

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO BRANCH OFFICE
DIVISION OF JUDGES

**SUTTER HEALTH CENTER d/b/a
SUTTER ROSEVILLE MEDICAL CENTER
The Respondent**

and

Case 20-CA-30946-1

**HEALTH CARE WORKERS' UNION
LOCAL 250, SERVICE EMPLOYEES
INTERNATIONAL UNION AFL-CIO
The Charging Party**

*Jill H. Coffman, Esq., and Micah Berul, Esq.,
San Francisco, California, for the General Counsel.*

*William Franklin Birchfield, Esq.,
of O'Melveny & Meyers, LLP,
San Francisco, California, for the Respondent.*

*William A. Sokol, Esq., and Brooke Pierman, Esq.,
of Weinburg, Roger & Rosenfeld,
Oakland, California, for the Charging Party.*

DECISION

Statement of the Case

CLIFFORD H. ANDERSON, Administrative Law Judge: I heard the above-captioned case in trial in Sacramento, California on February 5 and 6, 2004, pursuant to a complaint and notice of hearing issued by the Regional Director of Region 20 of the National Labor Relations Board on November 25, 2003. The complaint is based on a charge filed by Health Care Workers' Union Local 250, Service Employees International Union, AFL-CIO (the Charging Party or the Union) against Sutter Health Center d/b/a Sutter Roseville Medical Center (the Respondent) on November 19, 2002, and docketed as Case 20-CA-30946-1.

The complaint, as amended at the hearing, alleges the Respondent, for the period November 15, 2002, through November 18, 2002, failed and refused to reinstate economic strikers to their former positions of employment while continuing to operate its business using managers, supervisors and non-unit employees to perform unit work and, further, discontinued certain services and closed certain areas of its facilities in which unit employees regularly performed unit work. The conduct described, the complaint alleges, was undertaken because the employees engaged in a strike and in order to discourage employees from engaging in protected concerted activities, thereby violating Section 8(a)(3) and (1) of the Act. The complaint further alleges that the Respondent wrongfully notified employees before the strike that

reinstatement would be so delayed violating Section 8(a)(1) of the Act and finally alleges that the Respondent failed to provide the Union with an opportunity to bargain respecting the terms and conditions of employment of the individuals working in the Unit in the days after the strike violating Section 8(a)(5) and (1) of the Act.

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The Respondent essentially admits the conduct alleged, but denies that it took the actions described because of the employees' protected and or union activities, but rather did so under the press of business necessity. The Respondent further alleges additional defenses.

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Findings of Fact

Upon the entire record herein, including helpful briefs from the Respondent and the General Counsel, I make the following findings of fact.¹

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I. Jurisdiction

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The Respondent, a California corporation, operates various health care facilities. Its Sutter Sacramento/Sierra Region includes five acute care hospitals and ancillary facilities including an acute care hospital in Roseville, California (herein the Hospital). During the calendar year ending December 31, 2002, the Respondent in operating its health care facilities derived gross revenues in excess of \$250,000 and purchased and received at the Hospital goods and materials valued in excess of \$5,000 from points located outside the state of California.

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Based on the above, there is no dispute and I find the Respondent is and has been at all times material an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

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II. Labor Organization

The record establishes, there is no dispute, and I find the Union is a labor organization within the meaning of Section 2(5) of the Act.

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III. The Alleged Unfair Labor Practices

A. Background

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The Hospital is one of an affiliated network of hospitals and is within the Respondent's Sacramento/Sierra Region. The Hospital is a major acute care institution with a substantial employee complement. The Union is a labor organization, which represents, inter alia, certain health care employees. The Respondent at all relevant times has recognized the Union as the exclusive representative of Hospital employees in the following unit (the Unit):²

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¹ As a result of the pleadings and the stipulations of counsel at the trial, there were few disputes of fact regarding collateral matters. Where not otherwise noted, the findings herein are based on the pleadings, the stipulations of counsel, or unchallenged credible evidence.

The General Counsel's motion to strike portions of the Respondent's brief, opposed by the Respondent, is denied.

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² The parties stipulated that the bargaining unit described in the contract was appropriate and amended both the complaint and the answer to conform thereto.

5 All Environmental Service Aides, Food Service Assistants, Laundry Helpers, Home
 Health Aides, Respiratory Assistants, Service Partners, Central Distribution Technicians,
 Grill Persons, Lead EVS Service Aides, Rehab Aides, Sterile Processing Technicians,
 Storekeepers, Nurse Assistant/CNAs, Radiology Assistants, Anesthesia Technicians,
 10 Cooks, ER Technicians, Monitor Technicians, OBF Technicians, Unit Secretaries,
 US/NAs, EEG Technicians, Surgical Technicians, LVNs, Echo Technicians, Radiology
 Technologists, Respiratory Care Practitioners, Mammo Technologists, Ultrasound
 Technologists, CV/Angio Technologists, Nuclear Medicine Technologists, CV/Radiology
 Technologists, Ultrasound Noninvasive Vascular Technologists, excluding all executive,
 15 administrative, professional and office clerical employees, employees represented by
 other collective bargaining representatives recognized by the Respondent and
 supervisors as defined the National Labor Relations Act.

15 The parties stipulated the Unit is appropriate for purposes of collective bargaining within the
 meaning of Section 9(a) of the Act and I so find.

20 The Unit was covered by a collective-bargaining agreement between the Hospital and
 the Union effective by its terms from July 12, 1999, through November 1, 2002. That agreement
 included, inter alia, the following language:

20 Article 5. Work Stoppage

25 There shall be no strike, slowdown, or other stoppage of work by Union employees and
 no lockout by the Employer during the life of this Agreement. In the event of a strike or
 picket line called by another Union, the Union recognizes its obligations to maintain
 adequate and customary service to the patients.

B. Events

30 **1. Pre-Strike Preparations**

35 In the fall of 2002 the parties were in negotiations for a new collective-bargaining
 agreement for the Unit. On November 1, 2002, the old contract expired, but the parties in
 bargaining agreed to extend it through November 13.³ On November 1 the Union filed with the
 Federal Mediation and Conciliation Service (FMCS) with a copy to the Hospital a document
 titled “Notice of Intent to Strike” which provided official notice of the Union’s intent to engage in a
 strike at the Hospital respecting the Unit as required by Section 8(g) of the Act. The filing set
 November 14 at 6:00 a.m. as the time for the commencement of strike activity.

