Lenox Hill Hospital *and* New York Professional Nurses Union. Case 2–CA–30976

March 29, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND HURTGEN

On December 16, 1998, Administrative Law Judge Michael A. Marcionese issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this matter to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Lenox Hill Hospital, New York, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Lauri Kaplan, Esq., for the General Counsel.
Joel E. Cohen, Esq. (McDermott, Will & Emery), for the Respondent.
Henry T. Berger, Esq. (Fisher, Fisher & Berger), for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL A. MARCIONESE, Administrative Law Judge. This case was tried in New York, New York, on October 26, 1998. The charge was filed by New York Professional Nurses Union (the Union), on November 26, 1997[1] and the complaint was issued April 28, 1998. The complaint, as amended at the hearing, alleges that the Respondent, Lenox Hill Hospital, violated Section 8(a)(5) and (1) of the Act, since on or about September 17, by failing and refusing to furnish the Union with information it requested orally and in writing. The Respondent, by its Answer filed June 2, 1998, admits, inter alia, the Section 9(a) status of the Union and the receipt of the Union's requests for information, but denies that the information is necessary for, and relevant to, the Union's performance of its duties as collective-bargaining representative of certain of the Respondent's employees, denies failing and refusing to furnish information, and denies the commission of any unfair labor practice.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New York corporation, is engaged in the operation of a hospital providing patient care, treatment, and related services at its facility in New York, New York. The Respondent annually derives gross revenues in excess of $1 million and purchases and receives at its New York facility products, goods, and materials valued in excess of $5000 directly from points outside the State of New York. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the

Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since 1985, the Union has represented a unit of all full-time and regular part-time registered nurses employed by the Respondent. The current collective-bargaining agreement is effective by its terms until October 31, 2002, unless the Union exercises its exclusive right to reopen the contract at the end of the third year, i.e., October 31, 2000. Eileen Toback has been the executive director of the Union since December 1996. She is responsible for, inter alia, contract administration, including representing the unit employees in the grievance procedure.

There is no dispute that the parties define a full-time employee as one who works 150 hours in a 4-week time block. Full-time nurses generally work three shifts for the first 3 weeks and four shifts for the fourth week in a 4-week scheduling block. The Respondent's nurses typically work 11-1/2-hour shifts. There are four different classifications of "regular part-time" nurses, based on the percentage of the full-time schedule that they work, i.e., .8, .6, .4, and .2. Under the collective-bargaining agreement, a part-time nurse who works a total of less than one-fifth of the regular full-time workweek (i.e., less than a .2 part-time employee) is excluded from the unit.[2] One-fifth of the regular full-time workweek is 30 hours over a 4-week period. A full-time or regular part-time nurse is generally assigned to a specific unit in the hospital.

It is also undisputed that the Respondent has historically supplemented its unit employees with "per diem" nurses who are not part of the bargaining unit. Although the collective-bargaining agreement provides that the Respondent inform the Union of the rate of pay that per diem nurses receive, there are no contractual restrictions on the Respondent's use of per diems. It is also undisputed that the Union has never sought, during contract negotiations, either inclusion of per diems in the unit or restrictions on their use. The contract contains no specific definition of "per diem nurses."[3]

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products,* 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[1] All dates are in 1997 unless otherwise indicated.

[2] The collective-bargaining agreement also excludes "temporary employees" from the unit. Temporary employees are defined, at art. VIII, as individuals who are hired for up to a 3-month period and are so informed when hired, for a special project or to replace a unit employee on leave or vacation. Under the contract, such temporary employees become covered by the contract if they are still employed after the expiration of the 3-month period. No party contends that the per diem employees at issue here are "temporary employees" within the meaning of the contract.

[3] The Respondent offered into evidence a copy of a March 1987 arbitration award involving a different union and employer resolving a

There is also no dispute that the Respondent's practice has been to utilize per diem nurses on an "as-needed basis" to fill holes in the schedule. The need could result from a unit employee taking sick leave or vacation time on short notice. A per diem nurse might also be called in to alleviate a short-term shortage of coverage caused by an increase in either the patient census, or the acuity level of the patients, i.e., the level of sickness of patients on a particular unit. Regular part-time employees are hired for a set number of hours and the Respondent must provide the employee with those hours and the employee must schedule herself for at least those hours in each scheduling block. In contrast, a per diem nurse can accept or decline any hours offered by the Respondent. Although theoretically there would be no repercussions if a per diem nurse declined a shift, as a practical matter, a per diem who declined too often would not likely be asked to work again.

