

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

GOOD SAMARITAN HOSPITAL,

Case 31–CA–282566

and

CALIFORNIA NURSES ASSOCIATION,

Amanda Laufer, Esq., for the General Counsel.
Patricia DeSantis Belton, Esq. and Brianna Frazier Earley, Esq.
(Jeffer, Mangels, Butler & Mitchell, LLP), for the Respondent.
Anthony J. Tucci, Esq. and Amara C. Blades, Esq.,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

GERALD M. ETCHINGHAM, Administrative Law Judge. This case was tried using the Zoom for Government video platform technology on March 22, 2022. The California Nurses Association (the Union, CNA, or Charging Party) filed the initial charge in this case on September 2, 2021, and on December 28, 2021, the Union filed a corrected first amended charge. The General Counsel issued the complaint on January 5, 2022 and Good Samaritan Hospital (the Respondent or PIHGS), filed a timely answer denying all material allegations.

The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act), when in August 2021¹, it refused to bargain with the Union after the Union provided sufficient notice to Respondent of its intent to modify, amend, or terminate the parties' most recent collective-bargaining agreement (the 2018 CBA), and whether since August 5, Respondent also refused to provide any information relevant to negotiations for a successor contract to the Charging Party Union. For the reasons detailed below, I find the General Counsel has proved these allegations by a preponderance of the evidence.

¹ All dates are in 2021 unless otherwise noted.

On the entire record,² including my observation of the demeanor of the witnesses, and after considering the parties' closing briefs,³ I make the following

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FINDINGS OF FACT

I. JURISDICTION

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The Respondent, a corporation, with an office and place of business in Los Angeles, California, has been operating a hospital/acute care facility providing medical care (its facility), where it annually derives gross revenues in excess of \$250,000, and purchases and receives goods at its facility location valued in excess of \$5000 directly from points outside the State of California. The parties admit, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, it has been a health care institution with the meaning of Section 2(14) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

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II. ALLEGED UNFAIR LABOR PRACTICES

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A. Stipulated Facts and Further Findings

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Respondent and the Union have had an ongoing collective-bargaining relationship, the most recent embodied by the 2018 CBA which existed from November 12, 2018, through November 11, 2021. (Jt. Exh. 1, #2; Jt. Exh. 2.) This relation dates back many years to 2000 and the Union has consistently sent written notices to bargain for a new CBA to Respondent during the contractual window period in July or August every 3 years without dispute, like clockwork, in 2009, 2012, 2015, 2018, and 2021.

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As of March 2022, Charging Party's unit is comprised of 500-600 nurses, and they all work at buildings located at 1225 Wilshire Blvd., 637 South Lucas Rd., and 1245 Wilshire Blvd., within the same block in Los Angeles where Respondent's main hospital is located. (Tr. 30-31.)

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The unit is specifically identified as the following employees of Respondent (the unit) and constitutes a unit appropriate for the purposes of the collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time, regular part-time, and per diem registered nurses, including charge nurses.

² The transcripts and exhibits in this case generally are accurate. However, I hereby make the following corrections to the trial transcript: page (p.) 9, line (l.) 19: "Denise" should be "Vanise;" p. 22, l. 22: "rounds" should be "backgrounds;" p. 43, l. 5: "SMCS" should be "FMCS;" p. 50, lls. 14, 19, and 21: "GALLEGOS" should be "Gamino;" p. 51, l. 1: "Gallegos" should be "Gamino;" and p. 119, lls. 18 and 20: "Gamino" should be "Gallegos."

³ Abbreviations used in this decision are as follows: Transcript citations are denoted by "Tr." with the appropriate page number; citations to the General Counsel exhibits are denoted by "GC Exh.;" Respondent exhibits are "R Exh.;" "Jt. Exh." for a joint exhibit; "R Br. for Respondent's closing brief; CP Br. for Charging Party's brief; and "GC Br." for General Counsel's closing brief. Although I have included several citations to the record to highlight particular testimony or exhibits, my findings and conclusions are based not solely on the evidence specifically cited, but rather on my review and consideration of the entire record.

Excluded: All other employees, employee health nurses, managerial employees, confidential employees, guards, and supervisors (including, but not limited to, Vice President of Patient Care Services, nursing directors, nursing managers, and house supervisors) as defined in the Act.

(Jt. Exh. 1, #2.)

At all relevant times, Betty Gallegos (Gallegos), was Respondent's senior employee relations HR advisor, and Jean Meussner (Meussner or HR VP Meussner), was Respondent's vice president of human resources. (Tr. 33, 169, 201; Jt. Exh. 1, #2.) Also, participating in CBA bargaining and communications for Respondent was its lawyer Barbara Arnold, Esq. (Attorney Arnold) who was copied on important CBA communications only during the critical window period to negotiate successor CBAs. (Tr. 33.)

In 2020 and 2021, one of the job duties for Gallegos and HR VP Muessner was responding to the Union's requests for information both related to the Covid-19 pandemic and related to the Union's notice of its intent to bargain and reopen negotiations with Respondent for a successor contract to the 2018 CBA. (Tr. 194, 201.) Stated differently, at all relevant times, Gallegos understood that the Union can send her RFIs related to its duty to represent its unit nurses and also the Union can send Gallegos RFIs related to the Union's contract bargaining relationship with Respondent. Id.

Gallegos also admits that in 2020 and 2021, there were times when the Respondent disputes whether the Union is entitled to receive the information it requests from Respondent. (Tr. 194.)

In fact, Gallegos also admits that when there is a dispute between the Respondent and the Union about providing requested information to the Union, usually there is a back-and-forth between the Respondent and the Union in terms of why that requested information is necessary to the Union. (Tr. 194.)

At all relevant times, Margarita Gamino (Gamino), was the Union's labor representative assigned to Respondent beginning in January 2019 and continuing thereafter, and Virginia Corcoran (Corcoran), was the Union's support staff secretary. (Tr. 29, 33, 97; Jt. Exh. 1, #3.) Sam Cook (Cook) is the Union's chief bargaining agent who participated in session in 2018 and through August 2021.

Gamino's job duties include enforcing the CBA between the Union and Respondent and helping resolve their issues, helping represent them in any kind of disciplinary meetings, and filing grievances. (Tr. 29.)

Gamino also participated in negotiations with Respondent for the 2018 CBA and Gamino was in charge of working with the bargaining committee, helping them draft proposals beginning around November of 2018 before Gamino began her official work as labor representative at the Union in January 2019. (Tr. 31, 97.) Gamino had no prior experience before late 2018 providing a notice of intent to bargain to Respondent at any point prior to November 2018. (Tr. 97.)

Alejandro Cuevas (Cuevas) is a 12-year critical care nurse with Respondent and he is also a union member. (Tr. 80.) At the time of hearing in March 2022, Cuevas was also the senior chief representative of the Union at Respondent. Id.

5 In the late summer/early fall of 2021, the nurses at Respondent were set to bargain a successor contract for the first time since the start of the Covid-19 pandemic in March 2020, which had acutely affected their working conditions. (Tr. 171.)

10 Also, resulting from the Covid-19 pandemic beginning in March 2020, the Union increased the number of requests for information it sent to Respondent on various Covid-19 pandemic issues such as N-95 mask-wearing, personal protective equipment (PPE), supplies, quarantines of nurses or patients, being OSHA compliant and having proper nurse-patient ratios during the pandemic. (Tr. 171–187; R Exhs. G, H, J, K, M, N, P, Q, S, and T.) None of the Union’s pandemic-related RFIs in 2020 and 2021 involved its intent to bargain for a successor
15 CBA or accompanied an intent to bargain letter with a broad range of requested information related to negotiating a successor agreement except as discussed below its August 5, 2021 Intent to Bargain Letter and accompanying request for information (the 8/5/21 Intent to Bargain Letter and RFI.) Id.

