235-7368.

Very truly yours,

A handwritten signature in black ink, appearing to read "Nicole Pereira". The signature is written in a cursive, flowing style.

Nicole Pereira  
Counsel for the Acting General Counsel

law judge, as appropriate. Issuance of a compliance specification shall not be a prerequisite or bar to Board initiation of proceedings in any administrative or judicial forum which the Board or the Regional Director determines to be appropriate for obtaining compliance with a Board order.

**Sec. 102.55** *Contents of compliance specification.*

(a) *Contents of specification with respect to allegations concerning the amount of backpay due.*—With respect to allegations concerning the amount of backpay due, the specification shall specifically and in detail show, for each employee, the backpay periods broken down by calendar quarters, the specific figures and basis of computation of gross backpay and interim earnings, the expenses for each quarter, the net backpay due, and any other pertinent information.

(b) *Contents of specification with respect to allegations other than the amount of backpay due.*—With respect to allegations other than the amount of backpay due, the specification shall contain a clear and concise description of the respects in which the respondent has failed to comply with a Board or court order, including the remedial acts claimed to be necessary for compliance by the respondent and, where known, the approximate dates, places, and names of the respondent's agents or other representatives described in the specification.

(c) *Amendments to specification.*—After the issuance of the notice of compliance hearing but prior to the opening of the hearing, the Regional Director may amend the specification. After the opening of the hearing, the specification may be amended upon leave of the administrative law judge or the Board, as the case may be, upon good cause shown.

**Sec. 102.56** *Answer to compliance specification.*

(a) *Filing and service of answer; form.*—Each respondent alleged in the specification to have compliance obligations shall, within 21 days from the service of the specification, file an original and four copies of an answer thereto with the Regional Director issuing the specification, and shall immediately serve a copy thereof on the other parties. The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the mailing address of the respondent.

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or

without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

(d) *Extension of time for filing answer to specification.*—Upon the Regional Director's own motion or upon proper cause shown by any respondent, the Regional Director issuing the compliance specification and notice of hearing may by written order extend the time within which the answer to the specification shall be filed.

(e) *Amendment to answer.*—Following the amendment of the specification by the Regional Director, any respondent affected by the amendment may amend its answer thereto.

**Sec. 102.57** *Extension of date of hearing.*—Upon the Regional Director's own motion or upon proper cause shown, the Regional Director issuing the compliance specification and notice of hearing may extend the date of the hearing.

**Sec. 102.58** *Withdrawal.*—Any compliance specification and notice of hearing may be withdrawn before the hearing by the Regional Director upon his or her own motion.

**Sec. 102.59** *Hearing; posthearing procedure.*—After the issuance of a compliance specification and notice of hearing, the procedures provided in sections 102.24 to 102.51 shall be followed insofar as applicable.

# GC Exhibit 11

**Pereira, Nicole**

---

**From:** Pereira, Nicole  
**Sent:** Friday, January 04, 2013 11:41 AM  
**To:** 'Bryan Carmody'; 'Kaitlin Brundage'  
**Subject:** 31-CA-26057, Barstow Community Hospital- Operated by Community Health Systems Inc , Request to cure answer  
**Attachments:** LTR.31-CA-26057 Barstow Community Hospital 1-4-13 pdf

Bryan & Kaitlin,

Here is a letter requesting that the Respondent cure its Answer to the Compliance Specification of Respondent Barstow Community Hospital- Operated by Community Health Systems Inc. Please be advised that if the Respondent does not submit an answer that complies with 102.56(b) and (c) by 5:00 p.m. on January 8, 2013 Counsel for the Acting General Counsel will move for partial summary judgment.

