

**From:** [Shorter, LaDonna](#)  
**To:** [Shorter, LaDonna](#)  
**Subject:** PASNAP (Albert Einstein Hospital), 04-CB-261088 -- COVID - Case-closing E-mail  
**Date:** Wednesday, November 18, 2020 6:23:27 PM

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**From:** (b) (6), (b) (7)(C)

**Sent:** Wednesday, November 18, 2020 12:31 PM

**To:** Maier, Harold A. <Harold.Maier@nlrb.gov>; Heller, Richard P. <Richard.Heller@nlrb.gov>

**Cc:** Bock, Richard <Richard.Bock@nlrb.gov>; Dodds, Amy L. <Amy.Dodds@nlrb.gov>; Shorter, LaDonna <Ladonna.Shorter@nlrb.gov>

**Subject:** PASNAP (Albert Einstein Hospital), 04-CB-261088 – COVID - Case-closing E-mail

The Region submitted this case for advice on whether, since about March 2020<sup>[1]</sup>, the Union has failed to bargain in good faith for a successor collective-bargaining agreement with the Employer. We agree with the Region that dismissal is warranted, but only for the reasons set forth below.

The Employer is an acute care hospital located in Philadelphia, Pennsylvania whose full-time, regular part-time and per diem Registered Nurses and Nurse Practitioners are represented by the Union. The parties' most recent collective-bargaining agreement ("Agreement") was due to expire on February 29. In light of the Employer's stalled proposed merger with another employer, after several meetings for a successor agreement, the parties agreed to an Extension Agreement on February 27. The Extension Agreement provided in pertinent part:

\* \* \*

Whereas the parties desire to extend the Agreement while negotiations continue;

Now therefore this 27th day of February, 2020, the parties agree as follows:

The parties' Collective Bargaining Agreement shall be extended through February 28, 2021, with the proviso that either party may terminate the Extension Agreement upon thirty (30) days written notice to the other party.

\* \* \*

The Agreement extended by the above also contained a zipper clause that effectively waived either party's obligation to bargain over open subjects not contained in the Agreement.

We conclude that the Union honored the Extension Agreement, which anticipated that negotiations would continue even while said Extension Agreement remained in effect. We similarly conclude the Union satisfied its bargaining obligation. Thus, the parties continued to exchange proposals for a successor contract by e-mail in late March and April. Notwithstanding the Union's March 31 refusal to meet virtually with the Employer and the mediator due to the demands of the pandemic on its bargaining team comprised of nurses, it immediately followed with an off-the-record, yet substantive, e-mailed contract proposal to the Employer and, on April 3, the Employer's off-the-record response was an equally substantive counterproposal for the Union's consideration.

(b) (7)(A)

In addition, on April 3, the Employer asked *if* the Union wished to meet, but both parties were apparently satisfied to bargain by e-mail until May 7 when the Employer again asked to resume bargaining virtually or by other remote means due to anticipated severe financial losses caused by

the pandemic. On May 11, the Employer repeated its request. On May 12, the Union's response was that it was not interested in beginning negotiations again due to the COVID-19 pandemic and the Extension Agreement, but offered to set something up in July if the Pennsylvania stay-at-home order was lifted by that time. Rather than pressing the issue, the Employer shifted gears and took a different tack by focusing on modifying the terms of the Extension Agreement instead.

To address what it perceived as the Union's concern about the Extension Agreement's termination language, on May 14, the Employer proposed to convert the Extension Agreement to a definite term of one year and remove the 30-day termination notice provision. On May 26, the Union rejected the Employer's proposal to change the terms of the Extension Agreement. The next day, by telephone, the parties and the Federal mediator spoke by telephone. The Employer instead suggested that the Extension Agreement be modified to end 90 days after Philadelphia County moved to the "Green Phase" of the Governor's reopening plan—with no 30-day termination provision. The Union replied it was willing to discuss the Employer's proposal, but did not believe there was a duty to bargain—apparently because of the zipper clause contained in the Agreement.

Regardless of the merit of the Union's position, we conclude that it continued to bargain nevertheless, and no violation can be found. Specifically, and notwithstanding its assertion, the Union indicated that it would entertain the Employer's proposal in exchange for discussion of a COLA, effective July, for all bargaining unit employees. On May 28, the Union made plain that absent further bargaining over the COLA, it rejected the Employer's proposed revision to the Extension Agreement.

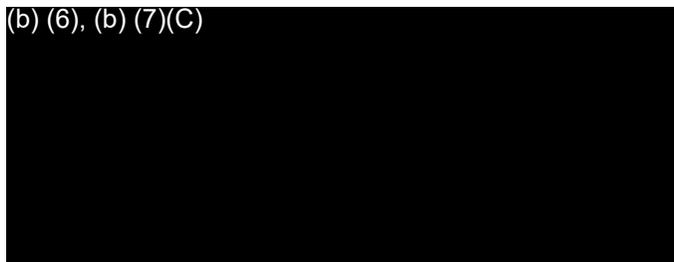
On June 17, although the Extension Agreement only required 30 days' notice, the Union provided 90 days' notice to the Federal Mediation and Conciliation Service that it intended to terminate the Agreement on September 17. Then, on July 10, the Union contacted the Employer to discuss the logistics of bargaining and proposed to meet on August 5, 11, and 19. The parties agreed to meet and bargain in-person and face-to-face on August 11 and 19, September 16 and 23 and October 14.

Therefore, although the Union specifically declined to bargain remotely on March 31 and May 12, in fact, the parties continuously bargained by e-mail about both the Agreement and modifications to the Extension Agreement; held discussions at least once with the mediator by telephone on May 27; and resumed face-to-face negotiations in August. Under these circumstances, we conclude that the Union has not unlawfully refused to bargain since about March 2020 as alleged in the charge.

Because the charge lacks merit, the Region should dismiss the charge, absent withdrawal. This email closes the case in Advice. Please contact us with any questions or concerns.

*As of January 20, 2020, the NLRB requires electronic filing by parties. Please see [www.nlr.gov](http://www.nlr.gov) for more information.*

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[\[1\]](#) All dates are 2020 unless otherwise indicated.