20 In or about July 2021, in anticipation of demanding to bargain for a successor CBA with Respondent as it had in 2009, 2012, 2015, and 2018, the Union begins a process that Gamino describes as electing its bargaining committee for upcoming successor CBA bargaining sessions with Respondent’s team as the Union first elects a bargaining committee by doing elections for what the Union calls a facility bargaining council who then elects the bargaining committee. (Tr.
25 65.) Gamino further explains that the Union starts the process by notifying nurses that nominations are open so they can either self-nominate or nominate each other. Id.

Also, in July 2021, the Union notifies nurses about the open nomination process through whatever means the Union can, including text threads, bulletin boards in breakrooms,
30 newsletters, flyers that the Union distributes, and emails. (Tr. 66.)

One flyer identified by Gamino and Cuevas that Gamino prepared with a heading entitled “Contract Bargaining and Upcoming Elections” was emailed to all nurses in July 2021, including Cuevas, and the flyer references the initial bargaining nomination process described above for
35 the negotiations for a new successor CBA. (Tr. 66–71, 81–84, 87–89; GC Exh. 15.)

Critical care nurse Cuevas also recalled receiving this same flyer in July 2021 from Gamino and he recalled posting it in several units at Respondent and specifically at 4 South and 4 North bulletin boards and the telemetry units in each, the unit where Cuevas works—the
40 cardiovascular intensive care unit (CVICU) as well as the general CVICU unit. Cuevas also handed out this flyer to his coworkers in preop and recovery but not the 5 South bulletin boards due to Covid-19 at that time.⁴ (Tr. 81–84, 87–94, ; GC Exh. 15.)

⁴ Cuevas also opines that he regularly posted flyers once or twice a month on several bulletin boards at Respondent as his regular custom and practice for the Union in 2021. (Tr. 93–94.)

Cuevas further described how he also left flyers in breakrooms for at least five or six units on each of their bulletin boards and that both Respondent management and staff use these breakrooms. Id.

5 Cuevas also recalled talking to his coworker about this July flyer and he assertively opines that discussing the flyer with coworkers is what got him to become more active participating in the Union. (Tr. 82–84, 87–94; GC Exh. 15.) Cuevas further opined that he did not know if any member of Respondent’s management saw the flyer when it was posted on the various bulletin boards in breakrooms. (Tr. 91–92.)

10 The 2018 CBA’s article 40, Duration and Termination of Contract paragraph specifically provides that:

15 This Agreement shall become effective on November 12, 2018 and shall remain in full force and effect through midnight, November 11, 2021. It shall automatically be renewed from year to year thereafter unless either party gives written notice of a desire to modify, amend or terminate it at least ninety (90), but not more than one hundred and twenty (120), days prior to November 11, 2021, or any anniversary of the expiration date thereafter if it is automatically renewed, in
20 the event this Agreement shall remain in effect during negotiations, and until ten (10) days, advance written notice by either party of its termination, but such notice may not be given sooner than ten (1) days before the expiration date.

25 Upon termination of this Agreement, whether by expiration of its term or otherwise, all rights and obligations of the Hospital, the Union, and the Nurses under this Agreement shall cease.

(Tr. 32; Jt. Exh. 2 at 83.)

30 Therefore, the 2018 CBA provides that, in 2021, if the Union wanted to modify, amend, or terminate the 2018CBA, it was required to provide written notice to Respondent between about July 14th and about August 12th if the Union wanted to negotiate a successor CBA and avoid automatic renewal just the same as it had in 2009, 2012, 2015, and 2018. (Tr. 32; Jt. Exh. 2 at 83.)

35 On August 5, 2021, Gamino instructed and Corcoran sent this written notice email to Gallegos and Meussner, and Respondent’s Attorney Arnold, with the subject line, “PIHGSH Intent to Bargain Letter and Information Request,” which attached a three-page letter request for information almost identical to the request sent in 2018, the Union’s August 5, 2021 Intent to Bargain Letter and RFI to Respondent). (Tr. 33, 197–198; Jt. Exh. 1, #4; Jt. Exh. 3.) Gamino instructed Corcoran to send the August 5, 2021 Intent to Bargain Letter to Gallegos, Meussner, and Attorney Arnold because these were the individuals who the Union usually notified regarding the opening of the successor agreement and bargaining.⁵ (Tr. 34.)

⁵ Surprisingly, Attorney Arnold and HR VP Meussner did not testify at hearing yet were sent or copied with communications critical in this case such as the 8/5/21 Intent to Bargain Letter and RFI from the Union. None of these percipient witnesses were shown to be unavailable as Attorney Arnold, in particular, was identified at hearing

In fact, the 8/5/21 Intent to Bargain Letter specifically provides:

From: Virginia Corcoran <VCorcoran@CalNurses.Org>
 Sent: Thursday, August 5, 2021 2:59 PM
 To: betty.gallegos@pihhealth.org
 Cc: jean.meussner@pihhealth.org; Arnold, Barbra <BAA@JMBM.com>;
 Margarita Gamino <MGamino@CalNurses.Org>;
 Sam Cook SCook@CalNurses.Org

Subject: PIHGSB Intent to Bargain Letter and Information Request

Ms. Gallegos,

Attached is the Intent to bargain letter and information request for PIH Good Samaritan Hospital.

Thank you,
 Virginia Corcoran

...
 California Nurses Association| Secretary
vcorcoran@calnurses.org | 818.240.1900 | PT

as a witness by Respondent but suddenly chose to rest its case without presenting Attorney Arnold's understanding after her receipt of the 8/5/21 Intent to Bargain Letter and RFI on August 5, 2021. Tr. 203–204. A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, and the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi*, 335 NLRB at 622. Moreover, the Board has held that “when a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge.” *International Automated Machines*, 285 NLRB 1122, 1123 (1987), enfd. 861 F.2d (6th Cir. 1988). Consequently, without credible testimony from Attorney Arnold, HR VP Meussner, or evidence to the contrary, I find that based on the parties' long CBA relationship, past practices in 2009, 2012, 2015, and 2018, and the involvement of Attorney Arnold and HR VP Meussner as two of the three Respondent's key percipient witnesses who received the Union's 8/5/21 written notice to negotiate a new contract during the critical window period that always came along in late July/early August in 2009, 2012, 2015, and 2018, I further find that Attorney Arnold and HR VP Meussner would each have understood that the Union's 8/5/21 Intent to Bargain Letter and RFI adequately communicated the Union's essential message that it intended to negotiate a new CBA for 2021 which was reasonable written notice within the meaning of art. 40 of the 2018 CBA and it was notice timely given. Moreover, Gamino confidently opined that Attorney Arnold has been the Respondent's legal representative for several years and that Attorney Arnold has also been the chief negotiator for at least four of the parties' CBAs dating back to 2009. Tr. 36–37. In addition, Attorney Arnold is only copied on the Union's intent to bargain notices and related RFIs and she does not receive any other communications from the Union (such as Covid-19 pandemic-related RFIs) except during this critical window period when successor CBAs are bargained for between the parties. Id. As a result, I draw an adverse inference that on August 5, 2021, Attorney Arnold and HR VP Meussner each received adequate and timely legal notice of the Union's intent to bargain a successor contract with Respondent and modify the 2018 CBA.

(Tr. 197-198; Jt. Exh. 3 at 1.) (Emphasis added.)

The August 5, 2021 Intent to Bargain letter was prepared by Gamino on instruction from chief Union Representative Cook⁶ in order to advise Respondent of the Union's intent to bargain and obtain necessary information for bargaining and also specifically provides a request for information (the 8/5/21 RFI) as follows:

August 5, 2021
 Betty Gallegos, Human Resources
 PIH-Good Samaritan Hospital
 1225 W. Wilshire Blvd.
 Los Angeles, CA 90015
Betty.Gallegos@PIHHealth.Org

VIA EMAIL, FACSIMILE and Certified US MAIL
 Re: Request for Information

Dear Ms. Gallegos:

In order for us to effectively bargain on behalf of our members, we would like to exercise our right to obtain information from PIH Health-Good Samaritan Hospital (hereinafter "Hospital") that is essential to this process. This is our initial request. We reserve the right to request additional information that may be required as we approach bargaining. Further, we reserve the same right for additional information required during the bargaining process. We would appreciate your efforts to provide the following information as it becomes available so we may review it prior to bargaining.