40 The Union also sent the Hospital a letter dated November 1, with copy to the FMCS, with
 the following body:

45 All employees participating in the strike and withdrawal of labor at Sutter Roseville
 Medical Center scheduled to begin at 6:00 AM on Thursday, November 14, 2002,
 hereby unconditionally offer to return to work at or after 6:00 AM on Friday,
 November 15, 2002.

50 _____
³ All dates hereinafter refer to 2002 unless otherwise specified.

This request is made by the Health Care Workers Union, Local 250 on behalf of all employees it represents as well as all employees who honor its picket lines at Sutter Roseville Medical Center on the above date.

5 In contemplation of the work stoppage, the Respondent determined to keep its facility open⁴ and in operation during the strike by the use of temporary replacements. The Respondent ascertained how many Unit employees would continue to work during the strike. To obtain temporary employees to fill strike vacancies it contacted employee agencies to contract for temporary unit employees to work during the announced strike. There is no dispute that the Respondent was able to obtain temporary unit replacements from these agencies only by committing to employ the temporary employees for a 5-day period, i.e. from November 14 through November 18. Further, the temporary employees contracted for were not sufficient to fulfill the Respondent's strike staffing requirements. In order to satisfy this projected staffing shortfall, the Respondent also arranged for managers and supervisors from the Hospital and other affiliated hospitals to work at the Hospital as temporary unit employees. Finally it was determined to close the Hospital cafeteria and limit food service to that necessary for patient needs.

20 The Hospital made a considered determination to schedule the temporary staffing of all temporary unit employees, including both the employment agency supplied temporary employees and the supervisory and managerial transferees, for a 5-day period commencing on November 14, at 6 a.m. and ending on November 19, at 6 a.m. On November 6 the Respondent notified its employees by memo of its position on the progress of bargaining and the upcoming strike and asserted, inter alia:

25 In the unfortunate event that a union-sponsored strike occurs, you undoubtedly understand our need to ensure that our patients continue to receive high quality care. We have made arrangements for replacement staff for a 5-day period **from 6 a.m., Thursday, November 14, until 6 a.m. on Tuesday, November 19.** While we understand that the SEIU proposed to strike for just one day, unfortunately we had no reasonable alternative in securing reliable and sufficient replacement workers for such a limited timeframe. Replacement staff will provide services for the full 5 days to provide continuity in patient care. [Emphasis in original.]

35 The Hospital confirmed the quoted scheduling of the 5-day minimum employment of all unit replacement staff in a November 8 memo to unit employees.

2. Final Pre-Strike Negotiations

40 Negotiations took place on November 13 and into the morning hours of November 14 between the Respondent and the Union with the assistance of a Federal Mediator from FMCS. The bargaining session evolved into shuttle bargaining in which the Respondent and the Union negotiating teams stayed apart and met separately with the Mediator, Mr. Rudy Medina, who went back and forth between the groups.

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50 ⁴ The Respondent gave no consideration to closing the facility during the strike. I notice administratively that an acute care hospital with a normal patient census would be very unlikely to undertake the substantial task of transferring its patients to other institutions, if adequate patient care could be maintained at the facility.

5 The session was lengthy and after a full day and well into the evening, with the parties well aware that the extended contract's expiration and the scheduled strike were but a few hours away, Mediator Rudy Medina met together with the Union's negotiator, Mr. John Borsos, and the Respondent's negotiators, Messrs. Thomas Luevano and Tony Burg, then the Assistant Administrator of the Respondent's Support Services.

10 Mr. Burg testified that the first such meeting lasted perhaps an hour. During the session, he recalled, Tom Luevano asked the Mediator to set additional dates for bargaining. The Mediator did not have a date available until November 26 and 27. Burg testified as to what happened next:

15 And then [Mediator Rudy Medina] said, was that okay with everyone, and John Borsos and Tom [Luevano] and myself said, Yes, that was fine. And then Tom said, well, is the contract extended then until that time? And everybody, including John Borsos and Rudy and myself said, Yes. Yes.

Q Did Mr. Borsos say anything else about extending the contract other than Yes?

20 A Well, just that he acknowledged that it was extended to that time.

Q Did he say anything about making any exceptions for the strike the next day?

A Not that I recall.

25 Mr. Luevano corroborated Burg:

30 The discussion centered around some of the issues that John [Borsos] had proposed and the extension of the agreement based upon the availability of the federal mediator. And he was checking his calendar. And he had indicated that the earliest that he could meet was the 26th and the 27th.

35 Our response to -- our request of John was at the time was -- at that time was, okay, well, we don't have anything in writing, but conceptually let's, you know, it doesn't seem like we're all that far off. Maybe we can do something. What about an extension to the contract to the 27th? And he said that would be fine.

Negotiations continued into the morning of November 14. No final agreement was reached and the parties ended the session. Luevano testified:

40 So my recommendation at this point is that we just call it a night. We'll continue negotiating on the 26th and the 27th. And Tony Burg agreed. And as we were leaving -- we were with the federal mediator in his room -- as we were leaving, I had said to John the conditions of the contract remain in place. And he said, Yes. And then I made references to several conditions such as the dues check-off. . . . And I gave examples of
45 that to John, and one of them was the dues check-off. That we would not suspend the dues check-off during this period of time. And he said, Yes. We left.

Burg did not recall discussions of the contract extension beyond the initial discussion described above.

50 The Union's lead negotiator, Mr. John Borsos, denied vociferously that any agreement to extend the contract had been entered into during the November 13-14 negotiations and further

testified that he had not heard the Respondent's expressed position that the contract had been extended in bargaining until learning, long after the strike, that it was part of the Respondent's defense to the instant unfair labor practice charge allegations.

5 The two Respondent negotiators testified they rejoined their committees after the final meeting with the union negotiator and the Mediator and informed their colleagues that they believed the contract had been extended. They testified they were uncertain respecting whether or not the strike would go forward, but determined it was prudent to assume it would.

10 The Union negotiation team member Senior Labor Relations Representative John Simmons testified that Borsos did not announce to the team that the contract had been extended either when he rejoined the Union negotiating team after the negotiations ended for that day or at any other time. Mr. Simmons testified that at the end of the session the Mediator came to the Union's caucus area, communicated a list of possible employer concessions and asked, if those concessions were made, would the Union call off its strike. Simmons added that
15 the Union team rejected the items on offer and that no agreement was ever reached.

