

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

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

and

Case No. 31-CA-026057

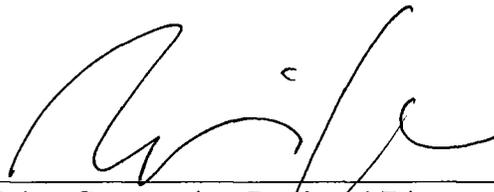
UNITED NURSES ASSOCIATION OF  
CALIFORNIA, UNION OF HEALTH  
CARE PROFESSIONALS, NUHHCE,  
AFL-CIO

**ORDER REFERRING PETITION TO REVOKE SUBPOENA NO. B-712296  
TO THE DIVISION OF JUDGES**

On October 31, 2012, the Region issued a Compliance Specification and Notice of Hearing in Case No. 31-CA-026057. In connection with the hearing, the Regional Director authorized the issuance of Subpoena Duces Tecum No. B-712296, which was served on Respondent on January 14, 2013. On January 23, 2013, Respondent filed its Petition to Revoke Subpoena Duces Tecum No. B-712296 with the Regional Director, which is attached as Exhibit 1.

Pursuant to Section 102.31(b) of the Rules and Regulations of the National Labor Relations Board (“Board”), Series 8, as amended, I hereby ORDER that this matter be referred to the Associate Chief Administrative Law Judge, Division of Judges, National Labor Relations Board, San Francisco, for ruling.

Dated: February 6, 2013

A handwritten signature in black ink, appearing to read 'B. Gee', written over a horizontal line.

Brian Gee, Acting Regional Director  
National Labor Relations Board  
Region 31  
11150 West Olympic Boulevard, Suite 700  
Los Angeles, CA 90064

# **EXHIBIT 1**

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
	:	
	:	
	:	
<i>and</i>	:	
	:	
	:	
UNITED NURSES ASSOCIATION OF, CALIFORNIA, UNION OF HEALTHCARE PROFESSIONALS, NUHHC, AFL-CIO	:	

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**PETITION TO REVOKE SUBPOENA NO. B-712296**

Pursuant to § 102.31(b) of the National Labor Relations Board’s Rules and Regulations and Statement of Procedures (hereafter, the “Board’s Rules”), Barstow Community Hospital (hereafter, “Barstow” or the “Hospital”) hereby petitions, by and through its undersigned counsel, for revocation of Subpoena No. B-712296 (hereafter, the “Subpoena”), which was issued by the National Labor Relations Board’s Chairman, Mr. Mark Gaston Pearce, on January 10, 2013.

**BACKGROUND**

1. The Underlying Unfair Labor Practice Case

On November 8, 2010, the National Labor Relations Board (hereafter, the “Board”) issued a Decision and Order (hereafter, the “Decision”) in which the Board concluded that Barstow violated §8(a)(1) and (3) of the Act by terminating Ms. Lois Sanders from her employment at the Hospital, and ordered the Hospital, *inter alia*, to make Ms. Sanders an offer of reinstatement and to make Ms. Sanders whole for any loss of earnings and other benefits resulting from the Hospital’s actions. Barstow Community

Hospital – Operated by Community Health Systems, Inc., 356 NLRB No. 15 (2010).<sup>1</sup> On March 26, 2012, the Decision was enforced by the United States Court of Appeals for the Ninth Circuit.

2. Compliance Proceedings

On October 31, 2012, the Regional Director of Region 31 (hereafter, the “Regional Director”) issued a Compliance Specification (hereafter, the “Specification”) in Case 31-CA-26057, in which she set forth backpay amounts allegedly owed Ms. Sanders and scheduled the case for a hearing on February 4, 2013. On November 27, 2012, Barstow filed an Answer (hereafter, the “Answer”) in which the Hospital challenged the backpay amount prescribed by the Regional Director and set forth several affirmative defenses.

3. The Subpoena

In the Subpoena, the General Counsel purports to require Barstow’s Custodian of Records to appear at the hearing scheduled for February 4, 2013, and to produce documents, which are described as follows:

- 1.) For the relevant period, a list of all RNs employed by Respondent in the Emergency Department, including their name, job title, years of experience as an RN and years of employment with the Respondent.
- 2.) Documents, including but not limited to, payroll documents that reflect regular hours, overtime hours, double time hours, shift differentials and any cost of living increases, for RNs employed by Respondent in the Emergency Department during the relevant period.

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<sup>1</sup> The Board’s November 8, 2010 Decision incorporated the earlier, two-Member Board Decision and Order in Case No. 31-CA-26057, which had been issued by the Board on August 18, 2008, and which was subsequently vacated by the United States Court of Appeals for the Ninth Circuit and remanded to the Board for proceedings consistent with the holding in New Process Steel, L.P. v. N.L.R.B., 130 S. Ct. 2635 (June 17, 2010). See, Barstow Community Hospital – Operated by Community Health Systems, Inc., 352 NLRB 1052 (2008); Ninth Circuit Order No. 09-70771 (August 26, 2010).

- 3.) Documents relating to the amount of each wage increase received by RNs employed by Respondent in the Emergency Department including merit, market or any other type of increase for the relevant period.
- 4.) Documents reflecting all factors relied upon by Respondent when determining the appropriate hourly wage and/or hourly wage increases for the RNs employed by Respondent in the Emergency Department including, but not limited to, certifications and continuing education credits during the relevant period.
- 5.) Documents relating to wage scales for the RNs employed by Respondent in the Emergency Department during the relevant period.
- 6.) Documents relating to the basis for market wage increases for the RNs employed by the Respondent in the Emergency Department during the relevant period.
- 7.) Documents relating to the shift differential rate for RNs employed by Respondent in the Emergency Department during the relevant period.
- 8.) Documents relating to Respondent's shift rotation policy or practices for RNs employed by Respondent in the Emergency Department during the relevant period.
- 9.) Documents relating to wage scales for specific positions or explaining how wage increases are determined for each RN, including but not limited to performance appraisal forms, matrices, charts and/or other documents during the relevant period.
- 10.) Documents relating to the Respondent's decision to reinstate Lois Sanders including any written offers of reinstatement.
- 11.) Payroll documents for Lois Sanders from May 7, 2001 through September 26, 2002 that reflect regular wages, hours, overtime hours, double time hours, shift differentials and any cost of living increases.

For the reasons set forth below, the Hospital respectfully requests the Subpoena be revoked in its entirety by, as the case may be, the Board or Administrative Law Judge (hereafter, for ease of reference, collectively, the "Board").<sup>2</sup>

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<sup>2</sup> As a general matter, the Hospital also objects to the extent the documents sought by the Subpoena are also the subject of a pending unfair labor practice proceeding that Region 31 has commenced, on the Acting General Counsel's behalf, against the Hospital. See Case No. 31-CA-090049. To that extent, the Subpoena functions as an unauthorized

## ARGUMENT

Under § 102.31(b) of the Board's Rules, the party to whom a Petition to Revoke is referred must revoke the Subpoena if the "evidence whose production is required does not relate to any matter under investigation or in question in the proceedings . . . , or if for any other reason sufficient in law the subpoena is otherwise invalid." Similarly, a party has no right to make a broad request for the production of documents as part of a "fishing expedition." See Millsboro Nursing & Rehabilitation Center, 327 NLRB 879, 881, fn. 2. (1999).

