

JUL 02 2010



**United States Government**  
**NATIONAL LABOR RELATIONS BOARD**  
**Region 7 – Resident Office**  
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June 30, 2010

Mr. Peter J. Kok, Attorney  
Mr. Keith Eastland, Attorney  
Miller Johnson Attorneys and Counselors  
250 Monroe Avenue N.W., Suite 800  
P.O. Box 306  
Grand Rapids, MI 49501-0306

RE: Michigan Nurses Association, National Nurses  
United, AFL-CIO (Borgess Medical Center)  
Case GR-7-CB-16846

Dear Mr. Kok and Mr. Eastland:

The Region has carefully investigated and considered your client's charge against Michigan Nurses Association, National Nurses United, AFL-CIO alleging violations under Section 8 of the National Labor Relations Act.

**Decision to Dismiss:** Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing your charge. A Summary Report of the basis for my conclusion is attached.

**Your Right to Appeal:** The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the GENERAL COUNSEL of the National Labor Relations Board. Use of the Appeal Form (Form NLRB-4767) will satisfy this requirement. However, you are encouraged to submit a complete statement setting forth the facts and reasons why you believe that the decision was incorrect.

**Means of Filing:** An appeal may be filed electronically, by mail, or by a delivery service. The appeal MAY NOT be filed by fax. Filing an appeal electronically is preferred but not required. To file an appeal electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), click on **E-GOV**, select **E-Filing**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14<sup>th</sup> Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to the Regional Director.

**Appeal Due Date:** The appeal is due on **July 14, 2010**. If you file the appeal electronically it will be considered timely filed if the transmission of the entire document through the Agency's website is accomplished **no later than 11:59 p.m. Eastern Time** on the due date.

If you mail the appeal or send it by a delivery service it must be received by the General Counsel in Washington, D.C. by the close of business at **5:00 p.m. Eastern Time** or be postmarked or given to the delivery service no later than **July 13, 2010**.

***Extension of Time to File Appeal:*** Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-Gov**, select **E-Filing**, and follow the detailed instructions. The fax number is (202) 273-4283. A request for an extension of time to file an appeal **must be received on or before the original appeal due date**. A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to the Regional Director.

***Confidentiality/Privilege:*** Please be advised that we cannot accept any limitations on the use of any appeal statement or evidence in support thereof provided to the Agency. Thus, any claim of confidentiality or privilege cannot be honored, except as provided by the FOIA, 5 U.S.C. 552, and any appeal statement may be subject to discretionary disclosure to a party upon request during the processing of the appeal. In the event the appeal is sustained, any statement or material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. Because we are required by the Federal Records Act to keep copies of documents used in our case handling for some period of years after a case closes, we may be required by the FOIA to disclose such records upon request, absent some applicable exemption such as those that protect confidential source, commercial/financial information or personal privacy interests (e.g., FOIA Exemptions 4, 6, 7(C) and 7(d), 5 U.S.C. § 552(b)(4), (6), (7)(C), and (7)(D)). Accordingly, we will not honor any requests to place limitations on our use of appeal statements or supporting evidence beyond those prescribed by the foregoing laws, regulations, and policies.

***Notice to Other Parties of Appeal:*** You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is sent to the General Counsel, please complete the enclosed Appeal Form (NLRB-4767) and send one copy of the form to all parties whose names and addresses are listed.

Very truly yours,

/s/ Stephen M. Glasser

Stephen M. Glasser  
Regional Director

SMG:aco  
Enclosures

cc: Office of Appeals  
National Labor Relations Board  
1099 14th Street, N.W.  
Washington, D.C. 20570

Mr. Shahin Motakef  
Executive Vice President & COO  
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Mr. John Karebian  
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Re: Michigan Nurses Association  
(Borgess Medical Center)  
Case GR-7-CB-16846

### SUMMARY REPORT

The charge was filed on March 25, 2010,<sup>1</sup> by Borgess Medical Center (BMC) alleging that the recognized collective bargaining representative of its approximately 700 Registered Nurses, Michigan Nurses Association (MNA), by conduct at and away from the bargaining table has refused to bargain in good faith with BMC regarding a successor to the parties' 2007-2010 collective bargaining agreement. The charge also alleges that MNA engaged in a pattern of improper conduct and orchestrated a campaign designed to disparage BMC and its employees, frustrate the negotiation process, and restrain and coerce employees in the exercise of their statutory rights under Section 7 of the National Labor Relations Act.

From mid-January to the present, the parties have engaged in contentious negotiations across a wide range of issues, but a common theme united many of their disputes: the workload and hours that can be required of RNs. Generally, BMC emphasized its goal of achieving significantly greater flexibility and unilateral control in scheduling, time off, PTO, layoff and recall, transfer procedures, and other subjects. MNA sought to retain and add to the existing contractual limitations in these areas and argued that the quality of patient care could suffer if individual nurses were overworked. Both parties have communicated directly with the nurses and with the public concerning their views on the negotiations and the other party's conduct.