20 The General Counsel also introduced a written agreement dated November 13, which contained broad principles rather than specific contract provisions and included a contract extension with a no-strike period extending to November 26. The document was signed by Thomas Luevano on behalf of the Respondent, but the signature line for the Union bears no signature.

25 There is no evidence that either side communicated to the non-negotiating members of their colleagues preparing for the strike, the press, or the public generally, that the strike had been called off or that an agreement to call off the strike was in place.

3. The Strike and Its Aftermath

30 At the appointed time the Union struck and approximately 400 of the approximately 450 unit employees withheld their services and established a picket line. The Hospital maintained its operations during the strike in accordance with its plans utilizing as unit employees: contract employees from temporary employment agencies; cross-over employees, managers, Hospital supervisors and other non-unit employees as well as managers and supervisors from other
35 Sutter facilities. The Hospital also closed its cafeteria, but continued food service for its patients.

40 At the end of the 24-hour strike, striking employees attempted to return to work. They were not allowed entrance to the Hospital, but rather were told that arrangements to staff the institution without them had been made for a 5-day period and that, accordingly, they would not be allowed return to work until 4 days after the strike had passed. This process was repeated to a limited degree on the following days. The Hospital held to its announced plan, continuing to staff unit positions with the individuals who had worked during the one-day strike for an additional 4 days. The striking unit employees were not allowed return to work until the 4-day period ended on the morning of November 19. At that time the employees returned to work in
45 accordance with their normal shift schedules and the Hospital discontinued its substitute staffing arrangements.⁵

50 ⁵ The parties stipulated that the Hospital employed as temporary unit replacements: 83 contract employees on November 14 – the day of the strike; 90 contract employees on November 15; 62 contract employees on November 16; 66 contract employees on November 17; and 71 contract employees on November 18.

No contention was made to the Union, to striking employees, nor to the public by the Respondent's agents that the strike was in contravention of the no strike provisions of an extended contract and was therefore illegal and the actions of the strikers unprotected. The Union filed the instant charge on November 19.

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The parties met for additional negotiations on November 26. Mr. Luevano testified he privately raised with the Mediator his view that the contract extension agreed upon on November 13 should have barred the November 14 strike. The Mediator in Luevano's recollection advised him: "that it would serve no useful purpose to bring this up, given the contentious nature of the then-existing negotiations and the fact that we had really not made much progress [in negotiations]." In consequence Luevano testified he did not raise the matter with the Union at any time. The Hospital and the Union thereafter reached a new agreement on a new collective-bargaining agreement, but remain in disagreement respecting the allegations involved herein.

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C. Analysis and Conclusions

1. The Respondent's Argument the Strike was Unprotected Activity

The Respondent argues that the old contract was extended in bargaining and therefore the strike was in violation of the contract's no strike provisions and the employees' actions were unprotected. The Board holds strikes in such circumstances unprotected and termination of employees for such unprotected conduct permissible. *Granite Construction Company*, 330 NLRB 205 (1999).

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The General Counsel and the Union contest the assertion that the contract was extended. Further, in response to questioning from the bench at the trials end, the General Counsel argues, even assuming the strike was unprotected, the Respondent condoned the strike activity and, under longstanding Board law, is now foreclosed to assert the employees activity was unprotected under the doctrine of condonation citing, inter alia, *General Clothing Corp.* 285 NLRB 596 (1987). The Respondent argues condonation is inapplicable to the facts of the instant case.

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The condonation issue is appropriately considered initially for, if the Board's condonation doctrine is applicable to the conduct as issue, it will be unnecessary to further consider the protected or unprotected nature of the work stoppage.

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A review of the cases is in order. The Board with court approval has established the principle that:

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[W]here employees engage in concerted activity which, although otherwise lawful and protected, is rendered unprotected by some improper aspect of the employees conduct, such as a breach of a no-strike clause, but the employer forgives or condones the strike, he will thereafter be estopped from asserting the unlawful nature of the strike as grounds for discharge. *Jones & McKnight, Inc. v. NLRB*, 445 F.2d 97, 102 (7th Cir. 1971).

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In *Davis & Burton Contractors*, 261 NLRB 728 (1982), the Board held that, when an employer satisfied a picketing employee's demands so that the employee ceased picketing and returned to work without incident for a period of days or weeks until an economic layoff, the employer had condoned the picketing and it could not then assert the unprotected conduct as a basis for refusing to reemploy the employee.

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The Board and the courts have differed from time to time respecting what constitutes condonation in given situations. The Board reviewed its condonation doctrine in *General Electric Co.*, 292 NLRB 843 (1989). In *White Oak Coal Co.*, 295 NLRB 567 (1989), the Board in a scholarly analysis of the history and development of the cases held, in conformity with various Circuit Courts of Appeals decisions, that where an employee's relationship with an employer has not been terminated by the employer at the time of condonation, the employers simple offer of reemployment may be sufficient to condone the conduct at issue.

The Respondent argues that the General Counsel bears the burden of proving condonation and failed to offer any evidence relating to the issue. The record is clear, however, that the Respondent treated the striking employees on their offer to return to work precisely as it had earlier planned and announced it would, i.e. reinstate them following a 5-day hiatus. And further, the actions of the Respondent on November 26, when Mr. Luevano agreed with the Mediator not to raise the issue of the contract extension/no strike clause with the Union and in fact did not raise the matter, establish that the Respondent had made a decision to condone the activity at least through that date.

Based on the above, I reject the Respondent's argument that the record does not show condonation and sustain the General Counsel's argument that the Respondent, after accepting the reinstatement offers of the employees, was estopped to assert that the strike was unprotected as a breach of the non strike clause of the old contract, which had been extended by agreement of the parties in bargaining before the strike. I therefore find it unnecessary to determine if in fact the contract was extended in the bargaining of November 13-14.⁶ The employees' one-day strike shall therefore be considered protected conduct for purposes of the legal analysis herein.

2. The Issue of the Timing of Striker Reinstatement

The employees through the Union gave timely notice of a twenty-four hour or single day strike and accompanied it with a written unconditional offer to return to work at the end of the strike. In the event, employees were denied reinstatement for a 4-day period following the strike.