Thanks,  
Nicole



United States Government  
NATIONAL LABOR RELATIONS BOARD

Region 31

11150 W. Olympic Blvd., Suite 700

Los Angeles, CA 90064-1824

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Direct Dial: (310) 235-7368

Nicole.Pereira@nlrb.gov

January 4, 2013

Kaitlin Brundage, Esq.  
62 Ledgewood Road  
West Hartford, CT 06107

Brian T. Carmondy, Esq.  
134 Evergreen Lane  
Glastonbury, CT 06033-3706

Re: Barstow Community Hospital-  
Operated by Community Health  
Systems, Inc.  
Case No. 31-CA-26057

Dear Ms. Brundage and Mr. Carmondy,

This letter is to follow up on my letter sent previously on December 3, 2012. Please be advised that the Answer to the Compliance Specification of Respondent Barstow Community Hospital- Operated by Community Health Systems, Inc., does not comply with the requirements of Section 102.56(b) and (c) of the Board's Rules and Regulations, and is therefore deficient. More specifically, Respondent's Answer disputes the figures contained in Appendix A of the Specification, but does not set forth in detail Respondent's position as to the applicable premises and does not furnish Respondent's own supporting figures, as is required.

Section 102.56(b) provides, in pertinent part: "As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures."

Section 102.56(c) provides, in pertinent part: "If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required

by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.”

I have attached a copy of the entire Section 102.56 for your convenience. Unless Respondent submits an Answer which complies with Section 102.56(b) and (c) by 5:00 p.m. on Tuesday, January 8, 2013 Counsel for the Acting General Counsel will move for partial summary judgment concerning those portions of the Compliance Specification pertaining to the computation of backpay (which include Paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and Appendix A).

If you have any questions regarding this matter, please call me at (310)235-7368.

Very truly yours,

A handwritten signature in cursive script that reads "Nicole Pereira". The signature is written in black ink and is positioned above the printed name and title.

Nicole Pereira  
Counsel for the Acting General Counsel

law judge, as appropriate. Issuance of a compliance specification shall not be a prerequisite or bar to Board initiation of proceedings in any administrative or judicial forum which the Board or the Regional Director determines to be appropriate for obtaining compliance with a Board order.

**Sec. 102.55** *Contents of compliance specification.*

(a) *Contents of specification with respect to allegations concerning the amount of backpay due.*—With respect to allegations concerning the amount of backpay due, the specification shall specifically and in detail show, for each employee, the backpay periods broken down by calendar quarters, the specific figures and basis of computation of gross backpay and interim earnings, the expenses for each quarter, the net backpay due, and any other pertinent information.

(b) *Contents of specification with respect to allegations other than the amount of backpay due.*—With respect to allegations other than the amount of backpay due, the specification shall contain a clear and concise description of the respects in which the respondent has failed to comply with a Board or court order, including the remedial acts claimed to be necessary for compliance by the respondent and, where known, the approximate dates, places, and names of the respondent's agents or other representatives described in the specification.

(c) *Amendments to specification.*—After the issuance of the notice of compliance hearing but prior to the opening of the hearing, the Regional Director may amend the specification. After the opening of the hearing, the specification may be amended upon leave of the administrative law judge or the Board, as the case may be, upon good cause shown.

**Sec. 102.56** *Answer to compliance specification.*

(a) *Filing and service of answer; form.*—Each respondent alleged in the specification to have compliance obligations shall, within 21 days from the service of the specification, file an original and four copies of an answer thereto with the Regional Director issuing the specification, and shall immediately serve a copy thereof on the other parties. The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the mailing address of the respondent.

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or

without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

(d) *Extension of time for filing answer to specification.*—Upon the Regional Director's own motion or upon proper cause shown by any respondent, the Regional Director issuing the compliance specification and notice of hearing may by written order extend the time within which the answer to the specification shall be filed.

(e) *Amendment to answer.*—Following the amendment of the specification by the Regional Director, any respondent affected by the amendment may amend its answer thereto.

**Sec. 102.57** *Extension of date of hearing.*—Upon the Regional Director's own motion or upon proper cause shown, the Regional Director issuing the compliance specification and notice of hearing may extend the date of the hearing.

**Sec. 102.58** *Withdrawal.*—Any compliance specification and notice of hearing may be withdrawn before the hearing by the Regional Director upon his or her own motion.