In the present case, the question is, simply put, what amount of backpay is due to Ms. Sanders. As noted above, the Hospital has challenged the backpay amount awarded by the Board to Ms. Sanders. However, nearly every one of the voluminous number of documents sought by the Subpoena bear no rational relation to this case, or the relatively simple question at issue in this case. Indeed, this Subpoena smacks as the prototypical "fishing expedition" that is expressly prohibited by the Board's law. See Millsboro Nursing & Rehabilitation Center, *supra*. The most effective way to address the various deficiencies in the instant Subpoena are to discuss each request individually.

### A. Document Request ¶ 1

Document Request ¶ 1 requests a list of all RNs employed in the Hospital's Emergency Department over a ten-year period, including their names, job titles, years of experience as an RN and years of employment with the Hospital. To the extent that the General Counsel wishes to obtain information about all the RNs who worked in the Emergency Department, the inclusion of this request presents precisely the type of fishing expedition that is disallowed by the Board's Rules. Without further evidence that

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device of pre-hearing discovery by the Region.

these records are somehow relevant to the General Counsel's purpose of determining the backpay owed to Ms. Sanders, the General Counsel's request is overly broad.

Furthermore, Document Request ¶ 1 requires the Hospital to provide the sensitive, confidential and personal information of its employees to the Board without so much as notifying those employees that their work and professional histories are being disclosed without their consent. The Hospital would argue that this is a violation not only of Hospital policy, but also of the rights of the involved employees. Accordingly, the Hospital requests that the Board revoke this portion of the Subpoena.

B. Document Request ¶ 2

Document Request ¶ 2 is further evidence of the overly broad approach taken in general by the General Counsel in this Subpoena. The number of regular, overtime or double time hours worked by any other RN, with a different schedule and proclivity to work overtime or double time, have no bearing on the hours that would have been worked by Ms. Sanders. As in Document Request ¶ 1, the General Counsel must not be allowed to utilize its subpoena power to embark upon a fishing expedition.

Additionally, Document Request ¶ 2 presents the same concerns regarding the disclosure of private employee information as were discussed in the context of Document Request ¶ 1, *supra*. Accordingly, the Hospital requests that the Board revoke the Subpoena.

C. Document Request ¶ 3

Document Request ¶ 3 is overly broad and unduly burdensome. While wage increases granted to all RNs in the Emergency Department may, admittedly, be relevant for the purpose of determining those increases which Ms. Sanders would have been

eligible to receive over the relevant period of time, the General Counsel's request is not so narrowly worded. Instead, the General Counsel requests information concerning "the amount of each wage increase received by RNs [...] in the Emergency Department". While the General Counsel would only have an interest in those increases which could have applied to Ms. Sanders as well, the Subpoena is drafted broadly, requiring the Hospital to pull a voluminous amount of information about increases which may not have applied to Ms. Sanders, such as market adjustments granted only to certain employees, or merit increases based upon individual employee actions or performance reviews. As a result, Document Request ¶ 3 is rendered overly broad, and as a result, unduly burdensome for the Hospital, and therefore the Subpoena must be revoked and more precisely drafted to render it valid.

D. Document Request ¶ 4

Document Request ¶ 4 is both irrelevant and overbroad. Document Request ¶ 4 requires the Hospital to provide literally every sheet of documentation reflecting "all factors" relied upon by the Hospital when granting hourly wage increases. However, the General Counsel cannot prove the relevance of such information, in a case such as this one where the question is simply the amount of backpay owed to Ms. Sanders. At most, the Hospital is obliged to provide information about those wage increases that would have applied to Ms. Sanders over the relevant period of time. This foray into the inner workings of the Hospital's evaluation and payroll processes are not relevant to the General Counsel's ability to determine the appropriate amount of backpay for Ms. Sanders – it is sufficient for the Hospital to provide documentary evidence of the percentage or ratio of increase that was provided to employees. Accordingly, such a

fishing expedition for information about the Hospital's procedures must not be allowed.

Furthermore, the General Counsel's request in Document Request ¶ 4 is, once again, overly broad. As in Document Request ¶ 3, the General Counsel requests, broadly, all information related to every and any wage increase granted to Emergency Department RNs over a ten-year period. A number of these wage increases, if they were specific to a particular RN or a particular group of RNs, are not relevant to determining the backpay due to Ms. Sanders. Accordingly, the General Counsel's request should have been more narrowly drawn, and therefore, the instant Subpoena should be revoked.

E. Document Request ¶ 5

The term "wage scales" is ambiguous. In this regard, it should be noted that at no time during or after Ms. Sanders' employment with the Hospital has there been a Collective Bargaining Agreement in place. Also, to the extent the Hospital is able to glean any clear meaning from the term "wage scales," the Respondent believes Request No. 5 is encompassed by the General Counsel's other requests which deal with certain employees' wages. The Hospital hereby incorporates by reference here all objections it has set forth in response to other requests. Also, in the event the request is later clarified, the Respondent reserves any and all rights to interpose applicable objection(s).

F. Document Request ¶ 6

Document Request ¶ 6, like Document Request ¶ 4, marks another improper foray into Hospital operations that is irrelevant to the case at bar. In Document Request ¶ 6, the General Counsel requests documents "relating to the basis for market wage increases" for RNs in the Emergency Department over the relevant period of time. Again, the issue in this case is simply the backpay owed to one RN, Ms. Lois Sanders. The General

Counsel's request once again attempts to gain a glimpse at the Hospital's operations and decision-making mechanisms, which fall outside the scope of relevance in the case at bar. Accordingly, this Subpoena must be revoked.

G. Document Request ¶ 7

To the extent this request does not specify the shift differential for any particular shift, the request is ambiguous, putting the Respondent in a position where it cannot reasonably identify the requested documents, much less set forth any objection(s). In the event the request is later clarified, the Respondent reserves any and all rights to interpose applicable objection(s).

H. Document Request ¶ 8

Document Request ¶ 8 is simply irrelevant to the case at bar. The General Counsel has no reason related to the case at bar to procure information about the Hospital's shift rotation policy or practices, as requested in Document Request ¶ 8. This information has absolutely no bearing upon the backpay which the General Counsel awards to Ms. Sanders, and again marks a poorly disguised attempt by the General Counsel to seek information outside the scope of relevance for its own purposes unrelated to the case at bar.