In support of its charge that MNA bargained in bad faith, BMC points to MNA's decision to cancel a scheduled March 3 negotiation meeting in order to prepare for a March 9 ratification vote on the package of BMC's economic and noneconomic proposals that had been advanced at that time. MNA leadership announced in advance of the meeting their intention to recommend rejection of the proposal package, which included converting a substantial portion of existing contract terms to "policies" that would be subject to BMC's unilateral control.<sup>2</sup> Late in the afternoon of Friday, March 5, MNA received from BMC's legal counsel and bargaining spokesman an unsolicited batch of policy drafts, some of which contained substantial changes to existing practices under current terms of the contract. After studying their content MNA concluded that these drafts affected their understanding of how BMC could exploit the "policy" language in its proposal, and contradicted BMC's assurances that few or no specific significant changes were contemplated. MNA's decision to cancel the ratification vote is not, in these circumstances, evidence of a desire to frustrate or avoid agreement. Neither can it be shown that MNA's subsequent statements to the RNs and the public that its decision to cancel the vote was caused by a "new proposal" are unfair or misleading statements.

Other statements by MNA are alleged by BMC to be disparaging, intentionally false and misleading, and as evidence of MNA's bad faith in the negotiations, as well as unlawful restraint and coercion of employees in violation of Section 8(b)(1)(A). MNA statements that BMC would be unrestrained by contract language and would be able to "do whatever they want" or act "at their whim" under its policy proposals, however, are neither demonstrably false or misleading;

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<sup>1</sup> All dates herein are 2010, unless otherwise noted.

<sup>2</sup> In a related charge filed by MNA, Case GR-7-CA-52794, the parties have been informed of the Regional Director's determination that reasonable cause exists to believe that BMC violated Section 8(a)(1)(3)(5) and that, absent settlement or adjustment, a Complaint and Notice of Hearing will soon issue in that case.

under its proposals, BMC would be constrained only by a process of giving “notice” and seeking “input” from the RNs and the MNA, neither of which would necessarily prevent BMC from acting unilaterally. Moreover, MNA publications made clear that the policy vs. contract dispute concerned a limited but important range of issues.

The accuracy of MNA’s public statements that BMC was “refusing to give the nurses a voice in providing safe patient care” depends on whether substituting “input” for contractual guarantees would leave the RNs with a meaningful say on scheduling and workload conflicts. It was determined that MNA’s statement is not an unreasonable one.

BMC cites two statements made by local news outlets on April 11 that MNA was seeking minimum staffing ratios when, in fact, MNA had withdrawn its staffing ratio proposal at the April 6 meeting. No evidence was presented or found that MNA was responsible for the inaccuracy in these reports.

BMC alleges that a statement attributed to bargaining unit RN Chris Sherlock (MNA member and grievance chairperson) in a March 4 local newspaper article disparaged the hospital. Sherlock’s statement was, “How some patients make it through the night – alive – it’s a miracle.” However, both the article and the February 17 MNA press release where the quote originally appeared were about the statewide shortage of nurses and pending legislation on staffing ratios. Neither source addressed the contract negotiations at BMC, and neither indicated that Sherlock was speaking of BMC, exclusively or inclusively.

BMC alleges that MNA refused to counter or respond to its proposals. A careful review of the evidence, however, shows that the MNA presented a comprehensive list of proposals covering noneconomic subjects of bargaining at the parties’ first meeting on January 14. BMC introduced its noneconomic and “policy” proposals at the next meeting on January 19. Contrary to BMC’s claims that MNA summarily rejected the proposal, the evidence shows that much time during the next seven meetings was devoted to MNA asking questions, seeking clarification and justification for BMC’s demands. After BMC made explicit at the third meeting that it would not be responding to MNA’s proposals as “contract” language, but only consistent with its proposed right to change policies unilaterally, BMC proposals became the *de facto* basis for much of the subsequent discussions.

MNA’s representative stated at the end of the January 21 meeting that it would “put together our economic proposal,” but when the parties reconvened on January 25 MNA resumed its questioning of BMC about the meaning and intentions behind BMC’s proposals, and the parties continued to focus primarily on BMC’s proposals for the next several meetings. Although MNA representatives described BMC’s proposals as a “hurdle we cannot get past,” and that they believed the parties had “hit a brick wall” and were at a “standstill” until they could consult with their members over these issues, it was not until the February 16 meeting that MNA unequivocally rejected the policy proposals on ground that they encompassed permissive subjects of bargaining.<sup>3</sup> The MNA team’s departure from the meeting room that day at about 3:24 p.m., nearly six hours after the meeting began, while explaining that it would be seeking input from the union membership, does not support BMC’s claim that MNA had unlawfully refused to meet.

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<sup>3</sup> The MNA’s position that BMC’s policy proposals include permissive subjects of bargaining is consistent with its legal theory in Case GR-7-CA-52794.

In mid-March MNA suggested the concept of expedited arbitration as a means to address BMC's desire for flexibility, an idea that BMC rejected almost immediately. Even after that date, at a mediated bargaining session on April 6, MNA representatives asked whether BMC would consider merely reducing the scope of its policy proposals.

Considering the totality of MNA's conduct at the bargaining table throughout the course of these negotiations, and their communications with their members and the public, the evidence does not support a conclusion that MNA had an unlawful intent to frustrate or avoid reaching agreement with BMC, or that it restrained and coerced employees in the exercise of their Section 7 rights.

Accordingly, based on the foregoing, the charge is dismissed.