1) A list of all the Full Time, Part Time and Per Diem Registered Nurses in electronic format employed by the employer as outlined in Article 1, with the following, broken down by department:

1. Name.
2. Home phone number and address.
3. Hourly wage rate.
4. Date of hire.
5. Current Base Rate
6. Years of experience
7. Employee's status.
8. Unit/Department
9. Shift
10. Scheduled hours
11. FTE Status
12. Date and amount of last wage increase
13. Number of hours worked to date

⁶ Gamino describes Cook as having a history of bargaining with Respondent as Cook was previously one of the chairs and negotiators for the 2018 CBA between the Union and Respondent. (Tr. 34; Jt. Exh. 10 at 3-5.)

14. Number of hours budgeted, separated between unpaid and paid, to date
- 2) A copy of all current job openings, job postings, qualifications and requirements
- 3) A copy of all registry and traveler contract including length of contract, name, unit, department, hours worked in the last 39 weeks, dates they worked OT shifts, wage rate and bonuses.
- 4) A list of all registry and travelers used in the last year broken down by unit and scheduled hours.
- 5) A list of all current registry and travelers contracted for each unit/department, hours scheduled and shifts.
- 6) A copy of all bargaining unit job descriptions, specifications, assignments and hours of Work.
- 7) A copy of proposed and actual budgets, as applicable for all registry, traveler, per diem, for fiscal years 2018, 2019, and 2020.
- 8) A copy of all clinical ladder programs that are currently in effect.
- 9) Detailed description of all benefit plans with employer/employee costs and specific employee enrollments broken down by plan, i.e., single, two-party, and family. Such descriptions shall include but not limited to, medical plans, dental plans, vision plans, retirement plans, and 401K plans.
- 10) Copies of current schedules from all departments.
- 11) A copy of IRS Form 990 for the previous fiscal year.
- 12) A complete copy of the current Hospital Employee Handbook and/or Personnel Policies with which bargaining unit members are required to comply with. Such policies shall include, but not limited to the following:
- a. Vacations and Holidays, and the scheduling of the same
 - b. PTO/Sick Leave accrual rates and the procedure for utilizing same
 - c. Leaves of Absence, Illness, Educational, Bereavement, Personal, Parental, Medical
 - d. Shift Differentials
 - e. Standby Pay, Call-Back Pay, Call Off Pay, Reporting Pay
 - f. Seniority Accrual
 - g. Performance Evaluations and applicable process
 - h. Per Diem requirements
 - i. Wage and Hour
 - j. Payment for mandatory meetings
 - k. Job Posting, Job Bidding, and Job Awarding
 - l. Lay-Off/Recall to Work
 - m. Staffing Guidelines, Matrices, and procedures for each unit
 - n. Floating and Call-Off
 - o. Meal and Rest Breaks
 - p. Internal Grievance Procedure
 - q. Long Term Disability
 - r. Life Insurance
 - s. Childcare
 - t. Certification Bonus or Differential
 - u. Tuition Reimbursement
 - v. Declared Contingency Staffing Plan for all units

We would appreciate this information by August 27, 2021. *If there are any questions or clarifications, please don't hesitate to contact me on my cell phone at (747) 228-8492 or via email at MGamino@CalNurses.Org.* Also, if you require more time to fulfill this request, please advise. The Union will accept remaining information without prejudice to its position that it is entitled to all of the information requested. Thank you in advance for your cooperation regarding the above request.

Sincerely,
Margarita Gamino
CALIFORNIA NURSES ASSOCIATION
Labor Representative

cc: Sam Cook, Jennifer Lemmon (CNA)
Jean Meussner (PIH-GSH)
Barbra Arnold (JMBM)
Federal Mediation and Conciliation Service
California State Mediation and Conciliation Service
(August 5, 2021 RFI)(Tr. 34–35, 197–198; Jt. Exh. 3 at 2–4.) (Emphasis added.)

Gamino opines that the August 5, 2021 RFI to Respondent asks for very broad information that the Union needed to be able to prepare for upcoming bargaining for a successor agreement or whenever the Union is opening up the successor agreement in bargaining and trying to obtain that information just the same as the Union has historically requested from Respondent in 2018 and in other 90-to 120-day window periods prior to contract expiration. (Tr. 34–35; Jt. Exh. 10 at 3–5.) Furthermore, Gamino further explains that in addition to copying Respondent's attorney Arnold, Muessner, and sending the August 5, 2021 Intent to Bargain Letter and RFI directly to Gallegos, the August 5, 2021 Intent to Bargain Letter and RFI was also copied the Federal Mediation and Conciliation Service or FMCS, and the California State Mediation and Conciliation Service or SMCS and this would alert Respondent that the Union wanted to negotiate a successor contract. (Tr. 35–36; Jt. Exh. 3 at 2–4.)

Gamino also explains that she copied FMCS with the August 5, 2021 Intent to Bargain Letter and RFI as Gamino would usually only copy FMCS with these types of notices because it was Gamino's understanding that the Union and Respondent needed to notify FMCS of the Union's intent to bargain a successor agreement, and that negotiations would be opening up for both parties. (Tr. 36.) Gamino also opined that the Union does not regularly copy the FMCS with requests to bargain letters that do not pertain to bargaining contracts or successor contracts and that Gamino has only copied the FMCS for this purpose—*"to open up the successor agreement."* (Tr. 36.) (Emphasis added.)

Gamino further opined that she also copied SMCS with the August 5, 2021 Intent to Bargain Letter and RFI for the same reasons that she copied the FMCS. (Tr. 36.) For the same reason, Gamino explains that she does not copy the SMCS with information requests that do not pertain to bargaining contracts or successor contracts like the August 5, 2021 Intent to Bargain Letter and RFI were intended. Id.

Gamino further explained that she copied Respondent Attorney Arnold with the August 5, 2021 Intent to Bargain Letter and RFI because Attorney Arnold has been the Respondent's legal representative for several years and Attorney Arnold has also been the chief negotiator for Respondent on prior CBAs dating back to 2009. (Tr. 36–37.) Gamino further explains that just the same as she infrequently copies FMCS and SMCS above with only notices and intent to bargain letters and related RFIs, Gamino's regular custom and practice is to not copy Attorney Arnold with request to bargain letters or information requests that did not pertain to CBAs or requests to negotiate successor contracts. (Tr. 37.)

Instead, Gamino would regularly send or copy only Gallegos and/or Meussner and not Attorney Arnold at Respondent with request to bargain letters or information requests that do *not* pertain to bargaining contracts or negotiating successor contracts. (Tr. 37.)

Also, in August 2021, Gamino was confident that the Union also sent the FMCS a Form F-7 as it usually does when it is giving notice of its intent to bargain a successor CBA. (Tr. 43.) The FMCS Form F-7 was not sent to Respondent at this time, however, in error, according to Gamino. (Tr. 43, 105.)

The Union 8 August 5, 2021 Intent to Bargain Letter and RFI could have been written in a clearer manner, but I find that it did communicate in writing the Union's intent to bargain for a successor contract with Respondent. I further find that the Union's August 5, 2021 Intent to Bargain Letter and RFI adequately and reasonably communicates the Union's intent to modify, amend, or terminate the expiring 2018 CBA very similar to the way it has done in other years with Respondent. Moreover, I further find that the Union's August 5, 2021 Intent to Bargain Letter and RFI reasonably conveys to Respondent the Union's desire to enter into negotiations for a new successor CBA. (Tr. 34–35.)