I. Document Request ¶ 9

Initially, the Hospital notes this request refers to "wage scales." and therefore, the Hospital incorporates the same points and objections set forth in response to Request No. 5. In addition, document Request ¶ 9 is overly broad and unduly burdensome, in that it requests information about the wage scales for each RN employed by the Hospital. Whereas the rest of the General Counsel's requests, while often still overly broad, were

constrained to the RNs in the Emergency Department, this request requires the Hospital to produce information, including “performance appraisal forms, matrices, charts, and/or other documents” for all of the Hospital’s RNs. This request is overly broad, in that there is no discernable reason why the General Counsel could effectively compile a backpay specification for Ms. Sanders relying upon information for the Emergency Department RNs in every other request but this one. Furthermore, the request is unduly burdensome, in that there is no valid reason why the Hospital should be required to produce information for all RNs at the Hospital, when the only even arguably relevant information would pertain to Emergency Department RNs. Accordingly, this Subpoena is strikingly overbroad, and the Hospital’s Petition to Revoke should be granted.

J. Document Request ¶ 10

The Compliance Specification does not set forth any allegation that the Hospital has failed to comply with the offer of reinstatement obligation imposed upon the Hospital under the Board’s Decision. Accordingly, the request is neither material to this case nor relevant to any issue that is material to this case. In addition, the Hospital’s offer of reinstatement is already in the possession of the General Counsel.

K. Document Request ¶ 11

Upon information and belief, the General Counsel is already in possession of the responsive documents, which were previously provided to the General Counsel by the Hospital.

**CONCLUSION**

For all the reasons set forth above, Barstow requests that the Subpoena be revoked in its entirety, as the General Counsel’s requests are irrelevant, overly broad, and unduly

burdensome.

Dated: January 23, 2013  
Glastonbury, Connecticut

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bryan T. Carmody", is written over a horizontal line. The signature is stylized and somewhat cursive.

Bryan T. Carmody  
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(203) 249-9287  
bryancarmody@bellsouth.net

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

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	:	Case No.	31-CA-26057
BARSTOW COMMUNITY HOSPITAL -	:		
OPERATED BY COMMUNITY HEALTH	:		
SYSTEMS, INC.	:		
	:		
<i>and</i>	:		
	:		
UNITED NURSES ASSOCIATION OF,	:		
CALIFORNIA, UNION OF HEALTHCARE	:		
PROFESSIONALS, NUHHCE, AFL-CIO	:		

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**CERTIFICATE OF SERVICE OF PETITION TO REVOKE**  
**SUBPOENA NO. B-712296**

The Undersigned, Bryan T. Carmody, Esq., being an Attorney duly admitted to the practice of law, certifies, pursuant to 28 U.S.C. § 1746, that the Petition to Revoke Subpoena No. B-712296 (hereafter, the "Petition") was e-filed this date by Barstow Community Hospital with the following through the website of the National Labor Relations Board ([www.nlr.gov](http://www.nlr.gov)):

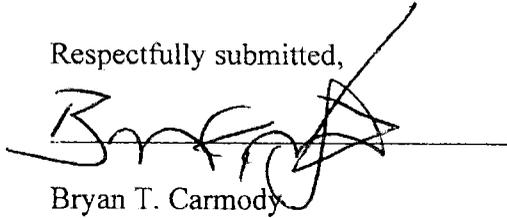
Mori Pam Rubin  
Regional Director, Region 31  
11150 West Olympic Blvd., Suite 700  
Los Angeles, CA 90064-1825

The Undersigned further certifies that, on this date, a copy of the Petition was served upon Counsel for the Charging Party by email, as follows:

Ryan Spillers, Esq.  
Gilbert & Sackman  
3699 Wilshire Blvd., Suite 1200  
Los Angeles, CA 90010  
[rspillers@gslaw.org](mailto:rspillers@gslaw.org)

Dated: Glastonbury, Connecticut  
January 23, 2013

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bryan T. Carmody", is written over a horizontal line. The signature is stylized and somewhat cursive.

Bryan T. Carmody  
134 Evergreen Lane  
Glastonbury, Connecticut 06033  
(203) 249-9287  
[bryancarmody@belisouth.net](mailto:bryancarmody@belisouth.net)

**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 ORDER REFERRING PETITION TO REVOKE SUBPOENA NO. B-712296 TO THE DIVISION OF JUDGES on the parties listed below on the 6<sup>th</sup> day of February, 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**

Kaitlin Brundage  
[brundagekk@gmail.com](mailto:brundagekk@gmail.com)

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Bryan T. Carmody, Esq.  
[bryancarmody@bellsouth.net](mailto:bryancarmody@bellsouth.net)



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Aide Carretero, Case Processing Assistant  
National Labor Relations Board  
Region 31  
11150 West Olympic Blvd., Suite 700  
Los Angeles, CA 90064-1825

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Division of Administrative Law Judges  
San Francisco, CA

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

and

Case No. 31-CA-026057

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

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S  
OPPOSITION TO RESPONDENT'S PETITION TO REVOKE  
SUBPOENA NO. B-712296**

Pursuant to Section 102.31(b) of the Rules and Regulations of the National Labor Relations Board, as amended, Counsel for the Acting General Counsel hereby respectfully opposes Respondent Barstow Community Hospital's Petition to Revoke Subpoena No. B-712296, received by the Region on January 23, 2013. Attached as Exhibit 1 is a copy of Subpoena Duces Tecum B-712296.

Respondent's petition to revoke should be denied in its entirety for the following reasons: (1) the petition is untimely; (2) the subpoena seeks information relevant to the allegations in the Compliance Specification and Notice of Hearing; (3) the subpoena requests are tailored to the allegations and not overbroad; (4) the subpoena does not seek

privileged or private information; (5) the terms used in the subpoena are not ambiguous; and (6) the Acting General Counsel is entitled to all relevant, non-privileged documents, regardless of whether the documents are in its possession.

## **I. PROCEDURAL HISTORY**

On November 8, 2010, the Board issued its decision its Decision and Order in this case, finding that Respondent 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 to take certain affirmative actions, including offering reinstatement to and making Sanders whole for any loss of pay or other benefits she may have suffered as a result of Respondent's unfair labor practices.

On October 31, 2012, the Region issued its Compliance Specification and Notice of Hearing. On November 27, 2012, Respondent filed an answer. On January 22, 2013, Counsel for the Acting General Counsel filed a Motion to Transfer Proceedings to the Division of Judges and Motion for Partial Summary Judgment because Respondent failed to file an answer that conformed with the requirements set forth in Section 102.56(b) of the Board's Rules and Regulations. On January 22, 2013, Associate Chief Administrative Law Judge Gerald M. Etchingham issued a Corrected Order to Show Cause as to why the Acting General Counsel's motion for partial summary judgment should not be granted.

On January 14, 2013, in connection with the hearing in this case, the Region served upon Respondent Subpoena Duces Tecum No. B-712296. On January 23, 2013, Respondent filed a petition to revoke the subpoena.