**Sec. 102.59** *Hearing; posthearing procedure.*—After the issuance of a compliance specification and notice of hearing, the procedures provided in sections 102.24 to 102.51 shall be followed insofar as applicable.

# GC Exhibit 12

Paragraph #	Allegation	Answer	Legal Support	Conclusion
1	At the time of her suspension on August 31, 2002, and subsequent discharge on September 26, 2002, Lois Sanders, herein called discriminatee Sanders, was employed by Respondent as a Registered Nurse in Respondent's Emergency Room Department on the night shift.	Admit		
2	Discriminatee Sanders' backpay period begins September 1, 2002, the day after her suspension on August 31, 2002, and ends on August 8, 2012, the day Respondent Barstow served her with a valid, written offer of reinstatement.	Deny. The backpay period begins on September 27, 2002 and ends on August 3, 2012.		Not a component of the Motion for Partial Summary Judgment.
3(a)	An appropriate measure of the earnings that discriminatee Sanders would have received during each calendar quarter of her backpay period is based on the average weekly hours she worked when working a night-shift schedule at Barstow Community Hospital prior to her discharge.	Deny	Board Rules and Regulations § 102.56(b); 102.56(c); <i>See also South Coast Refuse Corp.</i> , 337 NLRB 841 (2002); <i>U.S. Service Industries</i> , 325 NLRB 485, 486 (1998) (A general denial is not sufficient to refute allegations pertaining to gross backpay calculations); <i>Mining Specialists, Inc.</i> , 330 NLRB 99, 101 (1999), citing <i>Best Roofing Co.</i> , 304 NLRB 727 (1991) (A respondent's answer is insufficient where it fails to offer any alternative formula for	No basis for disagreement; General denials regarding the computation of gross back pay shall not suffice; No alternative method of computation offered; Matters within knowledge of Respondent.

			computing backpay, fails to furnish appropriate supporting figures for amounts owed, or fails adequately to explain any failure to do so).	
3(b)	Based on Respondent's payroll records, Sanders worked a weekly average of 26.28 regular hours, 15.46 overtime hours, and 2.02 double-time hours when she worked a night-shift schedule at Barstow Community Hospital prior to her discharge.	Deny	Board Rules and Regulations § 102.56(b); 102.56(c); <i>See also South Coast Refuse Corp.</i> , 337 NLRB 841 (2002); <i>U.S. Service Industries</i> , 325 NLRB 485, 486 (1998); (A general denial is not sufficient to refute allegations pertaining to gross backpay calculations); <i>Mining Specialists, Inc.</i> , 330 NLRB 99, 101 (1999), citing <i>Best Roofing Co.</i> , 304 NLRB 727 (1991) (A respondent's answer is insufficient where it fails to offer any alternative formula for computing backpay, fails to furnish appropriate supporting figures for amounts owed, or fails adequately to explain any failure to do so).	No basis for disagreement; General denials regarding the computation of gross backpay shall not suffice; No alternative method of computation offered; Matters within knowledge of Respondent.
4(a)	Discriminatee Sanders would have been employed by Respondent Barstow as a Registered Nurse from September 1, 2001 through October 8, 2012, and would have been paid a wage rate of \$21.77 per hour plus shift differentials for night-shift hours, plus subsequent merit and cost-of-living wage increases, September 1, 2002 through August 8, 2012, the date	Deny. Respondent Barstow admits that they made Sanders a valid offer of reinstatement, but contend it was on August 3, 2012.	Board Rules and Regulations § 102.56(b); 102.56(c); <i>See also South Coast Refuse Corp.</i> , 337 NLRB 841 (2002); <i>U.S. Service Industries</i> , 325 NLRB 485, 486 (1998) (A general denial is not sufficient to refute allegations pertaining to gross backpay calculations); <i>Mining Specialists, Inc.</i> , 330 NLRB 99, 101 (1999), citing <i>Best Roofing Co.</i> , 304 NLRB	No basis for disagreement; General denials regarding the computation of gross backpay shall not suffice; No alternative method of computation offered.