Also, I further find that, at a minimum, Respondent was obligated to write to or contact the Union with a question as to what the August 5, 2021 Intent to Bargain Letter and RFI were for if Respondent had any questions or planned to disregard the August 5, 2021 Intent to Bargain Letter and RFI written communications as an appropriate intent to bargain letter just as Respondent had received in this same window period in 2009, 2012, 2015, and 2018.

Gamino opines that on August 5, 2021, the Union sent written correspondence to Respondent which mentioned the Union's "intent to bargain" and the Union requested its customary broad list of information that the Union has traditionally requested from Respondent to assist it specifically for the purposes of opening up an agreement and reviewing that information so that the Union knows what they will be proposing across the table at bargaining sessions for a successor contract. (Tr. 118.) Apart from forgetting to copy Respondent with the FMCS Form F-7 as in past years. I agree with Gamino and further find that the Union's August 5, 2021 notice to Respondent pursuant to article 40 of the CBA was sufficient. *Id.*

Gamino further admits that at no time has the Union ever sent a notice of an intent to terminate the current collective-bargaining agreement, Joint Exhibit 2, to Respondent. (Tr. 102.) Instead, Gamino opines that the Union's August 5, 2021 Intent to Bargain Letter and RFI to Respondent was intended by the Union to be used to reopen up negotiations for a successor

agreement as the parties did before every 3 years at this same time in 2009, 2012, 2015, and 2018. (Tr. 118.)

Gamino also admits that between July 14, 2021 and August 12, 2021, she did not send any other written communication mentioning the collective-bargaining agreement or an intent to bargain to Meussner, Gallegos, Attorney Arnold, or to any other management employee at Respondent other than the August 5, 2021 Intent to Bargain Letter and RFI. (Tr. 99–100, 103.)

Gamino further admits that nowhere in the August 5, 2021 Intent to Bargain Letter are the terms “collective bargaining agreement,” “CBA,” or “memorandum of understanding.” (Tr. 98.) Gamino further admits that the words “modify,” “amend,” or “terminate” are also not mentioned anywhere in the August 5, 2021 Intent to Bargain Letter. (Tr. 98—99.) In addition, the August 5, 2021 Intent to Bargain Letter does not mention any bargaining dates. *Id.* Gamino also admits that the August 5, 2021 Intent to Bargain Letter makes no reference to the Act or of 90 days’ notice. (Tr. 102–103.)

Gallegos recalled receiving a letter from the FMCS sometime after the window period had expired after August 12, 2021, and she forwarded the FMCS letter onto Attorney Arnold. (Tr. 192–193.)

On August 17, 2021, Gamino and Respondent’s Gallegos were emailed information from the FMCS as they had been in past successor CBA years when the Union sent Respondent a similar intent to bargain letter and request for information correspondence. The FMCS’ email advised the Union and Respondent of the FMCS’ knowledge of upcoming contract negotiations for a successor CBA and the FMCS assigned a commissioner to the Union and Respondent the same as in 2009, 2012, 2015, and 2018. (Tr. 43–44; GC Exh. 3.)

Between August 5 and August 19, 2021, no one from Respondent contacted Gamino or the Union about the August 5, 2021 Intent to Bargain Letter or accompanying request for information. (Tr. 49.) In addition, Gallegos further admits that she did not engage in the usual back-and-forth between the Respondent and the Union that Gallegos opined was the normal custom and practice between the parties when there is a dispute as to whether the Union’s requested information on August 5, 2021, was necessary for the Union to have. (Tr. 194–195.)

I also reject as non-credible Gallegos’ testimony that she viewed the Union’s August 5, 2021 Intent to Bargain Letter and RFI as simply another RFI about the pandemic or the Delta surge variant during the pandemic. (Tr. 190, 198.) I find it unreasonable and reject this testimony because a quick review of the August 5, 2021 Intent to Bargain Letter and RFI shows that there is no reference to Covid-19 or the pandemic at all and because this written communication arrived to Gallegos during the Union’s window period for giving notice to negotiate a successor contract the Union had similarly done in 2009, 2012, 2015, and 2018. I further find that Gallegos should have known that the August 5, 2021/21 written communications from the Union was unrelated to the pandemic because there is absolutely no mention of the pandemic and this communication was copied to Attorney Arnold, the FMCS, and the SMCS which should have alerted Gallegos that this is the Union’s notice to begin successor negotiations for a new CBA with Respondent.

Also, the August 5, 2021 RFI was identical to the August 7, 2018 RFI sent to Respondent with the Union's reopener letter and notice of its desire to begin bargaining in August 2018 with copies to the FMCS and SMCS and Gallegos should have known that the August 5, 2021 Intent to Bargain Letter and RFI had no relation at all to the Covid-19 pandemic or a Delta variant surge because there was no specific reference in these written communication to the pandemic or the Delta surge.

Gallegos also admits that she did not ask Gamino to clarify the Union's purpose of sending the August 5, 2021 Intent to Bargain Letter or related RFI before the window period expired about August 12, 2021. (Tr. 191, 200.) Gallegos further admits that she did not reach out to contact Gamino because Gallegos was confused about the information that the Union was requesting with its August 5, 2021 Intent to Bargain Letter and RFI and Gallegos confirms that no one from Respondent contacted the Union to ask what the Union was trying to bargain about on August 5, 2021. Id.

I further find Respondent's non-response to the August 5, 2021/21 Intent to Bargain Letter and RFI is inconsistent with their statutory objective of good-faith negotiations looking for a preservation of industrial peace. I further find that Respondent's total silence to the Union's August 5, 2021 Intent to Bargain and related RFI during the open window period was intentional and made in bad faith by Respondent as it violated the Respondent's normal custom and practice of resolving RFI disputes without any back-and-forth communications from Respondent when it received the August 5, 2021 written notice and RFI.

On August 19, 2021, Meussner sent an email to Gamino and copied Gallegos with the subject line, "Notice of Automatic Renewal of CBA," which attached a one-page letter (the 8/19/21 Notice of Auto Renewal) and the correspondence advises Gamino that Respondent was automatically renewing the 2018 CBA because, according to Respondent, it did not receive the intent to bargain for a successor CBA within the time frame established in the 2018 CBA. (Tr. 45; Jt. Exh. 1, #5; Jt. Exh. 4.)

Gallegos' attached one-page August 19, 2021 letter to Gamino specifically states:

This letter is written to provide you notice that neither Good Samaritan Hospital nor California Nurses Association ("CNA") gave written notice to the other of a desire to modify, amend or terminate the existing Collective Bargaining Agreement ("CBA") between the parties during the contractual notice window of at least ninety (90), but not more than one hundred and twenty (120), days prior to November 11, 2021. Therefore, pursuant to Article 40 of the CBA, the CBA shall automatically be renewed effective November 11, 2021 for another year and will remain in effect until November 11, 2022.
(Tr. 188-189; Jt. Exh. 4 at 2.)

From August 19, 2021, through August 26, 2021, Gamino and Meussner exchanged emails with the subject line, "PIHGSH Intent to Bargain Letter and Information Request." (Jt. Exh. 1, #6; Jt. Exh. 5.)

The next day on August 20, 2021, after receipt of Respondent's August 19, 2021 Notice of Auto Renewal letter, Gamino immediately responded to Meussner informing her that the two sides were not in agreement as to the meaning of the Union's August 5, 2021 Intent to Bargain Letter and Respondent's August 19, 2021 Notice of Auto Renewal and any alleged missed deadline under the CBA. (Tr. 45–46, 120; Jt. Exh. 5 at 3.)

Also, on August 20, 2021, Meussner writes to Gamino and copies Union chief representative Cook and Gallegos and Attorney Arnold:

[Gamino],

We did receive an August 5, 2021 information request from CNA. However, the information request does not include any notice by CNA of its “desire to modify, amend or terminate” the Collective Bargaining Agreement (“CBA”) between the parties, as was required by Article 40 of the CBA. In fact, the information request does not reference the Collective Bargaining Agreement at all.