Toback testified that she was informed by several union delegates, during a regular monthly delegate meeting in the summer 1997, that some per diem nurses were working regular weekend shifts in the emergency room, that a unit nurse whose request to work part-time had been denied quit and returned as a per diem in ambulatory services and that, in other units, per diems were being scheduled weeks and months in advance and that the units would not be able to function without these per diems on the schedule. Toback believed that this represented a change in the Respondent's established practice with respect to utilizing per diem nurses and that some of the per diems were more like regular part-time employees who should be included in the unit than per diem employees. Toback also expressed the concern that the Respondent might be utilizing per diems in lieu of filling a vacancy in a unit with a regular bargaining unit employee.

Toback testified that, on September 17, based on these reports, she sent Marge Kilfeather, the Respondent's assistant director of nursing/labor relations, a letter requesting information to evaluate the reports that she had received from the delegates in order to determine whether a grievance should be filed. Specifically, the letter requested the names of the per diem nurses who have worked more than 12 shifts in the last 6 months; the units to which these nurses were assigned; and the shifts these nurses worked. The letter concluded by inviting Kilfeather to contact Toback if she had any questions regarding the request. There is no dispute that the Respondent did not respond to this letter.

According to Toback, she called Kilfeather on October 27 to followup her request for information. Kilfeather apologized for not responding. She told Toback that the person who could get the information had been on vacation when the letter was received and that Kilfeather had forgotten about it by the time she returned. Toback recalled that Kilfeather also asked why Toback wanted the information and Toback told her that she wanted to know how often per diems worked. Kilfeather said that she would get back to Toback.

Toback sent another letter to Kilfeather on October 27, after their telephone conversation, reiterating the request for information she had made in the September 17 letter. Kilfeather responded, by letter dated November 3, that because per diem nurses are not included in the bargaining unit under the collective-bargaining agreement, the Respondent was not obligated to provide the information the Union requested. No other grounds for refusing to furnish this information were asserted.

On December 23, Toback filed a class action grievance at step three of the grievance procedure, signed by the Union's president, Maureen McCarthy, and requested a meeting to discuss the grievance. The grievance asserted that the Respondent was violating the contract's recognition clause as well as other articles regarding wages and benefits, with respect to employees working at least one-fifth of the regular full-time work week, including employees designated as "per diem" by the employer. As a remedy, the Union requested that the contract be applied to all employees working at least a one-fifth schedule. A meeting to discuss this grievance was scheduled for January 21, 1998, at the hospital.

At the January 21 meeting, the Union was represented by Toback, McCarthy and Vice President Kathy Flynn and the Respondent by Erin O'Connor, vice president of human resources, Mary Ann Bodee, director of labor relations, and Kilfeather. McCarthy explained that the grievance was filed in response to the reports received from union delegates described above, stating that these reports indicated that per diems were not being utilized as they had been in the past. According to Toback, O'Connor was receptive to the Union's arguments, stating that she had looked at the numbers and that there were some per diems that were being used quite often. O'Connor then discussed where the line should be drawn between per diems and unit employees, without offering any specific proposals. The union representatives responded that they could not discuss such a proposal without getting the information to show the frequency or infrequency of per diem use and the units they were working on. The meeting ended with no resolution of the grievance or the information request. Toback's testimony regarding this meeting was not contradicted by O'Connor, the Respondent's sole witness.