⁶ Were it necessary to determine if the contract had been extended by agreement of the negotiators in the November 13-14 bargaining, on this record I would find that mutual agreement to extend the no strike provisions of the contract had not in fact been reached. While it seems clear that the parties discussed a conceptual agreement or agreement in principal that would have included extending the contract to the next negotiation session to be held on November 26, I find it never was consummated or, in the alternative, any agreement did not survive the continued negotiations of that session and there was not a mutual agreement at the conclusion of the negotiation session in the early hours of November 14. Such a finding would rest largely on the uncontested testimony respecting the events and the written agreement, unsigned by the Union, as described supra. The Respondent agents' views, clearly tentative and doubtful respecting the implications for the strike, were, I find, at best based on a misapprehension that an agreement had occurred which extended the no strike portion of the contract. To the extent the Respondent agents recall an explicit adoption of contract extension including the no-strike provision by the Union at the sessions' conclusion, I would find they were mistaken.

At the conclusion of this period, reinstated strikers were offered reinstatement. The striking employees who were denied immediate reinstatement at the end of the strike fall into three categories, although all were offered reinstatement at the same time.⁷

5 One group of strikers comprises those who had been replaced by the employment
agency supplied temporaries who were supplied under 5-day contracts. These employees were
reinstated as the temporary agency employees concluded their employment contracts. A
10 second group of employees was replaced by non-agency supplied staffing, which included
managers and supervisors from the Hospital and other Sutter Hospitals. These employees
were reinstated when the non-agency provided staff was released. A third group of employees
was denied reinstatement because the employees worked as part of the cafeteria food service
15 which was not utilized when the cafeteria was closed during the 5-day period at issue and who
were offered reinstatement as that service resumed. The specifics and identification of
particular employees within the groups as well as the specifics necessary to quantify a remedy
for the individuals within the groups was reserved by the parties for the compliance stage of the
proceedings, if necessary.

a. The Arguments of the Parties

20 The General Counsel's complaint alleges that the Respondent's closure of the cafeteria
was improper and its denial of immediate reinstatement at the strike's end to the second and
third groups of employees set forth above violated the Act. The General Counsel advances two
theories of violation: (1) the closure and delayed reinstatement was inherently destructive of
25 employee rights and (2) the Respondent's actions were illegally motivated to punish striking
employees and to dissuade employees from striking in future. The General Counsel made it
clear that the complaint did not allege and the General Counsel does not argue that the delay of
reinstatement of the first group of employees, i.e. the employees replaced by the employee
agency supplied employees, was improper.⁸

30 The Respondent makes several arguments. First, it argues that there was no Board
cognizable harm done to strikers because the Board has long held that an employer has a 5–
day grace period for reinstating strikers and that Board has “created a bright-line rule that
reinstatement is “immediate” as long as it occurs within this administrative period.” (The
Respondent's brief at 13.) Second, the Respondent argues both that it had no improper
35 motivation in taking the action that it did and, rather, that it acted in response to substantial and
legitimate business reasons for reinstating the strikes when it did and for closing the cafeteria
during the period at issue.

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45 ⁷ Since the Respondent employees unit employees on a multi-shift basis, employees did not
all physically return to work at the 6 a.m. hour of the end of the 5-day period. Rather employees
from that time forward apparently resumed their normal schedules.

50 ⁸ The General Counsel concedes that the Respondent had a substantial and legitimate
business justification, i.e. the minimum 5-day service time for employment agency supplied
temporary unit employees, for delaying the reinstatement of those unit employees who had
been replaced by the 5-day temporaries and who were reinstated at the end of those employees
service.

Administrative law Judges are bound to follow Board law. Board doctrine once ascertained is to be applied irrespective of the force or directness with which the doctrine is stated or described by the Board. This being so, I find the cases cited above bind me and I find that there is no 5-day rule for the reinstatement of economic strikers. Since the instant case involves the reinstatement rights of economic strikers, the 5-day rule of *Drug Package Co.*, *supra*, is inapplicable here.

2. The Illegal Motivation Argument

The General Counsel argues that the Respondent delayed reinstatement in a desire to and as part of a plan to punish employees. The government argues the Respondent revealed its illegal motivation through its agent, Thomas Luevano, when he spoke to the Union's agent, John Borsos, by telephone on November 14. Borsos testified:

Mr. Luevano represented that he was going to recommend a lock out not happen, but that he represented that in discussions with his side, there were people who wanted to make sure that people were not rewarded and were penalized for striking, the lock out was meant as a way to teach a lesson to employees.

Mr. Luevano denied that the conversation, or any other such conversation either in person or by telephone, ever occurred.

Even without resolving the conflict in testimony, it is clear that any statement made during the one-day strike about the Respondent's deliberations respecting a future "lockout" could not be directed to or describe the Respondent's determination to delay the reinstatement of the strikers until five days after the strikes commencement. Indeed, that decision had been made and announced by the Respondent to unit employees well before the strike started. I find the evidence offered by the government simply does not support the argument advanced.

Considering the remaining record evidence on the question, it is clear the Respondent viewed earlier one-day strikes at the Hospital and other of its affiliates by the Union as gravely inconvenient and, it may at least be argued, disturbingly effective in that the brief period of employment loss borne by the strikers was far outweighed by the disproportionate burdens and costs the Respondent experienced in having to deal with such a one day work stoppage. I do not find that fact, standing alone, or as here met by the denials of the Respondent's witness, is sufficient to sustain the General Counsel's illegal motivation argument. The government bears the burden of proof on the illegal motivation allegation and has not sustained that burden. I shall therefore reject the government's theory of a violation dependent upon it.

3. The Respondent's Claim of Substantial and Legitimate Business Justification

In *NLRB v. Fleetwood Trailer Co., Inc.*, 389 U.S. 375, 378 (1967), the Supreme Court held that if, after conclusion of a strike, the employer

refuses to reinstate striking employees, the effect is to discourage employees from exercising their rights to organize and to strike guaranteed by [Sections] 7 and 13 of the Act. . . . Accordingly, unless the employer who refuses to reinstate strikers can show that his action was due to 'legitimate and substantial business justifications,' he is guilty of an unfair labor practice. The burden of proving justification is on the employer.

The Court in *Fleetwood* relied on its decision in *NLRB v. Great Dane Trailers, Inc.*, 388 U.S. 26, 34 (1967), where it held that

once it has been proved that the employer engaged in discriminatory conduct which could have adversely affected employee rights to some extent, the burden is on the employer to establish that he was motivated by legitimate objectives since proof of motivation is most accessible to him.