## **II. ARGUMENT**

### **A. The Petition to Revoke Should Be Denied Because It Is Untimely.**

As a threshold matter, the petition to revoke should be denied because it is untimely. Section 102.31(b) of the Board's Rules and Regulations provides that petitions to revoke a subpoena must be filed within 5 days after the date of service of the subpoena; the date of service for purposes of computing the time for filing a petition to revoke is the date the subpoena is received.

Here, Respondent filed its Petition to Revoke Subpoena Duces Tecum B-712296 more than 5 days after it received the subpoena. Respondent received the subpoena on January 14, 2013. Attached as Exhibit 2 is a copy of the Certified Mail Return Receipt for delivery of the subpoena, signed and dated January 14, 2013. Respondent e-filed its petition to revoke on January 23, 2013. Attached as Exhibit 3 is a copy of Respondent's petition and the certificate of service, both dated January 23, 2013. Because Respondent filed the petition to revoke more than 5 days after it received the subpoena, the petition is untimely and should be denied.

### **B. The Petition to Revoke Should Be Denied Because the Subpoena Seeks Information Relevant to Allegations in the Compliance Specification.**

Respondent objects to the subpoena on the grounds that it seeks irrelevant information, but Respondent's objection should be denied because the subpoena was issued for a proper purpose and the information sought is appropriate to that purpose. Section 11(1) of the Act provides that the Board shall have access to any evidence "that relates to any matter under investigation or in question." 29 U.S.C. § 161(1). Congress

has given the Board power to subpoena such information so that it is able “to get information from those who best can give it and who are most interested in not doing so.” See *United States v. Morton Salt Co.*, 338 U.S. 632, 642 (1950); *NLRB v. North American Van Lines, Inc.*, 611 F. Supp. 760, 765 (N.D. Ind. 1985).

The Board’s subpoena power was broadly drafted and is interpreted expansively.<sup>1</sup> The Board “need not even show probable cause to believe that the law has been violated.” *NLRB v. Frederick Cowan & Co., Inc.*, 522 F.2d 26, 28 (2d Cir. 1975). In order to be enforced, the Board need only articulate some reasonable basis to believe that the subpoenaed information will prove relevant. *Id.*

Relevance requires a fairly low threshold showing in a Board subpoena enforcement context. In *Endicott Johnson Corporation v. Perkins*, 317 U.S. 501, 509 (1943), the Supreme Court held that subpoenaed information must be produced so long as it is “not plainly incompetent or irrelevant to any lawful purpose....” Furthermore, a petition to revoke will be denied “unless it is palpable that the evidence sought can have no possible bearing on the issues.” *Steamship Co. v. China Union Lines*, 123 F. Supp. 802, 805 (S.D.N.Y. 1954).

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<sup>1</sup> See, e.g., *NLRB v. Martins Ferry Hospital Ass’n*, 649 F.2d 445, 448-49 (6th Cir. 1981), *cert. denied*, 454 U.S. 1083 (1981) (subpoena of employee W-4 forms proper to authenticate authorization card signatures submitted in support of *Gissel* order); *Fugazy Continental Corp. of Conn. v. NLRB*, 514 F. Supp. 718, 720-22 (E.D.N.Y. 1981) (subpoena issued to determine petitioner’s liability in ongoing compliance proceeding enforced over objection of alleged alter ego); *British Auto Parts, Inc. v. NLRB*, 405 F.2d 1182, 1184 (9th Cir. 1968), *cert. denied*, 394 U.S. 1012 (1969) (Section 11 proper to compel employer to provide *Excelsior* list of employee names and addresses); *NLRB v. Kenneth R. Williams et al.*, 396 F.2d 247, 249-50 (7th Cir. 1968) (Section 11 proper to investigate appropriate remedy); *NLRB v. C.C.C. Assoc., Inc., et al.*, 306 F.2d 534 (2d Cir. 1962) (Section 11 extends to post-Board order compliance proceedings to inquire into derivative liability of alter ego and successor entities).

Here, the subpoena seeks documents directly related to matters in question in the instant proceeding. As Respondent acknowledged, the issue in this case is “what amount of backpay is due” to Sanders, the discriminatee. Section 10540.3 of the Board’s Case Handling Manual provides that gross backpay can be calculated based on “the hours or earnings of another employee or group of employees, whose work, earnings, and other conditions of employment were comparable to those of the discriminatee both before and after the unlawful action.” The subpoena seeks documents which relate to calculating Sanders’ backpay based on the hours and earnings of employees who would likely be similarly situated, i.e., other Registered Nurses employed by Respondent in the Emergency Department. Documents reflecting these RNs’ years of employment, working hours, wage increases, etc. are relevant to determining whether they are comparable to Sanders. And documents reflecting Respondent’s methods of determining these RNs’ hourly wages and increases as well as shift rotation policies are relevant to determining Sanders’ backpay to the extent that they would have applied to her. These and other documents requested in the subpoena are directly relevant to the allegations in the Compliance Specification and “not plainly incompetent or irrelevant to any lawful purpose.”

Accordingly, Respondent’s objections that the subpoena seeks irrelevant information should be denied.

**C. The Petition to Revoke Should Be Denied Because the Subpoena Requests Are Tailored to the Allegations and Not Overbroad.**

Respondent objects to the subpoena on the grounds that the subpoena requests are overbroad, unduly burdensome, and an improper “fishing expedition.” Respondent has failed to substantiate these assertions.

The burden of showing that a subpoena is burdensome or would cause undue hardship or expense is on the party objecting to the subpoena. *See FTC v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977), *cert. denied*, 431 U.S. 974 (1977). This burden is not easily met. *NLRB v. Midwest Heating and Air Conditioning*, 528 F. Supp. 2d 1172, 1179-80 (D. Kan. 2007) (wide-reaching subpoenas, which were broad in terms of subject matter and time frame, were not unduly burdensome or overbroad because they were relevant to the issues in the case). Even compliance with a subpoena requiring the production of thousands of documents is insufficient to establish that the subpoena is unduly burdensome. *NLRB v. Caroline Food Processors*, 81 F.3d 507, 513 (4th Cir. 1995); *NLRB v. GHR Energy Corp.*, 707 F.2d 110, 114 (5th Cir.1982).

Here, the documents requested by the subpoena are not only relevant, but also narrow in scope and time frame. The subpoenaed documents date back only to the day after Sanders’ suspension, which is the beginning of the relevant backpay period. Paragraphs 1 through 9 of the subpoena seek documents relating to comparable employees within the backpay period,<sup>2</sup> and paragraphs 10 and 11 seek documents specific to Sanders, all of which have been tailored to obtain information relevant to

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<sup>2</sup> To the extent that paragraph 9 of the subpoena does not specify the applicable employees, Counsel for the Acting General Counsel clarifies that the request is limited to RNs employed by Respondent in the Emergency Department.

calculating Sanders' backpay, as explained above. Respondent has failed to meet its burden to specify how the review and production of relevant documents during the backpay period constitutes a "fishing expedition" or is unduly burdensome.