Pursuant to Article 40 of the CBA, the window for CNA to provide notice of its “desire to modify, amend or terminate” the CBA has passed. As such the CBA will automatically renew for another year and remain in place through November 11, 2022.

[Meussner]

(Tr. 46–47; Jt. Exh. 5 at 3.)

In response, also on August 20, Gamino specifically writes to Meussner and copies Respondent's Gallegos and Attorney Arnold and Union's Cook with the following:

[Meussner],

The subject line of the email clearly states what the email is in reference to, are you claiming that you did not understand what the intent of the notice was? The information request references bargaining several times and further states if there are any questions or clarifications, please do not hesitate to contact me. The notice identifies that copies were sent to FMCS and, as you can see in the attached email that was sent to myself and Ms. Gallegos, FMCS understands the notice was correctly provided and has assigned a mediator. *If it was not clear what the RFI and notice to bargain was in reference to, that would have been an appropriate and necessary question to ask.*

Your failure to provide the requested information and your response to the notice to bargain is a bad faith attempt to make the parties believe you were not aware of our intent to reopen this contract. *If there was any question or concern your party has an obligation to raise it. In the event the employer maintains its position the Union is prepared to pursue all legal remedies.* We renew the information request sent on August 5th and are requesting bargaining dates.

Thank you,

[Gamino]

(Tr. 46–47, 99, 120, 195; Jt. Exh. 5 at 2–3.) (Emphasis added.)

Gamino admits that this August 5, 2021 correspondence with Respondent was the first time she requested bargaining dates from Respondent and that Meussner did not respond by providing the Union with possible bargaining dates. (Tr. 47, 99; Jt. Exh. 5 at 2-3.)

5 On August 23, 2021, Gamino emails Meussner again regarding “PIHGSH Intent to Bargain Letter and Information Request” and copies Cook, Lemmon, Gallegos and Attorney Arnold saying in relevant part:

10 Again, the subject line of the email you received states “PIHGSH Intent to Bargain Letter and Information Request” and the body of the e-mail itself says “Attached is the intent to bargain letter and information request.” We also sent notice to FMCS who has assigned a mediator. The body of the email from FMCS states “Please see the attached confirmation letter (two pages) regarding your pending contract negotiations and assigned FMCS Commissioner.” This

15 confirmation letter was also received by Betty [Gallegos] from FMCS, no magic words are required to invoke a reopening.

It is clear from the substance and context of our August 5th letter that the Union intends to invoke the reopener clause of our collective bargaining agreement. As such, the contract did not automatically renew, and the Union reiterates its

20 demand that the Employer bargain a successor agreement.

(Tr. 48–49, 120, 195; Jt. Exh. 5 at 1.)

25 On August 25, 2021, Gallegos sent an email to Gamino with the subject line, “Re: Notice of Automatic Renewal of CBA. (Jt. Exh. 1, #7; Jt. Exh. 6.)

Also, on August 25, 2021, Gamino emails Meussner and copies Gallegos and Attorney Arnold and Cook and Lemmon and writes:

30 [Meussner],

Again, the subject line of the email you received states “PIHGSH Intent to Bargain Letter and Information Request” and the body of the e-mail itself says “Attached is the intent to bargain letter and information request.” We also sent notice to FMCS who has assigned a mediator. The body of the email from FMCS

35 states “Please see the attached confirmation letter (two pages) regarding your pending contract negotiations and assigned FMCS Commissioner.” This confirmation letter was also received by Betty [Gallegos] from FMCS, no magic words are required to invoke a reopening.

It is clear from the substance and context of our August 5th letter that the Union intends to invoke the reopener clause of our collective bargaining agreement. As

40 such, the contract did not automatically renew, and the Union reiterates its demand that the Employer bargain a successor agreement.

(Tr. 195; Jt. Exh. 5 at 1.)

On August 26, 2021, Gallegos writes to Gamino and copies Cook and Lemmon from the Union and Meussner and Attorney Arnold for Respondent regarding Response to Information request and states:

5 This letter is written in response to your August 5, 2021 information request which requested a response by August 27, 2021.
 While it was unclear from the face of the letter what the August 5, 2021 information request related to, we subsequently learned from you on August 19, 2021 that the union was requesting information for purposes of bargaining over
 10 the terms of the Collective Bargaining Agreement (“CBA”). However, we never received any notice from the union of its “desire to modify, amend or terminate” the CBA Pursuant to Article 40 of the CBA and the window for CNA to provide such notice has passed. As such, this information request is moot. If you need this information for some other purpose, please let us know and we will re-evaluate
 15 your requests.
 (Tr. 49–50, 196; Jt. Exh. 6 at 3.)

 Gamino explained that she did not respond to Gallegos’ invitation to let her know if Gamino needed the requested information for another purpose because the Union actually
 20 needed it for the specific purposes of bargaining a successor agreement. (Tr. 50.)

 On August 26, 2022, Meussner responds to Gamino and says that “PHGSH disagrees with your interpretation and we stand by our position.”

25 (Tr. 49; Jt. Exh. 5 at 1.)

 Gamino further opines that since August 2021 to the date of hearing, the Union and Respondent have not engaged in bargaining for a successor contract. (Tr. 76.)

30 *B. Past Notices to Respondent from the Union to Bargain for a Successor CBA and Other Requests for Information Between the Parties Were Related to the Covid-19 Pandemic and Not Intended for Use to Bargain for a Successor Agreement During the Window Period of Late July/Early August 2021*

35 1. The Union’s earlier communications to Respondent to reopen bargaining to negotiate a successor agreement every three years during the same window period in late July/early August 2009–2018

40 The prior CBA from 2015–2018 between the parties covered the period of November 12, 2015, to November 11, 2018. (Jt. Exh. 1, #8; Jt. Exh. 7.)

 Another prior CBA from 2012–2015 between the parties covered the period of November 12, 2012, to November 11, 2015. (Jt. Exh. 1, #9; Jt. Exh. 8.)

45 An even earlier CBA from 2009–2012 between the parties covered the period of November 12, 2009, to November 11, 2012. (Jt. Exh 1, #10; Jt. Exh. 9.)

On August 7, 2018, former Union Representative Cook sent a fax to Lexie Schuster (Schuster), Respondent's former senior vice president of human resources, which included a one-page intent to bargain letter and a three-page request for information letter:

5 August 7, 2018

Lexie Schuster
Human Resources
Good Samaritan Hospital
10 1225 Wilshire Boulevard
Los Angeles, CA 90017-1901

VIA FACSIMILE 213-977-2309 and Certified US MAIL #7006 0100 0005 8248 3279

15 *RE: Re-Opener of Good Samaritan Bargaining Agreement*

Dear Lexie Schuster,
Pursuant to the requirement of the National Labor Relations Act, as amended and in accordance with the Collective Bargaining Agreement between the California Nurses Association and Good Samaritan Hospital, which expires November 11, 2018 the Association hereby serves the required 90 day *notice of our desire to begin bargaining*.
20 CNA is prepared to begin negotiations next month. Please contact me to schedule some initial bargaining dates. We look forward to beginning this process as quickly as possible. Should you have any questions, you can contact me at my office, (818) 637-7137, on my
25 cell phone, (818) 434-0354 or via email scook@calnurses.org.
Sincerely,

Sam Cook
CNA Labor Representative
30

Cc: Desi Murray, Southern CA Bargaining Director
Cynthia Hanna, Lead Labor Representative
Federal Mediation and Conciliation Service
California State Mediation and Conciliation Service
35

Enclosure: FMCS Form F-7.

(Tr. 38–39; Jt. Exh. 1, #11; Jt. Exh. 10 at 2.) (Emphasis added.)

40 Gamino was not involved in the preparation of this August 7, 2018 communications from the Union to Respondent. (Tr. 103.)