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In re-evaluating the rights of economic strikers in light of *Fleetwood* and *Great Dane*, the Board in *Laidlaw Corp.*, 171 NLRB 1366, 1369 (1968), stated that:

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The underlying principle in both *Fleetwood* and *Great Dane*, supra, is that certain employer conduct, standing alone, is so inherently destructive of employee rights that evidence of specific antiunion motivation is not needed.

15

The Respondent emphasizes the context of the events under examination. First, the Respondent notes that the Hospital is a non-profit acute care hospital. The Act contains special provisions narrowly applicable to health care institutions, such as, but not limited to, Section 8(g), which provide additional regulation of work stoppages in recognition of the special burdens and responsibilities of an employer in the health care setting to insure continuity of patient care.

20

The Respondent notes that its preparations to operate during the strike must be viewed in this context. More particularly Respondent argues initially that in making its preparations it could not be certain when the strike would end. The Respondent cites a General Counsel Advice Memo in *Sidney Square Convalescent Ctr.*, Case 6-CA-27897, 1996 WL 789042 at *2 (N.L.R.B. G.C.) (Aug. 30, 1996), in which the General Counsel determined not to issue a complaint against an employer who permanently replaced employees who simultaneously with the strike notice offered unconditionally to return to work 24 hours after the strikes commencement. The General Counsel concluded a pre-strike return to work offer is not unconditional and does not bind the Union and therefore could not be relied on by the employer. The cited General Counsel memorandum was a change from an earlier memo: *Redstone Highlands Health Care Center, Inc.*, 1995 WL 902238 at *2, (N.L.R.B. G.C.) (Nov. 7, 1995), which found a pre-strike offer to be unconditional.

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The views of the General Counsel are those of the prosecutor and do not bind the Board. Indeed, as the two cited memos indicate, the General Counsel may take changing positions respecting violations of the Act. While the legal analysis is an interesting one, I find that the question of the legally binding nature of the Union's pre-strike unconditional offer on behalf of the striking employees to return to work after 24 hours is largely irrelevant to the instant case. This is so because of the substantial history of one-day strikes conducted by the Union against the Hospital or its affiliates. The record contains evidence of both the Hospital and its affiliated institutions history of one-day strikes. A history well known to all the parties. In each previous 24 hour strike notice situation the Union and the striking employees had in fact limited their strike to the announced one day period.

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Further, there is no evidence that the Respondent during the instant events in fact doubted or sought additional assurance from the Union that the announced 24 hour strike would be any different from earlier one day stoppages. Given the record as a whole, the history of stoppages and the conduct of the parties during the instant strike, I find the Respondent's argument in this proceeding that it needed to take prudent precautions in light of the non-binding nature of the Union's statement that the strike would only be one day long and its time specific unconditional offer to return to work after only one day of striking is of little merit.

45

The General Counsel, as discussed supra, has conceded the Respondent had a legitimate business justification for retaining the employment agency-supplied temporary

employees for the period for which they were contracted, i.e. the 5-day minimum. The Respondent cites a line of Board cases finding contractual commitments for replacement employees to be legitimate and substantial justification for delaying reinstatement of strikers. See, e.g., *AMI/HTI Tarzana Encino Joint Venture*, 332 NLRB 914 (2000); *Pacific Mutual Door*, 278 NLRB 854 (1986). Presumably these are the cases which guided the government on the issue as well.

The Respondent, arguing from this line of cases, proposes that the entire replacement staff, including the Respondent's supervisors and managers, should be treated as a unity and the Respondent therefore be found justified to end their service as a unity when the employment agency supplied temporary employees' terms of service ended. To do otherwise, argues the Respondent, would split the workforce into categories, an artificial bifurcation which would defeat the simplicity of the *AMI/HTI Tarzana – Pacific Mutual Door* doctrine.

I have considered the Respondent's argument for a unified or singular approach to an employer's temporary employee staffing and to striker reinstatement and do not find it persuasive. Without considering here the fact-based business considerations, which may be considered in such a setting, I simply do not find Board authority for the proposition asserted. The cited cases do not address the issue. I shall therefore reject the Respondent's assertion of a case established right to delay the replacement of any temporary workers until all could be replaced at once.

The Respondent, however, additionally argues that it had substantial business concerns respecting reinstating strikers ability to work with the employment agency-supplied temporary employees and the burdens of making changes in those employees context of work. In these regards the Respondent notes the statements of administrative law judge Cracraft in *AMI/HTI Tarzana Encino Joint Venture*, supra, 332 NLRB at 918:

Given the contours of the replacement situation, Respondent had substantial business reasons to require that nonstriking employees and contract employees work together during the entire 4-day period. The nonstriking employees were familiar with the operations and able to provide uniformity and stability in coordinating Staffing Agency care for the patients. Insertion of striking employees into the equation during the 4-day period would have created further learning curves for the replacement employees.

The Respondent argues further on brief at 19-20, quoting from the testimony of Mr. Thomas R. Luevano, Chief Labor Employee Relations Officer:

The General Counsel's argument ignores the real costs of keeping an acute-care hospital like [the Hospital] open in the midst of a strike. For example,

[t]o get [a] third party vendor to agree to staff the facility where they already have staff at other facilities and cancel these people out, and then bring them to yours is difficult enough. Then to arrange schedules for managers and supervisors to be back filled at other facilities is difficult enough. Then you have the on-sight administrative team who responsibility it is to insure that the services of this hospital remain in placed with little or no disruption is difficult enough. To do that and turn over an entire work force in one day is irresponsible, and it is impractical. [Transcript at 105-106.]

Respecting the latter argument that it would have been difficult and irresponsible to "turn over the entire work force in one day", I find the Respondent has not backed up its argument

with persuasive record evidence. Rather there is evidence that the Hospital successfully reinstated bargaining unit strikers “in one day” after the earlier one-day strike in the parties previous bargaining cycle. And in the events in controversy, the Respondent did not stage or spread the return of the strikers over a period of days. Rather the Respondent simply delayed
 5 reinstating all of the strikers for a period of days and then reinstated the “entire work force in one day.” Thus the reinstatement of employees was not done gradually or more gradually than would have occurred if they had been reinstated at the end of of the strike.⁹

Nor do I find persuasive the Respondent’s arguments respecting the difficulty in
 10 arranging the schedules of both Hospital and affiliated institution supervisors and managers “to be back filled at other facilities.” While any scheduling of staffing of other facility based employees will present complications, the complications involved are not obviously different in kind or degree when the Hospital schedules either a single day or 5 days of employment at the Hospital for such individuals.