Accordingly, Respondent's objections that the subpoena is overbroad and unduly burdensome should be denied.

**D. The Petition to Revoke Should Be Denied Because the Subpoena Does Not Seek Privileged or Private Information.**

Respondent specifically objects to paragraphs 1 and 2 of the subpoena on the grounds that these requests demand production of documents that are "sensitive," "confidential," "personal," and "private." But Respondent has failed to identify a single document where any alleged privilege applies.

Neither the attorney-client privilege nor the attorney work product doctrine has been identified as a privilege which protects Respondent from disclosing the requested, relevant information. The attorney-client privilege "protects only those disclosures . . . necessary to obtain informed legal advice . . . which might not have been made absent the privilege." *Fisher v. U.S.*, 425 U.S. 391, 403 (1976); *Patrick Cudahy, Inc.*, 288 NLRB 968, 969 (1988). The Board has held that otherwise producible items, such as corporate records, do not become privileged merely because they have been transferred between the client and the attorney. *Id.* at 971, fn. 13. Likewise, the work product doctrine is not so broad that "all written materials obtained or prepared by an adversary's counsel with an eye toward litigation are necessarily free from discovery in all cases." *Hickman v. Taylor*, 329 U.S. 495, 511 (1947).

No conclusion concerning such privilege claims is possible in the absence of a showing by some proffer of specific evidence supporting each such claim. *NLRB v. Dutch Boy, Inc.*, 98 LRRM 2396, 2398 (1978), *affd.* 606 F.2d 929 (10th Cir. 1979). Parties withholding documents as privileged must identify and describe the documents in sufficient detail to enable the demanding party to assess the applicability of the privilege or protection. Fed. R. Civ. P. 45(d)(2)(A). Boilerplate objections or blanket refusals are insufficient to assert a privilege. *Burlington Northern & Santa Fe Ry. Corp. v. United States Dist. Court for Dist. of Montana*, 408 F.3d 1142, 1148 (9th Cir. 2005).

Here, Respondent has failed to identify any documents which are privileged or provide any evidence supporting any such claim. Respondent asserts a privacy objection without articulating any privilege that applies or how the requested information<sup>3</sup> is protected from disclosure. Paragraph 17 of the Definitions and Instructions attached to the subpoena states:

If any document responsive to any request herein was withheld from production on the asserted ground that it is privileged, identify and describe:

- a. the author;
- b. the recipient;
- c. the date of the original document; and
- d. the subject matter of the document.

Counsel for the Acting General Counsel does not seek privileged or private information, but if Respondent identifies any such information, Counsel for the Acting General Counsel requests that Respondent be directed to create and produce a privilege log that

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<sup>3</sup> Paragraph 1 of the subpoena requests the names of RNs, their jobs titles, years of experience and employment, and paragraph 2 of the subpoena requests payroll documents reflecting RNs' hours, shift differentials, and cost of living increases.

contains information identifying the documents it contends are privileged. However, since Respondent has not identified any documents requested by the subpoena which contain privileged or confidential information, Respondent's objections are unsubstantiated.

Accordingly, Respondent's boilerplate objections that the subpoena seeks private information should be denied.

**E. The Terms Used in the Subpoena are Not Ambiguous.**

Respondent objects to paragraphs 5, 7, and 9 of the subpoena on the grounds that they are ambiguous. The terms used in these paragraphs are not vague or ambiguous, but to the extent that Respondent is unable to "glean any clear meaning," Counsel for the Acting General Counsel clarifies as follows:

The term "wage scales," as used in paragraphs 5 and 9 of the subpoena, refers to any schedule or list of wages applicable to RNs employed by Respondent in the Emergency Department.

The term "shift differential rate," as used in paragraph 7 of the subpoena, refers to all shifts for RNs employed by Respondent in the Emergency Department, including, but not limited to, the night shift.

**F. The Petition to Revoke Should Be Denied Because the Acting General Counsel is Entitled to All Relevant, Non-Privileged Documents, Regardless of Whether the Documents Are in Its Possession.**

Respondent specifically objects to paragraphs 10 and 11 of the subpoena on the grounds that the documents sought are already in the possession of the Acting General Counsel. Respondent's objection should be denied for several reasons.

First, Respondent failed to cite any case or rule which alleviates Respondent's obligation to produce relevant, non-privileged documents in its control on the grounds that the documents are in the possession of the requesting party or a third party. The Acting General Counsel is entitled to all relevant, non-privileged documents, regardless of whether those documents are in its possession. *See Eden Isle Marina, Inc. v. U.S.*, 89 Fed. Cl. 480, 494 (2009) (court rejected defendant's argument that it did not have to produce documents that were already in the plaintiff's possession pursuant to FOIA requests). Respondent must either produce such documents or at least sufficiently identify to which documents Respondent is referring to permit the Acting General Counsel to determine what documents are being referenced and whether such documents are, in fact, within the Acting General Counsel's possession, custody, or control. *See Cornell Research Foundation, Inc. v. Hewlett Packard Co.*, 223 F.R.D. 55, 68 (N.D.N.Y. 2003).

Second, Respondent, to date, has not authenticated any relevant documents and the parties have not entered into any formal stipulations which would alleviate Respondent's obligation to produce relevant, non-privileged documents in its control. Even if the parties had entered into formal stipulations regarding certain facts, the Acting General Counsel is still entitled to the information subpoenaed from Respondent to the extent necessary to establish the allegations in the Compliance Specification. And since Respondent has not authenticated any relevant documents, it is still required to produce them. *See In re Grand Jury Subpoena Duces Tecum*, 754 F.2d 918, 920-21 (11th Cir.1985) (compliance with a subpoena forces the subpoenaed person to admit the

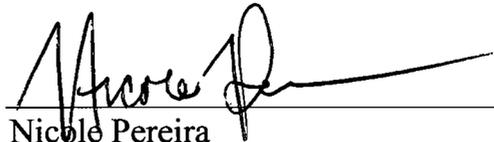
existence of the subpoenaed documents, his possession or control of those documents, and their authenticity).

Accordingly, Respondent's objections should be denied.

### **III. CONCLUSION**

Counsel for the Acting General Counsel respectfully requests that Respondent's Petition to Revoke be denied in its entirety and that Respondent be ordered to produce the documents subpoenaed.

Dated: February 6, 2013



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

# **EXHIBIT 1**

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

To Custodian of Records, Hospital of Barstow, Inc. d/b/a Barstow Community Hospital  
555 South 7<sup>th</sup> Avenue, Barstow, CA 92311

As requested by Nicole Pereira, Counsel for the Acting General Counsel  
whose address is 11150 W. Olympic Blvd., Suite 700 Los Angeles CA 90064  
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative  
Law Judge of the National Labor Relations Board

at National Labor Relations Board, Region 31  
in the City of Los Angeles, CA 90064

on the 4<sup>th</sup> day of February 20 13 at 9:00 (a.m.) (p.m.) or any adjourned  
or rescheduled date to testify in Barstow Community Hospital- Operated by Community Health Systems, Inc.