Gamino opined that the Union did not send a similar intent to bargain letter in August 2021, because she asked her lead representative Cook what she needed to provide adequate
45 notice and the 8/5/21 Intent to Bargain Letter was provided to her and she believes that the 8/5/21 Intent to Bargain Letter provides Respondent with sufficient notice along with the August 5, 2021 email and request for information that was sent by the Union's support staff to

Respondent, its lawyer, and the CMCS and SMCS with the F-7 Form that was filed. (Tr. 38–39; 104–106.)

The August 07, 2018, request for information from the Union to Respondent (the 8/7/18 RFI) was addressed to Lexie Schuster (Schuster) and Ray K. Holdgrafer, human resources, Good Samaritan Hospital, 1225 Wilshire Boulevard, Los Angeles, CA 90017-1901 and sent via facsimile 213-977-2309 and Certified US MAIL #7006 0100 0005 8248 3255 and provides as follows:

Re: Request for Information

Dear Ms. Schuster

In order for us to effectively bargain on behalf of our members, we would like to exercise our right to obtain information from Good Samaritan Hospital (hereinafter "Hospital") that is essential to this process.

This is our initial request. We reserve the right to request additional information that may be required as we approach bargaining. Further, we reserve the same right for additional information required during the bargaining process. We would appreciate your efforts to provide the following information as it becomes available so we may review it prior to bargaining.

1) A list of all the Full Time, Part Time and Per Diem Registered Nurses in electronic format employed by the employer as outlined in Article 1, with the following, broken down by department:

1. Name

...

We would appreciate this information by August 27, 2018. If there are any questions or clarifications please don't hesitate to contact me on my cell phone at (818) 434-0354 or via email at scook@calnurses.org.

I look forward to meeting with you in negotiations. Thank you in advance for your cooperation in regards to the above request.

Sincerely,

CALIFORNIA NURSES ASSOCIATION

Sam Cook

Labor Representative

cc: Desi Murray, Southern Division Director

Cynthia Hanna, Lead Labor Representative

Federal Mediation and Conciliation Service

California State Mediation and Conciliation Service

(Jt. Exh. 10 at 3–5.)

Gamino opines and I find that this 8/7/18 RFI is identical to the Union's 8/5/21 RFI sent to Respondent only to bargain for a successor CBA as both occur during the window period only when the Union is requesting to bargain a successor CBA. Only some of the representatives have changed between the 2 RFIs. (Tr. 39; Jt. Exh. 3 at 3–5; and Jt. Exh. 10 at 3–5.) In fact, Gamino

could not identify any difference between the August 7, 2018 and the August 5, 2021 RFIs made by the Union to Respondent when the Union was requesting to bargain a successor CBA. Id.

On July 27, 2015, former Union Representative Keng Mak sent the following via fax (213) 977-2309, and U.S. Certified Mail# 7006 0100 0005 8248 8328 to Schuster at Respondent which provides, in relevant part:

Pursuant to the requirement of the National Labor Relations Act, as amended, and in accordance with the Collective Bargaining Agreement between the California Nurses Association and Good Samaritan Hospital which expires on November 11, 2015, the Association hereby serves the required ninety (90) day notice of our desire to reopen the Agreement.

Enclosed also please find Form F-7, also submitted via facsimile.

Should you have any questions, you can contact me at (818) 637-7134.

Sincerely,

Keng Mak

Labor Representative

Cc: Fernando Losada, CNA/NNOC Director Collective Bargaining

Cynthia Hanna, Lead Labor Representative

Federal Mediation & Conciliation Services – NPU

State Mediation & Conciliation Services

(Jt. Exh. 1, #12; Jt. Exh. 11.) (Emphasis added.)

I further find that over the years of 2009–2021, the Union’s regular custom and practice was to also send Respondent a request for information similar to the broad August 5, 2021 RFI and August 7, 2018 RFI at the same time it sends its late July/early August intent to bargain letter which is only when the Union is requesting to bargain a successor CBA and that a request for information was also sent to Respondent’s HR Department on July 27, 2015. (Tr. 40–42; GC Exh. 2.)

On July 20, 2012, former Union Representative Gerry Daley sent via fax only to Schuster at Respondent which provides:

Re: Notice of Intent to Bargain

Dear Ms. Schuster:

Pursuant to the requirement of the National Labor Relations Act, as amended, and Article 40 of the collective bargaining agreement, the Association hereby serves the required *notice of our desire to begin bargaining* for a successor to the 2009–2012 collective bargaining agreement.

CNA is prepared to begin negotiations next month. Please contact me to schedule some initial bargaining dates. We look forward to beginning this process as quickly as possible. Should you have any questions, you can contact me on my cell phone, 818-331-1261 or via email at gdaley@calnurses.org.

Sincerely,

Gerry Daily
CNA Labor Representative

Cc: : Mike Griffing, Director of Collective Bargain
Jill Furillo, Southern California Director
Cynthia Hanna, Lead Labor Representative
Federal Mediation and Conciliation Service
California State Mediation and Conciliation Service

(Jt. Exh. 1, #13; Jt. Exh. 12.) (Emphasis added.)

On July 30, 2009, former Union Representative Karleen George sent via fax (213) 977-2309, and U.S. Certified Mail #7006 0100 0001 5765 3694 to Schuster at Respondent as follows:

Dear Ms. Schuster:

Pursuant to the requirement of the National Labor Relations Act, as amended, and in accordance with the Collective Bargaining Agreement between the California Nurses Association and Good Samaritan Hospital which expires on November 11, 2009, the Association hereby serves the required ninety (90) day *notice of our desire to reopen the Agreement*.

Enclosed also please find Form F-7, also submitted via facsimile.

Should you have any questions, you can contact me at (818) 637-7128

Sincerely, ..

Kathleen George

Lead Labor Representative

CC: Mike Griffing, CNA/NNOC Director Collective Bargaining
Jill Furillo, So. California CNA Director
Federal Mediation & Conciliation Services – NPU
Federal Mediation & Conciliation Services – Sub-Regional Office
State Mediation & Conciliation Services

(Jt. Exh. 1, #14; Jt. Exh. 13.) (Emphasis added.)

Gamino describes how the FMCS Form F-7 referenced above is a form sent to the FMCS to notify them of a party's intent to bargain a successor agreement. (Tr. 42–43; Jt. Exh. 13 at 2.)

Gamino admits after reviewing the file with prior years' notices of intent to bargain sent to Respondent compared to the August 5, 2021 Intent to Bargain Letter, that there was a history of a specific request-to-bargain letter being sent separate and apart from a request for information related to successor contract negotiations. (Tr. 113.)

The August 5, 2022 Intent to Bargain Letter and RFI has: Intent to Bargain Letter as it's notifying catch-phrase; the August 7, 2018 intent to bargain letter has: ReOpener of Good Samaritan Bargaining Agreement and "notice of our [the Union's] desire to begin bargaining" with the August 7, 2018 RFI attached identical to the Union's August 5, 2021 RFI; the July 27, 2015 intent to bargain letter contains the phrase: "notice of our [the Union's] desire to reopen the

Agreement”; the July 20, 2012 intent to bargain letter has the subject line: “Notice of Intent to Bargain” with the intent to bargain letter containing the phrase: “notice of our [the Union’s] desire to begin bargaining for a successor to the 2009–2012 collective bargaining agreement”; and the July 30, 2009 intent to bargain letter contains the phrase: “notice of our [the Union’s] desire to reopen the Agreement.” (Jt. Exh. 3 at 1, 3–5, Jt. Exhs. 10-13.)

Gamino also knows that this August 5, 2021 letter is the same letter that the Union has sent to several other Respondent facilities for the express purposes of bargaining a successor agreement and Gamino believes the August 5, 2021 Intent to Bargain Letter and RFI were adequate to commence bargaining a successor agreement with Respondent. (Tr. 114; Jt. Exh. 3.)