On February 4, 1998, the Union received the Respondent's written response to the grievance. In that response, Bodee summarized the discussions which had taken place at the January 21 meeting, including the discussion regarding how to determine when a per diem changes status from per diem to regular part-time. Bodee wrote as follows:

> In order to identify per diem RNs who may be regular part-time employees, actual hours worked would have to be retroactively calculated on prior work schedules since, it is not possible to determine in advance eligibility for BU [bargaining unit] status.
>
> We believe the contract language does not address when and if a per diem changes status to a part-time with a

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grievance which that union had filed seeking inclusion of a per diem employee in that bargaining unit. The Respondent argues that this award was relevant to the issues here because the language in the contract at issue there was similar to the language in the collective-bargaining agreement between the Respondent and this Union. I sustained the General Counsel's objection to receipt of this document at the hearing, finding that it had no relevance to the issues before me. In his brief, Respondent's counsel asked that I take judicial notice of this decision, arguing that failure to do so would be an abdication of my responsibility to assess the relevance of the information requested by the Union. I adhere to my ruling for the reason that the issue before me is whether the information requested by the Union in 1997 was relevant to and necessary for its performance of its duties as the bargaining representative of this unit. The relevance and need for the information must be assessed in light of the parties' collective-bargaining agreement as it has been interpreted and applied by the parties. A 10-year-old arbitration award involving different parties would shed little or no light on that issue.

> regular work schedule. The Hospital's practice of hiring and scheduling per diem RNs has been consistent during the term of our CB relationship, (i.e., that all per diems were excluded). However, in order to try to settle the matter the Hospital would like to propose that per diem RNs who have consistently and regularly worked .2 or more of a regular work week every week for the past 12-months will be included in the bargaining unit. However, not all of the terms and conditions of the CBA will apply. Obviously this proposal warrants further discussion. The Hospital would like to have a second meeting with regards to the above.[4]

On March 6, 1998, Kilfeather provided Toback with a chart purporting to show individual per diem utilization on a monthly basis over a 12-month period as a percentage of a regular full-time schedule. The monthly information was provided for all per diems who had averaged one-fifth of a full-time schedule over 12 months. This chart did not identify the individual per diems by name, nor did it disclose the shifts or units they had worked during the period. Toback testified that the Union could not determine which of these per diem employees should or should not be covered by the collective-bargaining agreement.

By letter dated March 10, 1998, Toback informed Kilfeather that the chart she provided on March 6 was not responsive to the Union's September 17 and October 27 requests for information. In the letter, Toback asserted that, because the Respondent used an annual average as a cutoff, a per diem nurse who worked one 8-hour shift per week every week except for a 1-week vacation would not be included in the data provided, nor would a per diem who commenced work during the year. Toback also informed Kilfeather that, without the names of the per diem nurses, the Union would not be able to verify the information provided. Toback concluded her letter by reiterating her requests for the names of the per diems who worked 12 shifts or more in the preceding 6 months and the units and the shifts they were assigned. The Respondent did not respond specifically to this letter. O'Connor testified that, during a telephone conversation with Toback, O'Connor offered to have a neutral third party verify the information on the chart, in lieu of disclosing the names to the Union. According to O'Connor, Toback declined this offer. Toback testified that she could not recall such an offer ever being made. I credit Toback, whom I found to be a generally more credible witness, in this regard. O'Connor's testimony was generally not specific regarding the communications and meetings between the parties. Instead, her testimony reiterated the positions taken by the Respondent on the relevance and necessity of the information and the asserted justifications for not furnishing it.

On May 6, 1998, during a labor/management meeting at the hospital, the grievance and the Union's information request were again discussed. The Union's president, McCarthy, renewed the request for information. Rather than respond specifically, O'Connor raised the issue of what formula to use to determine at what point a per diem becomes a regular part-time employee. There was no resolution of the grievance at this meeting. After the meeting, on May 13, Kilfeather faxed to the Union another chart showing monthly utilization of per diems by unit within the hospital. According to Toback, O'Connor had referred to this information during the meeting. This chart does not identify individual per diem nurses, but only shows total hours used in each department. Toback testified that the Union could not determine from this information how many hours any individual per diem worked, or whether there was any regularity or consistency to the individual per diems assignment. O'Connor conceded on cross-examination that it could not be determined from any of the information provided by the Respondent whether any per diem employees worked more than .2 of the regular workweek in every week in the previous 12 months, the formula O'Connor proposed to resolve the grievance.