Case No.: 31-CA-26057  
(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

See Attachment.

In accordance with the Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings), objections to the subpoena must be made by a petition to revoke and must be filed as set forth therein. Petitions to revoke must be received within five days of your having received the subpoena. 29 C.F.R. Section 102.111(b) (3). Failure to follow these regulations may result in the loss of any ability to raise such objections in court.

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

**B - 712296**

Issued at Los Angeles, California

this 10<sup>th</sup> day of January 2013



7003 2260 0006 6648 6200

*Paul H. Pomeroy*  
Chairman, National Labor Relations Board

**NOTICE TO WITNESS.** Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

**PRIVACY ACT STATEMENT**

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

- Case Name: Barstow Community Hospital- Operated by Community Health Systems, Inc.  
Case Number: 31-CA-26057

B. DOCUMENTS SUBPOENAED:

1. For the relevant period, a list of all RNs employed by Respondent in the Emergency Department, including their name, job title, years of experience as an RN and years of employment with the Respondent.
2. Documents, including but not limited to, payroll documents that reflect regular hours, overtime hours, double time hours, shift differentials and any cost of living increases, for RNs employed by Respondent in the Emergency Department during the relevant period.
3. Documents relating to the amount of each wage increase received by RNs employed by Respondent in the Emergency Department including merit, market or any other type of increase for the relevant period.
4. Documents reflecting all factors relied upon by Respondent when determining the appropriate hourly wage and/or hourly wage increases for the RNs employed by Respondent in the Emergency Department including, but not limited to, certifications and continuing education credits during the relevant period.
5. Documents relating to wage scales for the RNs employed by Respondent in the Emergency Department during the relevant period.
6. Documents relating to the basis for market wage increases for the RNs employed by the Respondent in the Emergency Department during the relevant period.
7. Documents relating to the shift differential rate for RNs employed by Respondent in the Emergency Department during the relevant period.
8. Documents relating to Respondent's shift rotation policy or practices for RNs employed by Respondent in the Emergency Department during the relevant period.

Case Name: Barstow Community Hospital- Operated by Community Health Systems, Inc.

Case Number: 31-CA-26057

9. Documents relating to wage scales for specific positions or explaining how wage increases are determined for each RN, including but not limited to performance appraisal forms, matrices, charts and/or other documents during the relevant period.
10. Documents relating to the Respondent's decision to reinstate Lois Sanders including any written offers of reinstatement.
11. Payroll documents for Lois Sanders from May 7, 2001 through September 26, 2002 that reflect regular wages, hours, overtime hours, double time hours, shift differentials and any cost of living increases.

# **EXHIBIT 2**

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

Custodian of Records,  
Hospital of Barstow, Inc. d/b/a  
Barstow Community Hospital  
555 South 7<sup>th</sup> Avenue  
Barstow, CA 92311  
31-CA-26057/Sub B-712296/1-10-13/NP

**COMPLETE THIS SECTION ON DELIVERY**

**A. Signature**

X *Krystal Donley*

- Agent  
 Addressee

**B. Received by (Printed Name)**

*Krystal Donley*

**C. Date of Delivery**

*1/14/13*

- D. Is delivery address different from item 1?**  Yes  
If YES, enter delivery address below:  No

**3. Service Type**

- Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

- 4. Restricted Delivery? (Extra Fee)**  Yes

**2. Article Number**  
(Transfer from service label)

7003 2260 0006 6648 6200

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

UNITED STATES POSTAL SERVICE



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
REGION 31  
OLYMPIC CENTER  
11150 WEST OLYMPIC BOULEVARD, SUITE 700  
LOS ANGELES, CA 90064-1825



# **EXHIBIT 3**

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
	:	
	:	
	:	
	:	
<i>and</i>	:	
	:	
	:	
UNITED NURSES ASSOCIATION OF, CALIFORNIA, UNION OF HEALTHCARE PROFESSIONALS, NUHHCE, AFL-CIO	:	

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**PETITION TO REVOKE SUBPOENA NO. B-712296**

Pursuant to § 102.31(b) of the National Labor Relations Board’s Rules and Regulations and Statement of Procedures (hereafter, the “Board’s Rules”), Barstow Community Hospital (hereafter, “Barstow” or the “Hospital”) hereby petitions, by and through its undersigned counsel, for revocation of Subpoena No. B-712296 (hereafter, the “Subpoena”), which was issued by the National Labor Relations Board’s Chairman, Mr. Mark Gaston Pearce, on January 10, 2013.

**BACKGROUND**

1. The Underlying Unfair Labor Practice Case

On November 8, 2010, the National Labor Relations Board (hereafter, the “Board”) issued a Decision and Order (hereafter, the “Decision”) in which the Board concluded that Barstow violated §8(a)(1) and (3) of the Act by terminating Ms. Lois Sanders from her employment at the Hospital, and ordered the Hospital, *inter alia*, to make Ms. Sanders an offer of reinstatement and to make Ms. Sanders whole for any loss of earnings and other benefits resulting from the Hospital’s actions. Barstow Community

Hospital – Operated by Community Health Systems, Inc., 356 NLRB No. 15 (2010).<sup>1</sup> On March 26, 2012, the Decision was enforced by the United States Court of Appeals for the Ninth Circuit.

2. Compliance Proceedings

On October 31, 2012, the Regional Director of Region 31 (hereafter, the “Regional Director”) issued a Compliance Specification (hereafter, the “Specification”) in Case 31-CA-26057, in which she set forth backpay amounts allegedly owed Ms. Sanders and scheduled the case for a hearing on February 4, 2013. On November 27, 2012, Barstow filed an Answer (hereafter, the “Answer”) in which the Hospital challenged the backpay amount prescribed by the Regional Director and set forth several affirmative defenses.

3. The Subpoena

In the Subpoena, the General Counsel purports to require Barstow’s Custodian of Records to appear at the hearing scheduled for February 4, 2013, and to produce documents, which are described as follows:

- 1.) For the relevant period, a list of all RNs employed by Respondent in the Emergency Department, including their name, job title, years of experience as an RN and years of employment with the Respondent.
- 2.) Documents, including but not limited to, payroll documents that reflect regular hours, overtime hours, double time hours, shift differentials and any cost of living increases, for RNs employed by Respondent in the Emergency Department during the relevant period.

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<sup>1</sup> The Board’s November 8, 2010 Decision incorporated the earlier, two-Member Board Decision and Order in Case No. 31-CA-26057, which had been issued by the Board on August 18, 2008, and which was subsequently vacated by the United States Court of Appeals for the Ninth Circuit and remanded to the Board for proceedings consistent with the holding in New Process Steel, L.P. v. N.L.R.B., 130 S. Ct. 2635 (June 17, 2010). See, Barstow Community Hospital – Operated by Community Health Systems, Inc., 352 NLRB 1052 (2008); Ninth Circuit Order No. 09-70771 (August 26, 2010).