Turning to the Respondent’s position that it was justified in keeping the replacement
 15 crew together to preserve continuity, familiarity, uniformity, and stability of the temporary employment agency-supplied staff that were committed to work the 5-day period, there is an element of logic to the Respondent’s argument. I find it somewhat undermined however by the
 20 fact that reinstating the regular employees immediately following the strike would also allow the out of facility supervisors and managers doing unit work during the strike to be replaced. That action itself would provide and restore continuity of care since the regular staff – after only a days absence during the 24-hour strike – would need confront no “learning curve” of patient care service provision, whereas the out-of-facility transferees from other affiliates surely would
 25 not have become completely familiar with the positions they had at that time filled for but a single day.¹⁰

The Respondent’s arguments in these latter regards are not frivolous and are taken
 30 seriously. They must however be weighed and considered in the context of the specifics of the instant case which includes both the strike experience of the parties at the Hospital as well as their experiences at the other affiliated institutions – all of which Hospital decision makers were well aware. Considering the Respondent’s argued legitimate business justifications balanced against the protected employee right to engage in a concerted work stoppage on the facts of the
 35 instant case, I find that the Respondent’s reasons are insufficient. As noted supra, I have rejected or heavily discounted many, although not all, of the Respondent’s arguments. The

⁹ Actually, if the strikers had been reinstated at the strike’s end, the process would have been gradual. This is so because some strikers’ reinstatements would have been delayed until
 40 the 5-day temporary employees finished their minimum terms of service.

¹⁰ The Respondent also argues that it feared reinstating the strikers into the workforce
 45 alongside the temporary replacements, comprising employment agency-supplied temporaries, cross-over employees and supervisory/managerial fill-ins, would engender hostility which would adversely affect patient care and the smooth running of the Hospital. While these fears can be important and actions to deal with them prudent where they are reasonably anticipated, I reject
 50 the Respondent’s claim here on the facts of the case. The record simply does not provide any basis for taking such actions given the history of the parties. As noted supra, the parties had a history of one-day strikes at the Hospital and other affiliated institutions. The record shows no significant evidence of the type of animosity or difficulty that the Respondent argues informed its decision to delay reinstating some strikers. Further the decision could not have turned on any events occurring during the instant strike, because the decision to delay striker reinstatement was made and announced well before the strike commenced.

Respondent's experience in the previous strike at the Hospital establishes that it was able to immediately reinstate employees without, on this record at least, suffering diminution of patient care or experiencing the types of difficulties advanced as horribles by the Respondent to be provided for by delaying strikers' reinstatement.

5

In hearing and reviewing the testimony and other evidence, I formed the impression that much of the dissatisfaction of the Respondent's decision makers came from the fact that the Union, by striking for a single day, inflicted on the Hospital a grave inconvenience entailing a very large amount of managerial time and effort to cope with the stoppage. And, from the Hospital's perspective, unfairly, the Union and the striking employees were able to cause this great disruption and inconvenience to the Hospital without incurring significant hardship or sacrifice themselves. This dissatisfaction¹¹ in my view is really directed to the legality of a one-day work stoppage directed against a health care institution. That question has been decided by the Board and is not for an administrative law judge to question in all events.¹²

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Given that a one-day strike of the type involved herein is protected activity permitted under the Act, the Respondent's arguments supporting delayed reinstatement are simply insufficient on this record to allow a finding that they rise to the level of sufficient legitimate and substantial business justification to allow deferral of the reinstatement of economic strikes under *Fleetwood Trailer*. Accordingly, I find the delay in reinstatement of the employees who had been temporarily replaced by supervisors and managers was a violation of Section 8(a)(1) and (3) of the Act.

20

4. The Issue of the Cafeteria Closure and Deferral of Cafeteria Strikers Reinstatement

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The Respondent closed the public portions of its cafeteria during the strike and thereafter until the strikers were reinstated. A certain number of strikers worked in association with the portions of the cafeteria that were closed. There were no strike replacements for these employees, but the delay in their reinstatement for the 4-day period is pled as part of the general striker reinstatement delay allegations. Additionally the closure of the cafeteria or its failure to be reopened for the 4-day period at issue is also alleged as a violation of the Act.

30

Conceptually the analysis of these employee rights is similar to that which is set forth above save for several elements, which favor the government. Given that there were no replacements involved, there were no scheduling requirement arguments advanced nor an argument that striking and non-striking employees would be doing the same jobs. The Respondent did not provide special or unique reasons for shutting down the cafeteria during the period following the strike. Rather the Respondent advanced the same concerns and arguments discussed and rejected above.

35

40

For the same reasons I have found that the Respondent improperly delayed the reinstatement of the other strikers immediately above, I find the Respondent wrongfully denied the cafeteria strikers reinstatement immediately after the strike by the device of keeping the public portion of the cafeteria closed. As found supra the Respondent did not demonstrate sufficient legitimate and substantial business justification for the continued closure and concomitant failure to reinstate the striking cafeteria works at the strikes end.

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¹¹ A portion of the Respondent's brief is entitled: "One-Day Strikes Are Inherently Disruptive to Replacement Staffing."

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¹² And, of course, an employer may in a variety of situations lock out employees as part of the bargaining process. No lock out was involved herein.

5. The Respondent's Notification to Employees that Reinstatement Would Be Delayed

5 The complaint alleges that the Respondent's pre-strike communications to employees
 that strikers would not be reinstated at the strikes end but rather would only be reinstated four
 days later violated Section 8(a)(1) of the Act. The government's theory is that threatening
 employees with an illegal denial of reinstatement following a strike impermissibly chills
 employee Section 7 rights. The allegation is entirely derivative of and dependent on the
 10 allegation that the delayed reinstatement was improper. Having found the delay described in
 the communication to employees violated the Act, it follows that the Respondent announcement
 to employees of that improper reinstatement policy also violates the Act. I so find and sustain
 this allegation of the complaint.

6. The Failure to Bargain Allegation

15 The complaint alleges that the Respondent's retention of temporaries – other than the
 employment agency-supplied temporaries discussed supra – in the four days after the strike
 was: (1) a mandatory subject of bargaining, (2) done without affording the Union an opportunity
 to bargain and, (3) in consequence, a violation of Section 8(a)(5) of the Act.