In sum, Gamino admits that she did not send an identical letter on August 5, 2021 with the request for information to Respondent that was the same or identical to prior notices of intent to bargain letters from the Union in years 2018, 2015, 2012, and 2009—that contain exact language of the Act, the CBA, an intent to provide 90-day’ notice, and/or using the words modify, amend, or terminate the collective-bargaining agreement, reopen the collective-bargaining agreement, or successor contract, because nobody at the Union told Gamino to add this identical language on August 5, 2021. (Tr. 116–117.) As provided above, in years 2018 and 2021, the Union added the broad RFI language to its intent to bargain letters which RFIs only requested this bargaining information during the window period to help the Union negotiate a successor agreement.

2. Other requests for information between the parties related to the Covid-19 Pandemic and were not intended for use to bargain for a successor agreement during the window period of late July/Early August 2021

Gallegos opines that the Delta surge variant of Covid-19 began in Los Angeles in mid-July 2021. (Tr. 186.) Gallegos also thought that the Union was acting extremely aggressively during the Covid-19 pandemic asking for information related to the Covid-19 pandemic and its variant surges. (Tr. 197.)

Other RFIs from the Union to Respondent are irrelevant here in March 2020, April 2020, June 2020, July 2020, December 2020, January 2021, March 2021, April 2021, May 2021, November 2021, and January 2022, because they are unrelated to the Union’s intent to bargain a successor agreement with Respondent during the window period and they, instead, specifically relate to the Covid-19 pandemic and *not* the Union’s intent to bargain a successor CBA with Respondent. (Tr. 50–64, 171-187; GC Exh. 4–14; R Exhs. G, H, J, K, M, N, P, Q, S, and T; Jt. Exh. 3 at 5; Jt. Exh. 10 at 3-5.)

More importantly, all of these other RFIs specifically related to the COVID-19 pandemic and clearly requested information from Respondent for such things unrelated to negotiating a successor CBA such as N-95 mask-wearing, personal protective equipment (PPE), or supplies, quarantines of nurses or patients, and being OSHA compliant with proper nurse-patient ratios during the pandemic, and pay incentives to nurses working through a pandemic (collectively known as the Covid-19 pandemic-related RFIs). (Tr. 50–64, 171–187; GC Exhs. 4–14; R Exhs. G, H, J, K, M, N, P, Q, S, and T; Jt. Exh. 3 at 5; Jt. Exh. 10 at 3–5.) None of these Covid-19 pandemic-related RFIs in 2020 and 2021 involved the Union’s intent to bargain for a successor

CBA or accompanied an intent to bargain letter with a broad range of requested information related to negotiating a successor agreement. Only the Union's August 5, 2021 RFI which contained broad categories of requested information related to negotiating a successor agreement is relevant here and not the Union's Covid-19 pandemic-related RFIs. Id.

In fact, none of these COVID-19 pandemic-related RFIs were copied to Attorney Arnold or the FMCS or SMCS like the August 5, 2021 RFI or the August 7, 2018 RFI which were used to communicate the Union's intent to bargain a successor CBA with Respondent. (Tr. 50–64, GC Exh. 4–14; Jt. Exh. 3 at 5; Jt. Exh. 10 at 3–5.) Moreover, the Union's August 5, 2021 Intent to Bargain Letter and accompanying RFI to Respondent makes no reference to the Covid-19 pandemic in any way.

III. DECISION AND ANALYSIS

A. *Credibility*

I find witness demeanor and the adverse inferences attributable to percipient witnesses Attorney Arnold and Respondent HR VP Meussner for not testifying at hearing to be critical factors in resolving this case. Based on consideration of the arguments of counsel on the issue but relying to a very large degree on my conclusions regarding the relative demeanor of the conflicting witnesses as well as the concurrent documentary evidence or lack thereof, I also credit Gamino's testimony over Gallegos' testimony.

Based on my observations and review of the record, I found the Union's witnesses (Gamino and Cuevas) to be more credible than the Respondent's witness, Gallegos, and I credit their testimony to the extent consistent with my findings of fact. Gamino, in particular, testified in a straightforward manner and her testimony did not waiver under cross-examination. As a result, I find that she was a believable witness who appeared very professional and testified consistently without hesitation and took her testimony seriously. Cuevas also testified in a straight-forward manner without pause throughout most of his limited testimony.

As referred above in footnote 5, percipient witnesses Attorney Arnold and HR VP Meussner might have provided more insight to the findings of facts here and their refusal to testify leads me to further find they would more likely than not support the Union's and General Counsel's facts and arguments presented rather than provide evidentiary support to Respondent.

I reject Gallegos testimony that she assumed that the Union's August 5, 2021 Intent to Bargain Letter and accompanying RFI was just another aggressive Covid-19 pandemic-related RFI that she infers did not warrant Respondent's further inquiry or clarification despite Gallegos' knowledge of every 3-year window period when the parties were getting ready to negotiate a successor CBA. Neither the August 5, 2021 Intent to Bargain Letter nor the accompanying August 5, 2021 RFI makes any reference to the Covid-19 pandemic or raise any issues related to the pandemic.

Gallegos admits that in August 2021, she understood that the Union was required by article 40 of the 2018 CBA to send Respondent notice of its intent to modify, amend, or terminate the 2018 CBA during the specific window period of around July 12 to about August

12, 2021. (Tr. 188–189, 193.) Also, Gallegos admits that Respondent usually engages in a give-and-take approach with the Union to resolve RFI disputes and Gallegos and Respondent did not act in good faith when they ignored and intentionally avoided contacting the Union during this window period in 2021 in response to the August 5, 2021 Intent to Bargain Letter and RFI. Once again, Gallegos and Respondent were fully aware of the soon-expiring window period when it received the legally adequate August 5, 2021 Intent to Bargain and RFI but did nothing to resolve any ambiguity or dispute as to what the Union meant by its intent to bargain or to question the requested broad information which was identical to the Union’s 8/7/18 RFI. (Tr. 200.)

B. Since the Union provided timely notice to Respondent of its intent to bargain a successor CBA, Respondent's refusal to do so is a violation of Section 8(a)(5) and (1) of the Act

1. The Union’s August 5, 2021 Intent to Bargain Letter and RFI provided Respondent with legally adequate notice of the Union’s intent to bargain for a successor CBA with Respondent under Section 40 of the 2018 CBA

Complaint paragraphs 7 and 9–10 allege that on or about August 5, 2021, Respondent has failed and refused to bargain collectively with the Union concerning wages, hours, and other terms and conditions of employment of the unit by refusing to meet and bargain with the Union over a successor collective-bargaining agreement to the parties’ 2018 CBA.

A line of cases at the Board can be read together to hold that, in the absence of evidence of a contrary intent by the parties, a timely request to negotiate changes to a contract, received by the other party prior to the automatic renewal date of the agreement, will be found to have prevented the contract from automatically renewing, at least as to provisions which the party is seeking to change. See *South Texas Chapter, AGC*, 190 NLRB 383 (1971); *Speedrack, Inc.*, 293 NLRB 1054, 1054–1056 (1989); *Hydrologics, Inc.*, 293 NLRB 1060, 1062 (1989); and *Teamsters Local 507 (Klein News)*, 306 NLRB 118, 135–136 (1992).

Obviously, parties are free to contractually require more exacting strict notice provisions. But these parties did not. Thus, in the face of generalized notice requirements like here, the Board's well-settled and uniform approach is to accept as adequate a range of efforts that reasonably convey the party's desire. Respondent does not dispute that it refused to bargain for a successor CBA. It argues that the Union’s August 5, 2021 Intent to Bargain Letter and RFI did not specifically state a desire to terminate the 2018 CBA, and therefore, the CBA renewed automatically despite the parties’ long history of entering into successor CBAs.