On May 14, the Union officially responded to the Respondent's February 4 response to the class action grievance, stating that the issues remained outstanding and that, absent a change in the Respondent's position, the Union would pursue the grievance under the collective-bargaining agreement. By letter dated May 27, O'Connor summarized the Respondent's position regarding the grievance and the information request. O'Connor advised the Union that the information already provided was sufficient and satisfied the Respondent's obligation to provide information regarding nonunit employees. O'Connor asserted further that the Union's request for detailed information for each per diem nurse was overly burdensome and that such information would not be provided. O'Connor asked the Union for a response to the recent discussion on how to measure per diem utilization for purposes of inclusion or exclusion under the contract, stating her belief that both parties agreed that a week-by-week measure of exclusion/inclusion is unrealistic. O'Connor concluded by stating the Respondent's position that "the definition of a per diem RN, excluded from the bargaining unit, rests not only on a measure of time worked, but also on the parties traditional understanding of the attachment of per diem staff to the employer and their treatment as non-bargaining unit employees." Toback testified that the May 27 letter was the first time that the Respondent took the position that complying with the Union's information request would be unduly burdensome. O'Connor testified, without specifics, that she always discussed the burden of complying in meetings and discussions with the Union. I credit Toback in this regard. There have been no further substantive discussions between the parties regarding the grievance since May 27 and no further information has been provided.

The Respondent offered testimony from O'Connor regarding the burden of gathering the specific information requested by the Union. According to O'Connor, the only way to determine which shifts and units individuals worked during the previous six months would be to manually review the daily schedules showing who actually worked and cross-referencing to a list of per diems to determine whether the individuals were regular employees or per diems. Because the Respondent has 35 units on which unit employees work and each unit has at least two shifts a day, O'Connor estimated it would take a year and cost the Respondent $218,000 to gather the information requested by the Union. O'Connor conceded that the Respondent never

[4] The Respondent objected to receipt of this document and testimony regarding what transpired at the January 21 meeting on the grounds that such evidence was inadmissible under Rule 408 of the Federal Rules of Evidence. I overruled the objection on the grounds that this evidence was not being offered to prove that the Respondent had violated the collective-bargaining agreement as alleged in the grievance. Rather, the evidence was offered by the General Counsel to place the Union's information request in the context of the discussions related to the pending grievance to show that the requested information was relevant. This evidence is admissible under FRE 408 for such a purpose.

offered to let the Union review the schedules to gather the information itself.

At the hearing, O'Connor also testified that she did not want to disclose the names of the per diem employees to the Union because it is "her policy" that such information is confidential. Although at first acknowledging that the Respondent has no policy prohibiting disclosure of this information to the Union, she later claimed that the Respondent does have a general policy regarding privacy of employee information. No written confidentiality policy was submitted into evidence at the hearing and O'Connor admitted that she did not furnish any such policy in response to a subpoena from the General Counsel requesting such a document. There is no evidence that the Respondent ever asserted confidentiality as a basis for denying the Union's request for information during the meetings and correspondence between the parties.

Finally, O'Connor testified that, at a meeting in her office in May 1998, she observed Toback with a folder labeled "per diem organizing drive." There is no evidence that the Respondent raised this issue with the Union as a reason for not furnishing the information which the Union had been requesting since September.

The parties agree that an employer has a duty under the Act to furnish its employees' statutory bargaining representative with requested information that is relevant to, and necessary for, the proper performance of the union's statutory duties as exclusive collective-bargaining representative of the employees and that the employer's duty extends to furnishing information requested during the term of a collective-bargaining agreement for the purpose of administering and policing the agreement. *NLRB v. Acme Industrial Co.,* 385 U.S. 432, 435–436 (1967). The parties also agree that, when the requested information relates to nonbargaining unit employees, the Union must demonstrate the relevance of the information. *United Graphics,* 281 NLRB 463, 465 (1986), and cases cited therein. The parties disagree whether the Union has met its burden here. In addition, the Respondent asserts that, even if the information is relevant, the Respondent satisfied its statutory obligation by furnishing the two charts showing hours worked by individual per diems, with the names deleted, and per diem usage by departments and that to require any further production of information would be unduly burdensome and violate the confidentiality rights of the per diem employees. Finally, the Respondent argues that the Union wants the names of the per diem nurses so that it can organize them and that it has no duty to assist the Union in these efforts.