	that Respondent Barstow made Sanders a valid offer of reinstatement.		727 (1991) (A respondent's answer is insufficient where it fails to offer any alternative formula for computing backpay, fails to furnish appropriate supporting figures for amounts owed, or fails adequately to explain any failure to do so).	
4(b)	Based on Respondent's payroll records, prior to her discharge and when working a night-shift schedule, discriminatee Sanders worked a weekly average of 36.51 hours that were subject to a shift differential of \$4.77 per hour, plus subsequent merit and cost-of-living increases.	Deny	Board Rules and Regulations § 102.56(b); 102.56(c); <i>See also South Coast Refuse Corp.</i> , 337 NLRB 841 (2002) (A general denial is not sufficient to refute allegations pertaining to gross backpay calculations); <i>U.S. Service Industries</i> , 325 NLRB 485, 486 (1998); <i>Mining Specialists, Inc.</i> , 330 NLRB 99, 101 (1999), citing <i>Best Roofing Co.</i> , 304 NLRB 727 (1991) (A respondent's answer is insufficient where it fails to offer any alternative formula for computing backpay, fails to furnish appropriate supporting figures for amounts owed, or fails adequately to explain any failure to do so).	No basis for disagreement; General denials regarding the computation of gross backpay shall not suffice; No alternative method of computation offered.
4(c)	Subsequent merit and cost-of-living wage increases are based on the average wage increases received by Registered Nurses employed by Respondent Barstow in its Emergency Room Department from September 1, 2002 to the present, based on data	Deny	Board Rules and Regulations § 102.56(b); 102.56(c); <i>See also South Coast Refuse Corp.</i> , 337 NLRB 841 (2002) (A general denial is not sufficient to refute allegations pertaining to gross backpay calculations); <i>U.S. Service Industries</i> , 325 NLRB 485, 486 (1998); <i>Mining</i>	No basis for disagreement; General denials regarding the computation of gross backpay shall not suffice; No alternative method of computation offered.

	provided by Respondent.		<i>Specialists, Inc.</i> , 330 NLRB 99, 101 (1999), citing <i>Best Roofing Co.</i> , 304 NLRB 727 (1991) (A respondent's answer is insufficient where it fails to offer any alternative formula for computing backpay, fails to furnish appropriate supporting figures for amounts owed, or fails adequately to explain any failure to do so).	
5	Quarterly Gross Backpay for discriminatee Sanders is the total wages she would have received each calendar quarter, or portions thereof, in each calendar quarter of the backpay period.	Deny	Board Rules and Regulations § 102.56(b); 102.56(c); <i>See also South Coast Refuse Corp.</i> , 337 NLRB 841 (2002); <i>U.S. Service Industries</i> , 325 NLRB 485, 486 (1998) (A general denial is not sufficient to refute allegations pertaining to gross backpay calculations); <i>Mining Specialists, Inc.</i> , 330 NLRB 99, 101 (1999), citing <i>Best Roofing Co.</i> , 304 NLRB 727 (1991) (A respondent's answer is insufficient where it fails to offer any alternative formula for computing backpay, fails to furnish appropriate supporting figures for amounts owed, or fails adequately to explain any failure to do so).	No basis for disagreement; General denials regarding the computation of gross backpay shall not suffice; No alternative method of computation offered.
6	Quarterly Interim Earnings for discriminatee Sanders is the total earnings she received from other employment during each calendar quarter, or portions thereof, in each calendar quarter of the	Deny	Board Rules and Regulations § 102.56(b); 102.56(c); <i>See also South Coast Refuse Corp.</i> , 337 NLRB 841 (2002); <i>U.S. Service Industries</i> , 325 NLRB 485, 486 (1998) (A general denial is not	No basis for disagreement; General denials regarding the computation of gross backpay shall not suffice; No alternative method of