- 3.) Documents relating to the amount of each wage increase received by RNs employed by Respondent in the Emergency Department including merit, market or any other type of increase for the relevant period.
- 4.) Documents reflecting all factors relied upon by Respondent when determining the appropriate hourly wage and/or hourly wage increases for the RNs employed by Respondent in the Emergency Department including, but not limited to, certifications and continuing education credits during the relevant period.
- 5.) Documents relating to wage scales for the RNs employed by Respondent in the Emergency Department during the relevant period.
- 6.) Documents relating to the basis for market wage increases for the RNs employed by the Respondent in the Emergency Department during the relevant period.
- 7.) Documents relating to the shift differential rate for RNs employed by Respondent in the Emergency Department during the relevant period.
- 8.) Documents relating to Respondent's shift rotation policy or practices for RNs employed by Respondent in the Emergency Department during the relevant period.
- 9.) Documents relating to wage scales for specific positions or explaining how wage increases are determined for each RN, including but not limited to performance appraisal forms, matrices, charts and/or other documents during the relevant period.
- 10.) Documents relating to the Respondent's decision to reinstate Lois Sanders including any written offers of reinstatement.
- 11.) Payroll documents for Lois Sanders from May 7, 2001 through September 26, 2002 that reflect regular wages, hours, overtime hours, double time hours, shift differentials and any cost of living increases.

For the reasons set forth below, the Hospital respectfully requests the Subpoena be revoked in its entirety by, as the case may be, the Board or Administrative Law Judge (hereafter, for ease of reference, collectively, the "Board").<sup>2</sup>

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<sup>2</sup> As a general matter, the Hospital also objects to the extent the documents sought by the Subpoena are also the subject of a pending unfair labor practice proceeding that Region 31 has commenced, on the Acting General Counsel's behalf, against the Hospital. See Case No. 31-CA-090049. To that extent, the Subpoena functions as an unauthorized

## ARGUMENT

Under § 102.31(b) of the Board's Rules, the party to whom a Petition to Revoke is referred must revoke the Subpoena if the "evidence whose production is required does not relate to any matter under investigation or in question in the proceedings . . . , or if for any other reason sufficient in law the subpoena is otherwise invalid." Similarly, a party has no right to make a broad request for the production of documents as part of a "fishing expedition." See Millsboro Nursing & Rehabilitation Center, 327 NLRB 879, 881, fn. 2. (1999).

In the present case, the question is, simply put, what amount of backpay is due to Ms. Sanders. As noted above, the Hospital has challenged the backpay amount awarded by the Board to Ms. Sanders. However, nearly every one of the voluminous number of documents sought by the Subpoena bear no rational relation to this case, or the relatively simple question at issue in this case. Indeed, this Subpoena smacks as the prototypical "fishing expedition" that is expressly prohibited by the Board's law. See Millsboro Nursing & Rehabilitation Center, *supra*. The most effective way to address the various deficiencies in the instant Subpoena are to discuss each request individually.

### A. Document Request ¶ 1

Document Request ¶ 1 requests a list of all RNs employed in the Hospital's Emergency Department over a ten-year period, including their names, job titles, years of experience as an RN and years of employment with the Hospital. To the extent that the General Counsel wishes to obtain information about all the RNs who worked in the Emergency Department, the inclusion of this request presents precisely the type of fishing expedition that is disallowed by the Board's Rules. Without further evidence that

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device of pre-hearing discovery by the Region.

these records are somehow relevant to the General Counsel's purpose of determining the backpay owed to Ms. Sanders, the General Counsel's request is overly broad.

Furthermore, Document Request ¶ 1 requires the Hospital to provide the sensitive, confidential and personal information of its employees to the Board without so much as notifying those employees that their work and professional histories are being disclosed without their consent. The Hospital would argue that this is a violation not only of Hospital policy, but also of the rights of the involved employees. Accordingly, the Hospital requests that the Board revoke this portion of the Subpoena.

B. Document Request ¶ 2

Document Request ¶ 2 is further evidence of the overly broad approach taken in general by the General Counsel in this Subpoena. The number of regular, overtime or double time hours worked by any other RN, with a different schedule and proclivity to work overtime or double time, have no bearing on the hours that would have been worked by Ms. Sanders. As in Document Request ¶ 1, the General Counsel must not be allowed to utilize its subpoena power to embark upon a fishing expedition.

Additionally, Document Request ¶ 2 presents the same concerns regarding the disclosure of private employee information as were discussed in the context of Document Request ¶ 1, *supra*. Accordingly, the Hospital requests that the Board revoke the Subpoena.

C. Document Request ¶ 3

Document Request ¶ 3 is overly broad and unduly burdensome. While wage increases granted to all RNs in the Emergency Department may, admittedly, be relevant for the purpose of determining those increases which Ms. Sanders would have been

eligible to receive over the relevant period of time, the General Counsel's request is not so narrowly worded. Instead, the General Counsel requests information concerning "the amount of each wage increase received by RNs [...] in the Emergency Department". While the General Counsel would only have an interest in those increases which could have applied to Ms. Sanders as well, the Subpoena is drafted broadly, requiring the Hospital to pull a voluminous amount of information about increases which may not have applied to Ms. Sanders, such as market adjustments granted only to certain employees, or merit increases based upon individual employee actions or performance reviews. As a result, Document Request ¶ 3 is rendered overly broad, and as a result, unduly burdensome for the Hospital, and therefore the Subpoena must be revoked and more precisely drafted to render it valid.

D. Document Request ¶ 4

Document Request ¶ 4 is both irrelevant and overbroad. Document Request ¶ 4 requires the Hospital to provide literally every sheet of documentation reflecting "all factors" relied upon by the Hospital when granting hourly wage increases. However, the General Counsel cannot prove the relevance of such information, in a case such as this one where the question is simply the amount of backpay owed to Ms. Sanders. At most, the Hospital is obliged to provide information about those wage increases that would have applied to Ms. Sanders over the relevant period of time. This foray into the inner workings of the Hospital's evaluation and payroll processes are not relevant to the General Counsel's ability to determine the appropriate amount of backpay for Ms. Sanders – it is sufficient for the Hospital to provide documentary evidence of the percentage or ratio of increase that was provided to employees. Accordingly, such a

fishing expedition for information about the Hospital's procedures must not be allowed.

Furthermore, the General Counsel's request in Document Request ¶ 4 is, once again, overly broad. As in Document Request ¶ 3, the General Counsel requests, broadly, all information related to every and any wage increase granted to Emergency Department RNs over a ten-year period. A number of these wage increases, if they were specific to a particular RN or a particular group of RNs, are not relevant to determining the backpay due to Ms. Sanders. Accordingly, the General Counsel's request should have been more narrowly drawn, and therefore, the instant Subpoena should be revoked.