The Board uses a broad, discovery-type standard in determining relevance in information requests cases, including those in which a special showing of relevance is necessary. Potential or probable relevance is sufficient to give rise to an employer's obligation to provide information. *Shoppers Food Warehouse,* 315 NLRB 258, 259 (1994), and cases cited therein. Moreover, the Board does not pass on the merits of the Union's claim that the employer has breached the collective-bargaining agreement in determining whether information related to the processing of a grievance is relevant. Id. Contrary to the Respondent's argument, the Union's burden is not a heavy one. *Leland Stanford Jr. University,* 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983). The Board has held that a union satisfies its burden when it demonstrates a reasonable belief supported by objective evidence for requesting the information. The union is not required to show that the information which triggered its request was accurate or ultimately reliable, and the union's information request may be based on hearsay. *Shoppers Food Warehouse,* supra at 259 and cases cited therein.

In the instant case, I find that the General Counsel has demonstrated the relevance of the information requested by the Union. Toback testified that she requested this information after receiving specific reports from union delegates indicating a change in the Respondent's practice of utilizing per diem nurses. Although the delegates themselves did not testify, no adverse inference should be drawn from their failure to appear. The Union did not have to prove that in fact there had been a change in per diem utilization, only that the Union had a reasonable basis, based on objective evidence, for believing there had been. I also find that the Union sufficiently demonstrated the relevance of the request to the Respondent. The Union's first request, September 17, invited the Respondent to contact the Union if it had any questions regarding the request. There is no dispute that the Respondent did not accept this invitation. Moreover, when Toback spoke to Kilfeather about the request on October 27, Kilfeather asked her why the Union wanted the information. Toback told her because the Union wanted to know how often per diems worked. Kilfeather asked no further questions at that time. Finally, the Respondent did not dispute Toback's testimony that the Respondent was informed of the specific reports received from the delegates which triggered the information requests at the January 21, 1998 grievance meeting.

Respondent conceded the relevance of the information request in its written answer to the grievance, submitted to the Union on February 4. In that response, Bodee advised the Union that actual hours worked would have to be retroactively calculated to identify per diem nurses who may be regular part-time employees. Moreover, O'Connor told the Union, at the January 21 grievance meeting, that her review of the records indicated that there were some per diems being used quite often. The Respondent's proposal to settle the grievance by agreeing on a formula to determine at what point a per diem becomes a regular part-time employee further demonstrated the relevance of the information. The Union would not be able to assess the merits of such a proposal without knowing the frequency and consistency of individual per diem nurses' work.

The Respondent argues that the information requested by the Union is not relevant because whether someone is a per diem or regular part-time employees is not determined by the number of hours worked. However, this is the only information it was willing to give to the Union. The Union was clear from the first request that it wanted more than the number of hours worked. In fact, the Union did not even request this specifically. Rather, what the Union requested was the names, units, and shifts on which the per diems worked. As Toback testified, this additional information would be used as "indicators" to determine whether the per diem was working only on an "as-needed basis," in accordance with Respondent's established practice, or was working as a regular part-time employee. As the Board has noted, the Union is not required to accept the Respondent's assertion that all per diem nurses are working as traditional per diems. It is entitled to conduct its own investigation and reach its own conclusion about the applicability of the collective-bargaining agreement to these per diem employees. *Shoppers Food Warehouse,* supra at 259.

Respondent's further contention that the information was not relevant because per diem employees are not in the unit, and its

reliance on the 1987 arbitration award to prove it, misses the point. There is no dispute that per diem employees are not part of the unit. The issue raised by the Union's information request and class action grievance is whether the Respondent was utilizing per diems as regular part-time employees, a legitimate concern of the Union as part of its contract administration and enforcement duties.

The information that the Respondent did provide to the Union, almost 6 months after the Union's first request, did not satisfy its statutory obligation. Respondent's own witness conceded that it could not be determined from this information whether an individual per diem worked one-fifth the regular workweek in the preceding 12 months. It is also apparent that the Union could not determine from the information provided whether the individual per diems were working a regular schedule, were assigned to a particular unit, had any pattern to their work or had other attributes of a regular part-time employee.