	backpay period.		sufficient to refute allegations pertaining to gross backpay calculations); <i>Mining Specialists, Inc.</i> , 330 NLRB 99, 101 (1999), citing <i>Best Roofing Co.</i> , 304 NLRB 727 (1991) (A respondent's answer is insufficient where it fails to offer any alternative formula for computing backpay, fails to furnish appropriate supporting figures for amounts owed, or fails adequately to explain any failure to do so).	computation offered.
7	Quarterly Net Backpay is the difference between calendar quarter gross backpay and calendar quarter interim earnings.	Deny	Board Rules and Regulations § 102.56(b); 102.56(c); <i>See also South Coast Refuse Corp.</i> , 337 NLRB 841 (2002) (A general denial is not sufficient to refute allegations pertaining to gross backpay calculations); <i>U.S. Service Industries</i> , 325 NLRB 485, 486 (1998); <i>Mining Specialists, Inc.</i> , 330 NLRB 99, 101 (1999), citing <i>Best Roofing Co.</i> , 304 NLRB 727 (1991) (A respondent's answer is insufficient where it fails to offer any alternative formula for computing backpay, fails to furnish appropriate supporting figures for amounts owed, or fails adequately to explain any failure to do so).	No basis for disagreement; General denials regarding the computation of gross backpay shall not suffice; No alternative method of computation offered.
8	Quarterly Interim Expenses is the total amount of necessary expenses incurred by discriminatee	Deny	Board Rules and Regulations § 102.56(b); 102.56(c); <i>See also South Coast Refuse Corp.</i> , 337	No basis for disagreement; General denials regarding the

	Sanders related to seeking and holding interim employment that she would not have otherwise incurred, but for her unlawful suspension and discharge. This amount includes travel expenses and the cost of a pre-employment physical.		NLRB 841 (2002); <i>U.S. Service Industries</i> , 325 NLRB 485, 486 (1998) (A general denial is not sufficient to refute allegations pertaining to gross backpay calculations); <i>Mining Specialists, Inc.</i> , 330 NLRB 99, 101 (1999), citing <i>Best Roofing Co.</i> , 304 NLRB 727 (1991) (A respondent's answer is insufficient where it fails to offer any alternative formula for computing backpay, fails to furnish appropriate supporting figures for amounts owed, or fails adequately to explain any failure to do so).	computation of gross backpay shall not suffice; No alternative method of computation offered.
9	Quarterly Medical Expenses is the total amount of necessary expenses incurred by discriminatee Sanders to maintain her medical insurance coverage during the period of time after her discharge from Barstow Community Hospital until she received medical insurance coverage from her interim employer.	Deny	Board Rules and Regulations § 102.56(b); 102.56(c); <i>See also South Coast Refuse Corp.</i> , 337 NLRB 841 (2002); <i>U.S. Service Industries</i> , 325 NLRB 485, 486 (1998) (A general denial is not sufficient to refute allegations pertaining to gross backpay calculations); <i>Mining Specialists, Inc.</i> , 330 NLRB 99, 101 (1999), citing <i>Best Roofing Co.</i> , 304 NLRB 727 (1991) (A respondent's answer is insufficient where it fails to offer any alternative formula for computing backpay, fails to furnish appropriate supporting figures for amounts owed, or fails adequately to explain any failure to do so).	No basis for disagreement; General denials regarding the computation of gross backpay shall not suffice; No alternative method of computation offered.