20 An employer need not bargain with a union respecting temporary strike replacement
 employees' terms and conditions of employment. The complaint does not allege a failure to
 bargain over the strike replacement employees during the strike. Consistent with the General
 Counsel's theory that the strike replacements, other than employment agency supplied 5-day
 25 contract employees, ceased being legitimate replacements at the strike's end, the complaint
 alleges the Respondent had a duty thereafter to bargain respecting all those who were doing
 unit work and that the Respondent failed to do so. This allegation is entirely derivative of and
 dependent on the allegation that the delayed striker reinstatement was improper. Having found
 the delay in offering reinstatement to the striking employees at the strikes end violated the Act, it
 30 follows that the Respondent's failure to provide an opportunity to the Union to bargain over the
 terms and conditions of individuals doing unit work during the period when strikers should have
 been reinstated also violates the Act. I so find and sustain this allegation of the complaint.

7. Summary and Conclusions

35 As set forth above, I have found that the employees work stoppage on
 November 14, 2003, was protected, concerted activity or, in the alternative, that the Respondent
 was estopped to deny that this was so because it had reinstated the employees and not raised
 the argument of unprotected activities at relevant times. I therefore found it unnecessary to
 40 determine if the parties collective-bargaining agreement was orally extended to cover the period
 of the one-day strike on November 14, 2003. I also found that there is no 5-day grace period for
 the reinstatement of economic strikers by an employer under Board law.

45 Treating the employees' November 14, 2003, work stoppage as protected, I considered
 the Respondents argued legitimate and substantial business justifications for delaying
 reinstatement of the striking unit employees other than those replaced by temporary Agency
 employees, from the strikes end to four days thereafter. Finding the Respondent's asserted
 justification insufficient, I found the delay in reinstatement a violation of Section 8(a)(1) and (3)
 50 of the Act as alleged. Making a similar analysis of the allegation of the wrongful closure of the
 cafeteria and the delay in cafeteria striker's reinstatement, I reached the same conclusions and
 found the closure and the delay in reinstatement also to violate Section 8(a)(1) and (3) of the
 Act.

In consequence of the above findings, I also found that the Respondent's pre-strike announcement to employees that reinstatement of strikers would not occur at the strikes end violated Section 8(a)(1) of the Act and I further found that the Respondent's failure to provide the Union with an opportunity to bargain respecting the terms and conditions of employment of individuals engaged in Union work, other than those individuals supplied by temporary agencies, in the four days following the strikes end violated Section 8(a)(5) and (1) of the Act.

Remedy

Having found that the Respondent violated the Act as set forth above, I shall order that it cease-and-desist there from and post remedial Board notices.

I shall also direct that the Respondent make whole the striking employees¹³ who unconditionally offered to return to work by the end of the strike, and whose delay in reinstatement was without legitimate and substantial business justification or who were not reinstated immediately after the strike because portions of the Respondent's facility were closed, for any and all losses incurred due to the denial of reinstatement to their normal shifts in the four day period November 15 through 18, 2002, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Conclusions of Law

On the basis of the above findings of fact and the record as a whole and Section 10(c) of the Act, I make the following conclusions of law.

1. The Respondent is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution with the meaning of Section 2(14) of the Act.

2. The Charging Party is, and has been at all relevant times, a labor organization within the meaning of Section 2(5) of the Act.

3. The Charging Party represents the Respondent's employees in the following unit, which is appropriate for bargaining within the meaning of Section 9 of the Act:

All Environmental Service Aides, Food Service Assistants, Laundry Helpers, Home Health Aides, Respiratory Assistants, Service Partners, Central Distribution Technicians, Grill Persons, Lead EVS Service Aides, Rehab Aides, Sterile Processing Technicians, Storekeepers, Nurse Assistant/CNAs, Radiology Assistants, Anesthesia Technicians, Cooks, ER Technicians, Monitor Technicians, OBF Technicians, Unit Secretaries, US/NAs, EEG Technicians, Surgical Technicians, LVNs, Echo Technicians, Radiology Technologists, Respiratory Care Practitioners, Mammo Technologists, Ultrasound Technologists, CV/Angio Technologists, Nuclear Medicine Technologists, CV/Radiology Technologists, Ultrasound Noninvasive Vascular Technologists, excluding all executive, administrative, professional and office clerical employees, employees represented by other collective bargaining representatives

¹³ The parties agreed to identify individual strikers and the extent and quantification of losses to be made whole at the compliance stage of the proceedings, as necessary.

recognized by the Respondent and supervisors as defined the National Labor Relations Act.

5 4. The Respondent violated Section 8(a)(1) of the Act by notifying potential striking employees who were not to be replaced by temporary employees supplied by employment agencies with a minimum 5-day employment period that strikers reinstatement would be delayed for a 4 day period after the strike without legitimate and substantial business justification to do so.

10 5. The Respondent violated Section 8(a)(3) and (1) of the Act by:

a. Delaying the reinstatement of certain economic strikers after the strike had ended and the strikers had unconditionally offered to return to work without substantial and legitimate business justification.

15 b. Closing or keeping closed portions of the facility which employed unit employees following a strike without legitimate and substantial business justification to do so and thereby denying reinstatement to economic strikers after the strike had ended and the strikers had unconditionally offered to return to work.

20 6. The Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with an opportunity to bargaining respecting terms and conditions of employment of employees doing unit work at a time the employees were no longer legitimate striker replacements.

25 7. The unfair labor practices described above are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

ORDER

30 Based upon the above findings of fact and conclusions of law, and on the basis of the entire record herein, I issue the following recommended Order.¹⁴

35 The Respondent, Sutter Health Center d/b/a Sutter Roseville Medical Center, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
 - 40 a. Discouraging membership in Health Care Workers' Union Local 250, Service Employees International Union, AFL-CIO and discouraging employees' exercise of their right to engage in protected concerted activity by delaying the reinstatement of certain economic strikers after the strike had ended and the strikers had unconditionally offered to return to work.
 - 45 b. Notifying employees who were not to be replaced by temporary employees supplied by employment agencies with a minimum 5-day employment period

50 ¹⁴ If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections shall be waived for all purposes.

before a strike that the strikers' reinstatement would be delayed for 4 days without legitimate and substantial business justification to do so.