The Respondent's contention that it should not be required to comply with the Union's information request because it is unduly burdensome is rejected. The Board has held that the costs and burden of complying with a Union's request for relevant and necessary information does not justify a categorical refusal to supply the information. If there are substantial costs or other impositions involved in providing requested information, the Act requires an employer to offer to bargain about who shall bear such costs. See *Hospital Episcopal San Lucas,* 319 NLRB 54, 57 (1995), and cases cited therein. In the instant case, the Respondent did not assert this ground for refusing to provide the requested information until O'Connor's May 27 letter. At that time, the Respondent provided no specifics to the Union to support its claim of undue burden and did not offer to bargain over cost sharing. Moreover, I note that the Respondent does not argue that the information requested by the Union does not exist. Rather it argues that it would be costly and time consuming to extract the information from the daily work schedules. However, the Respondent never offered to make these schedules available to the Union for its own inspection as an alternative to the Respondent compiling the information.

I also reject the Respondent's argument that it should not be required to disclose the names of the per diem employees for confidentiality reasons. In dealing with union requests for relevant but assertedly confidential information, the Board is required to balance a union's need for the information against any "legitimate and substantial" confidentiality interest established by the employer. The employer who claims confidentiality has the burden of proving that such confidentiality interests are in fact present and of such significance as to outweigh the union's need for the information. The employer must timely raise and prove its confidentiality claim before the balancing test is triggered. Finally, even where the employer can prove a legitimate confidentiality concern, it has a duty to seek an accommodation through the bargaining process. *Exxon Co., U.S.A.,* 321 NLRB 896, 898 (1996). Here, the Respondent did not even meet the threshold burden to trigger a balancing test. The Respondent did not even assert a confidentiality claim in its communications with the Union. Even at the hearing, O'Connor's basis for claiming confidentiality was her own policy of not disclosing employee information. Only on further questioning did she claim the existence of a general hospital policy protecting the privacy of employee information as support for her position, yet this policy was never offered into evidence. Accordingly, I find that there are no confidentiality concerns which would preclude the Union from obtaining the information requested, which is relevant and necessary to its representative duties.

Finally, the fact that the Union might use the information requested to organize the per diem employees is no basis for a refusal to furnish information which is otherwise relevant and necessary to the Union's performance of its statutory duties. See *Central Manor Home for Adults,* 320 NLRB 1009, 1011 (1996), and cases cited therein. As found above, the information requested by the Union on September 17 is relevant to and necessary for the Union's proper policing of the collective-bargaining agreement. The Respondent has not demonstrated that the Union had any other purpose in making the request. O'Connor's testimony regarding the folder in Toback's possession at some unidentified meeting in May 1998 does not justify the Respondent's failure and refusal to furnish this information.

Based on the above, and the record as a whole, I find that the Respondent has violated Section 8(a)(1) and (5), as alleged in the complaint, by refusing to furnish the Union with relevant and necessary information since September 17, 1997.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing and refusing, since September 17, 1997, to furnish the Union with requested information which is relevant to, and necessary for, the Union's performance of its duties as the exclusive collective-bargaining representative of an appropriate unit of the Respondent's employees, the Respondent has failed to bargain collectively in good faith with the Union in violation of Section 8(a)(1) and (5) of the Act.

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

REMEDY

Having found that the 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. Specifically, I shall recommend that the Respondent be ordered to furnish the Union with the names of per diem nurses who had worked more than 12 shifts in the preceding 6 months, the units to which these nurses were assigned and the shifts these nurses worked, with any concerns about the cost and burden of complying to be resolved through good-faith bargaining between the parties.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Lenox Hill Hospital, New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively in good faith with New York Professional Nurses Union by failing and refusing to furnish information concerning per diem nurses that the Union

[5] 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.

requested by its letters dated September 17 and October 27, 1997, and March 10, 1998.

(b) 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, furnish the Union with the names of per diem nurses who had worked more than 12 shifts in the preceding 6 months, the units to which these nurses were assigned and the shifts these nurses worked.

(b) Within 14 days after service by the Region, post at its facility in New York, New York, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by 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 September 17, 1997.

(c) 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.

[6] 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."

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 the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively in good faith with New York Professional Nurses Union by failing and refusing to furnish information concerning per diem nurses that the Union requested by its letters dated September 17 and October 27, 1997, and March 10, 1998.

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

WE WILL, within 14 days from the date of the Board's Order, furnish the Union with the names of per diem nurses who had worked more than 12 shifts in the preceding 6 months, the units to which these nurses were assigned and the shifts these nurses worked.

LENOX HILL HOSPITAL