10	Quarterly Net Backpay and Expenses is the sum of the calendar quarter net backpay, quarterly interim expenses and quarterly medical expenses.	Deny	Board Rules and Regulations § 102.56(b); 102.56(c); <i>See also South Coast Refuse Corp.</i> , 337 NLRB 841 (2002); <i>U.S. Service Industries</i> , 325 NLRB 485, 486 (1998) (A general denial is not sufficient to refute allegations pertaining to gross backpay calculations); <i>Mining Specialists, Inc.</i> , 330 NLRB 99, 101 (1999), citing <i>Best Roofing Co.</i> , 304 NLRB 727 (1991) (A respondent's answer is insufficient where it fails to offer any alternative formula for computing backpay, fails to furnish appropriate supporting figures for amounts owed, or fails adequately to explain any failure to do so).	No basis for disagreement; General denials regarding the computation of gross backpay shall not suffice; No alternative method of computation offered.
11	The total net backpay due discriminatee Sanders is the sum of the net backpay due in all of the quarters of the backpay period.	Deny	Board Rules and Regulations § 102.56(b); 102.56(c); <i>See also South Coast Refuse Corp.</i> , 337 NLRB 841 (2002); <i>U.S. Service Industries</i> , 325 NLRB 485, 486 (1998) (A general denial is not sufficient to refute allegations pertaining to gross backpay calculations); <i>Mining Specialists, Inc.</i> , 330 NLRB 99, 101 (1999), citing <i>Best Roofing Co.</i> , 304 NLRB 727 (1991) (A respondent's answer is insufficient where it fails to offer any alternative formula for computing backpay, fails to furnish	No basis for disagreement; General denials regarding the computation of gross backpay shall not suffice; No alternative method of computation offered.

			appropriate supporting figures for amounts owed, or fails adequately to explain any failure to do so).	
12	Specific computations for discriminatee Sanders are set forth in Appendix A. All amounts are rounded to the nearest dollar.	Deny	Board Rules and Regulations § 102.56(b); 102.56(c); <i>See also South Coast Refuse Corp.</i> , 337 NLRB 841 (2002); <i>U.S. Service Industries</i> , 325 NLRB 485, 486 (1998); (A general denial is not sufficient to refute allegations pertaining to gross backpay calculations); <i>Mining Specialists, Inc.</i> , 330 NLRB 99, 101 (1999), citing <i>Best Roofing Co.</i> , 304 NLRB 727 (1991) (A respondent's answer is insufficient where it fails to offer any alternative formula for computing backpay, fails to furnish appropriate supporting figures for amounts owed, or fails adequately to explain any failure to do so).	No basis for disagreement; General denials regarding the computation of gross backpay shall not suffice; No alternative method of computation offered.
13	Summarizing the facts and calculations specified above, Respondent Barstow is liable for the backpay due discriminatee Sanders as described above. The obligation of Respondent Barstow to make whole discriminatee Sanders under the Board Order will be discharged by payment to her in the amount of \$43,217.00, plus interest accrued to the date of payment pursuant to such Order, minus the tax withholding required by Federal and state laws.	Deny	Board Rules and Regulations § § 102.56(b); 102.56(c); <i>See also South Coast Refuse Corp.</i> , 337 NLRB 841 (2002); <i>U.S. Service Industries</i> , 325 NLRB 485, 486 (1998) (A general denial is not sufficient to refute allegations pertaining to gross backpay calculations); <i>Mining Specialists, Inc.</i> , 330 NLRB 99, 101 (1999), citing <i>Best Roofing Co.</i> , 304 NLRB 727 (1991) (A respondent's answer	No basis for disagreement; General denials regarding the computation of gross backpay shall not suffice; No alternative method of computation offered.

			is insufficient where it fails to offer any alternative formula for computing backpay, fails to furnish appropriate supporting figures for amounts owed, or fails adequately to explain any failure to do so).	
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**Re:** BARSTOW COMMUNITY HOSPITAL-  
OPERATED BY COMMUNITY HEALTH SYSTEMS, INC.  
Case: 31-CA-26057

**CERTIFICATE OF SERVICE**

I hereby certify that I served the attached **MOTION TO TRANSFER PROCEEDINGS TO THE DIVISION OF JUDGES, MOTION FOR PARTIAL SUMMARY JUDGEMENT AND ARGUMENT IN SUPPORT** on the parties listed below on the 22<sup>ND</sup> day of January, 2013:

**SERVED VIA E-FILING**

Chief Administrative Law Judge  
National Labor Relations Board  
Division of Judges  
[www.nlr.gov](http://www.nlr.gov)

**SERVED VIA E-MAIL**

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