E. Document Request ¶ 5

The term "wage scales" is ambiguous. In this regard, it should be noted that at no time during or after Ms. Sanders' employment with the Hospital has there been a Collective Bargaining Agreement in place. Also, to the extent the Hospital is able to glean any clear meaning from the term "wage scales," the Respondent believes Request No. 5 is encompassed by the General Counsel's other requests which deal with certain employees' wages. The Hospital hereby incorporates by reference here all objections it has set forth in response to other requests. Also, in the event the request is later clarified, the Respondent reserves any and all rights to interpose applicable objection(s).

F. Document Request ¶ 6

Document Request ¶ 6, like Document Request ¶ 4, marks another improper foray into Hospital operations that is irrelevant to the case at bar. In Document Request ¶ 6, the General Counsel requests documents "relating to the basis for market wage increases" for RNs in the Emergency Department over the relevant period of time. Again, the issue in this case is simply the backpay owed to one RN, Ms. Lois Sanders. The General

Counsel's request once again attempts to gain a glimpse at the Hospital's operations and decision-making mechanisms, which fall outside the scope of relevance in the case at bar. Accordingly, this Subpoena must be revoked.

G. Document Request ¶ 7

To the extent this request does not specify the shift differential for any particular shift, the request is ambiguous, putting the Respondent in a position where it cannot reasonably identify the requested documents, much less set forth any objection(s). In the event the request is later clarified, the Respondent reserves any and all rights to interpose applicable objection(s).

H. Document Request ¶ 8

Document Request ¶ 8 is simply irrelevant to the case at bar. The General Counsel has no reason related to the case at bar to procure information about the Hospital's shift rotation policy or practices, as requested in Document Request ¶ 8. This information has absolutely no bearing upon the backpay which the General Counsel awards to Ms. Sanders, and again marks a poorly disguised attempt by the General Counsel to seek information outside the scope of relevance for its own purposes unrelated to the case at bar.

I. Document Request ¶ 9

Initially, the Hospital notes this request refers to "wage scales," and therefore, the Hospital incorporates the same points and objections set forth in response to Request No. 5. In addition, document Request ¶ 9 is overly broad and unduly burdensome, in that it requests information about the wage scales for each RN employed by the Hospital. Whereas the rest of the General Counsel's requests, while often still overly broad, were

constrained to the RNs in the Emergency Department, this request requires the Hospital to produce information, including “performance appraisal forms, matrices, charts, and/or other documents” for all of the Hospital’s RNs. This request is overly broad, in that there is no discernable reason why the General Counsel could effectively compile a backpay specification for Ms. Sanders relying upon information for the Emergency Department RNs in every other request but this one. Furthermore, the request is unduly burdensome, in that there is no valid reason why the Hospital should be required to produce information for all RNs at the Hospital, when the only even arguably relevant information would pertain to Emergency Department RNs. Accordingly, this Subpoena is strikingly overbroad, and the Hospital’s Petition to Revoke should be granted.

J. Document Request ¶ 10

The Compliance Specification does not set forth any allegation that the Hospital has failed to comply with the offer of reinstatement obligation imposed upon the Hospital under the Board’s Decision. Accordingly, the request is neither material to this case nor relevant to any issue that is material to this case. In addition, the Hospital’s offer of reinstatement is already in the possession of the General Counsel.

K. Document Request ¶ 11

Upon information and belief, the General Counsel is already in possession of the responsive documents, which were previously provided to the General Counsel by the Hospital.

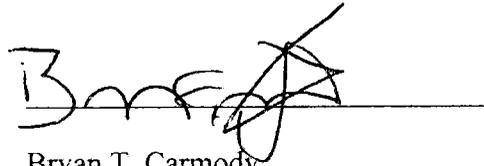
**CONCLUSION**

For all the reasons set forth above, Barstow requests that the Subpoena be revoked in its entirety, as the General Counsel’s requests are irrelevant, overly broad, and unduly

burdensome.

Dated: January 23, 2013  
Glastonbury, Connecticut

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bryan T. Carmody", is written over a horizontal line. The signature is stylized and somewhat cursive.

Bryan T. Carmody  
134 Evergreen Lane  
Glastonbury, CT 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.	:	Case No. 31-CA-26057
	:	
	:	
<i>and</i>	:	
	:	
UNITED NURSES ASSOCIATION OF, CALIFORNIA, UNION OF HEALTHCARE PROFESSIONALS, NUHHC, AFL-CIO	:	

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**CERTIFICATE OF SERVICE OF PETITION TO REVOKE**  
**SUBPOENA NO. B-712296**

The Undersigned, Bryan T. Carmody, Esq., being an Attorney duly admitted to the practice of law, certifies, pursuant to 28 U.S.C. § 1746, that the Petition to Revoke Subpoena No. B-712296 (hereafter, the "Petition") was e-filed this date by Barstow Community Hospital with the following through the website of the National Labor Relations Board ([www.nlr.gov](http://www.nlr.gov)):

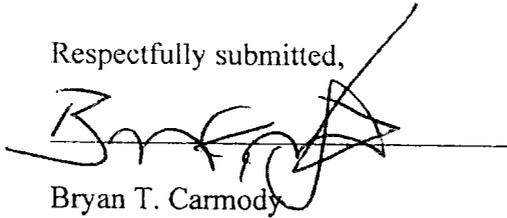
Mori Pam Rubin  
Regional Director, Region 31  
11150 West Olympic Blvd., Suite 700  
Los Angeles, CA 90064-1825

The Undersigned further certifies that, on this date, a copy of the Petition was served upon Counsel for the Charging Party by email, as follows:

Ryan Spillers, Esq.  
Gilbert & Sackman  
3699 Wilshire Blvd., Suite 1200  
Los Angeles, CA 90010  
[rspillers@gslaw.org](mailto:rspillers@gslaw.org)

Dated: Glastonbury, Connecticut  
January 23, 2013

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bryan T. Carmody", is written over a horizontal line. The signature is stylized and includes a large, sweeping flourish that extends upwards and to the right.

Bryan T. Carmody  
134 Evergreen Lane  
Glastonbury, Connecticut 06033  
(203) 249-9287  
[bryancarmody@bellsouth.net](mailto:bryancarmody@bellsouth.net)

**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 **COUNSEL FOR THE ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S PETITION TO REVOKE SUBPOENA NO. B-712296** on the parties listed below on the 6<sup>th</sup> day of February, 2013:

**SERVED VIA E-FILING**

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

**SERVED VIA E-MAIL**

Kaitlin Brundage  
[brundagekk@gmail.com](mailto:brundagekk@gmail.com)

Ryan Spillers, Esq.  
[rspillers@gslaw.org](mailto:rspillers@gslaw.org)

Bryan T. Carmody, Esq.  
[bryancarmody@bellsouth.net](mailto:bryancarmody@bellsouth.net)



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Aide Carretero, Case Processing Assistant  
National Labor Relations Board  
Region 31  
11150 West Olympic Blvd., Suite 700  
Los Angeles, CA 90064-1825