5 c. Closing or keeping closed portions of the facility which employed unit employees following a strike without legitimate and substantial business justification to do so, thereby denying reinstatement to economic strikers after the strike had ended and the strikers had unconditionally offered to return to work.

10 d. Failing to provide the Union with an opportunity to bargain respecting terms and conditions of employment of employees doing unit work at a time they were no longer legitimate striker replacements.

15 e. In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

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

20 a. Make whole the striking employees who unconditionally offered to return to work on November 15, 2002, at the end of the strike or thereafter, and whose delay in reinstatement was without legitimate and substantial business justification or who were not reinstated immediately after the strike because portions of the Respondent's facility were closed, for any and all losses incurred due to the denial of reinstatement to their normal shifts in the 4-day period November 15 through 18, 2002, with interest.

30 b. Preserve and within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all records, including an electronic copy of such records if stored in electronic form, necessary to determine if the terms of this Order have been complied with.

35 c. Within 14 days after service by the Region, post copies of the attached Notice at its Roseville, California facility set forth in the Appendix¹⁵. Copies of the notice, on forms provided by the Regional Director for Region 20, in English and such other languages as the Regional Director determines are necessary to fully communicate with employees, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted in each of the facilities where unit employees are employed. Reasonable steps shall be taken by the Respondent to ensure the notices are not altered, defaced or covered by other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed its Roseville, California facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice

50 ¹⁵ If this Order is enforced by a Judgment of the 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."

to all current employees and former employees employed by the Respondent at the closed facility at any time after November 14, 2002.

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- d. 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.

Issued at San Francisco, California, this 20th day of April 2004.

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Clifford H. Anderson
Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES Posted by Order of the National Labor Relations Board An Agency of the United States Government

FEDERAL LAW GIVES EMPLOYEES THE RIGHT TO

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

Employees covered by the National Labor Relations Act, including our employees, have a right to engage in protected activities such as an economic strike in support of bargaining demands. At the end of a strike, upon employees applying unconditionally to return to work, they are entitled to immediate reinstatement unless the employer has substantial and legitimate business justification to delay reinstatement.

Health Care Workers' Union Local 250, Service Employees International Union, AFL-CIO, represents certain of our employees in a bargaining unit described below. When some of those employees went out on a one-day strike in November 2002, we notified employees before the strike that reinstatement would not occur until four days after the strikes end. We in fact did not reinstate striking employees until four days after the strikes end.

After a trial in which we participated and adduced evidence, the National Labor Relations Board found that as to striking employees, other than those striking employees who had been replaced by temporary employees supplied under a contract calling for a minimum of 5 days' work, we did not demonstrate a substantial and legitimate business justification to delay the immediate reinstatement of strikers. Therefore the NLRB found we wrongfully delayed the striker's reinstatement, wrongfully told them before the strike that reinstatement would be delayed, and wrongfully failed to provide the Union an opportunity to bargain respecting the terms and conditions of employment of the temporary employees who continued to do unit work after the strike.

As part of the remedy ordered by the Board, we have been directed to post this notice and to take the affirmative steps set forth below.

We give our employees the following assurances:

WE WILL NOT discourage membership in Health Care Workers' Union Local 250, Service Employees International Union, AFL-CIO and/or discourage employees exercise of their right to engage in protected concerted activity by delaying the reinstatement of economic strikers for 4 days after the strike had ended and the strikers had unconditionally offered to return to work.

WE WILL NOT notify or inform employees who were not to be replaced during a strike by temporary employees supplied by employment agencies with a minimum 5-day employment period before a strike that strikers reinstatement would be delayed for 4 days without legitimate and substantial business justification to do so.

WE WILL NOT close or keep closed portions of the facility which employ unit employees following a strike without legitimate and substantial business justification to do so thereby denying reinstatement to economic strikers after the strike had ended and the strikers had unconditionally offered to return to work.

WE WILL NOT fail to provide the Union with an opportunity to bargaining respecting terms and conditions of employment of employees doing unit work who were no longer legitimate striker replacement.

WE WILL NOT utilize temporary strike replacement employees in bargaining unit positions after those employees are no longer legitimate strike replacements without providing the Union with an opportunity to bargain respecting their terms and conditions of employment.

WE WILL NOT in any like or related manner violate the National Labor Relations Act.

WE WILL make whole the striking employees who unconditionally offered to return to work on November 15, 2002, at the end of the strike, and whose delay in reinstatement was without legitimate and substantial business justification or who were not reinstated immediately after the strike because portions of the Respondent's facility were closed, for any and all losses incurred due to the denial of reinstatement of those employees to their normal shifts in the four day period November 15 through 18, 2002, with interest.

Health Care Workers' Union Local 250, Service Employees International Union, AFL-CIO, represents certain of our employees in the following bargaining unit of employees at our Marysville Medical Center:

All Environmental Service Aides, Food Service Assistants, Laundry Helpers, Home Health Aides, Respiratory Assistants, Service Partners, Central Distribution Technicians, Grill Persons, Lead EVS Service Aides, Rehab Aides, Sterile Processing Technicians, Storekeepers, Nurse Assistant/CNAs, Radiology Assistants, Anesthesia Technicians, Cooks, ER Technicians, Monitor Technicians, OBF Technicians, Unit Secretaries, US/NAs, EEG Technicians, Surgical Technicians, LVNs, Echo Technicians, Radiology Technologists, Respiratory Care Practitioners, Mammo Technologists, Ultrasound Technologists, CV/Angio Technologists, Nuclear Medicine Technologists, CV/Radiology Technologists, Ultrasound Noninvasive Vascular Technologists, excluding all executive, administrative, professional and office clerical employees, employees represented by other collective bargaining representatives recognized by the Sutter Marysville Medical Centers, and supervisors as defined the National Labor Relations Act.

SUTTER HEALTH CENTERS, SUTTER ROSEVILLE
MEDICAL CENTER

(Employer)

Dated _____ By _____

(Representative)

(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

901 Market Street, Suite 400, San Francisco, CA 94103-1735
(415) 356-5130, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUSTNOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THISNOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (415) 356-5139.

THIS NOTICE AND THE DECISION IN THIS MATTER ARE PUBLIC DOCUMENTS

Any interested individual who wishes to request a copy of this Notice or a complete copy of the Decision of which this Notice is a part may do so by contacting the Board's Offices at the address and telephone number appearing immediately above.