Here, the underlying facts are applicable and more analogous to the holdings in the cases styled: *The Oakland Press Co.*, 229 NLRB 476, 478-479 (1977); *Champaign County Contractors Assoc.*, 210 NLRB 467, 470 (1974) and *South Texas Chapter, AGC*, supra at 385-386, where the Board looked through form to substance and found sufficient compliance with the termination clauses to foreclose automatic renewal of collective-bargaining agreements. The key legal issue to resolve in this case is whether the Union failed to provide Respondent with adequate written notice of its intent to re-open bargaining and terminate the parties’ 2018 CBA between July 15, 2021, and August 12, 2021, as required.

While its notice may have been technically deficient with the Union negligently forgetting to copy Attorney Arnold with the Form F-7 sent to the FMSC, I further find that the Union's August 5, 2021 Intent to Bargain Letter and RFI was legally effective to reopen the 2018 CBA for negotiations because the essential message was communicated on August 5, 2021 to Respondent. Because of the August 5, 2021 Intent to Bargain Letter and the broad August 5, 2021 RFI, I further find that the Union conveyed its essential message to Respondent that it was terminating the 2018 CBA and reopening bargaining for the next successor agreement and it is not reasonable for Respondent to hold the Union to the standards of a Philadelphia lawyer as the Respondent was well aware of the Union's true intent to terminate the 2018 CBA given their long history of bargaining over the years and the various notices issues to reopen bargaining and negotiate a successor contract. See *Champaign County Contractors Assoc.*, 210 NLRB 467, 470, (Board affirming ALJ who found technically deficient notice legally effective to reopen contract negotiations.) In addition, the Board will interpret an ambiguous letter to find the union's true intent. See *The Oakland Press Co.*, 229 NLRB 476, 479, (same.)

I find that over the years the Union and Respondent regularly followed similar ways to give notice of an intent to bargain for a new successor agreement and this is exactly what occurred during the window period of 2021 when the Union sent Respondent its August 5, 2021 Intent to Bargain Letter and an identical RFI as it sufficiently sent Respondent in 2018, the last time the parties went through this same dance resulting in the 2018 CBA. The RFIs cover a broad range of requested information on wages, hours, working conditions, and fringe benefits and repeatedly referenced bargaining and like the Form F-7 notice to the FMSC and copying Respondent's Attorney Arnold, these communications only occurred every three years during the window period which was well-known to Respondent.

The cover email on August 5, 2021, however, clearly said "intent to bargain." It was sent to Respondent during the window period and the August 5, 2021 RFI sent with the letter is identical to the August 7, 2018 RFI sent seeking information that would only be needed to bargain a successor agreement. Instead of trying to clear up any misunderstanding, Respondent laid in wait until after the window period closed to announce that, in its view, the 2018 CBA automatically renewed on a basic technicality, and it would not bargain a successor agreement.

Moreover, as stated above, the Board will interpret an ambiguous letter to find the union's true intent and in this case I interpret the Union's August 5, 2021 Intent to Bargain Letter and RFI as legally adequate notice given the parties' prior negotiation history, the Union's copying Attorney Arnold with it who does not receive any correspondence from the Union unless it relates to negotiating a new successor agreement along with the Union's copying the FMCS and SMCS who also only get involved when the Union intends to bargain for a new successor agreement.

I further find Respondent's non-response to the August 5, 2021 Intent to Bargain Letter and RFI is "faintly suggestive of sharp practice and inconsistent with the [parties'] statutory objective of good-faith negotiations looking to a preservation of industrial peace." See *South Texas Chapter, AGC*, supra at 386)(same). In addition, by raising this issue of whether the Union's notice effectively terminated the 2018 CBA, the Respondent obstructed what had previously been an amiable collective-bargaining relationship. By doing so and by now refusing to renegotiate with the Union concerning all mandatory subjects of bargaining, the Respondent

has violated its obligations under Section 8(a)(5) of the Act. See *The Oakland Press Co.*, 229 NLRB 476, 480, (same.)

Finally, I further find that the delivery of the Union's August 5, 2021 Intent to Bargain Letter and RFI to Respondent and its Attorney Arnold was an indication of the Union's desire to negotiate a successor contract. Apparently, Gallegos and Meussner did not take it as much but I think Respondent must bear the responsibility for that misjudgment and it should have contacted the Union with questions or clarifications prior to August 12, 2021 and Gallegos' false statement that she thought the August 5, 2021 Intent to Bargain Letter and RFI was related to the Covid-19 pandemic is further evidence of Respondent's bad-faith bargaining. All of the subsequent conduct of the Union, in the person of Gamino was consistent with the belief that proper notice had been given. None of the evidence indicates that Respondent was misled. In this case, I further find that notice, legally adequate under Section 40 of the 2018 CBA, was given to Respondent on August 5, 2021.

I further find that since the Union's August 5, 2021 Intent to Bargain Letter and RFI provided timely notice to Respondent of its intent to bargain a successor CBA, and Respondent's refusal to do so is a violation of Section 8(a)(5) and (1) of the Act.

Respondent's affirmative defense argument of improper notice under article 38B has no meri.

Article 38B of the 2018 CBA provides that notice of an intent to bargain be hand-delivered or served via certified mail. (Jt. Exh. 2 at 81.) Here, Respondent argues that there is insufficient proof that the Union complied with this notice requirement and raises this affirmative defense at the 11th hour in its closing brief as it is not brought out by Respondent in any of the documentary emails or testimony at hearing in communications with Gamino between August 19 and August 25, 2021, nor did Meussner ever assert that Gamino's 8/5/21 Intent to Bargain Letter did not comply with Article 38B, nor did Respondent ever raise such a defense in its answer, statements of position, or supported testimonial evidence. (GC Exh. 1(l); GC Exh. 19; GC Exh. 20.)

The August 5, 2021 Intent to Bargain Letter and RFI specifically contain the same heading as in most recent years, the Union was sending it to Respondent—Attorney Arnold, Gallegos, and HR VP Meussner—"VIA EMAIL, FACSIMILE, and Certified US Mail." (Jt. Exh. 3 at 2.) Neither Gamino nor Gallegos testified that the August 5, 2021 Intent to Bargain Letter and RFI were not sent via certified U.S. Mail as specified on the document. (Jt. Exh. 3 at 2.) In addition, neither Attorney Arnold nor HR VP Meussner came forward and testified that the August 5, 2021 Intent to Bargain Letter and RFI were *not* sent via certified U.S. mail.

Consequently, I find that Respondent has not satisfied its burden to prove that the Union did not satisfy the notice requirements of article 38B of the 2018 CBA.

C. Respondent's refusal to provide the Union with Necessary and Relevant Information is Also a Violation of Section 8(a)(5) and (1) of the Act

Complaint paragraphs 8 and 9–10 allege that on or about August 5, 2021, Respondent has failed and refused to provide necessary and relevant information to the Union as contained in the August 5, 2021 RFI in violation of Section 8(a)(5) and (1) of the Act.

Pursuant to Section 8(a)(5) of the Act, each party to a bargaining relationship is required to bargain in good faith. Part of that obligation is that both sides are required to furnish relevant information upon request. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). The employer's duty to provide relevant information exists because without the information, the union is unable to perform its statutory duties as the employees' bargaining agent. Like a flat refusal to bargain, "[t]he refusal of an employer to provide a bargaining agent with information relevant to the Union's task of representing its constituency is a per se violation of the Act" without regard to the employer's subjective good or bad faith. *Brooklyn Union Gas Co.*, 220 NLRB 189, 191 (1975); *Procter & Gamble Mfg. Co.*, 237 NLRB 747, 751 (1978), *enfd.* 603 F.2d 1310 (8th Cir. 1979). In determining possible relevance, the Board does not pass upon the merits, and the labor organization is not required to demonstrate that the information is accurate, not hearsay, or even ultimately reliable. *Postal Service*, 337 NLRB 820, 822 (2002).

Because the duty to furnish information is meant to further the union's ability to represent the bargaining unit, information pertaining to unit employees' terms and conditions of employment, such as their wages and hours of work, is presumptively relevant to the union, and the burden is on the employer to rebut the relevance of the information requested. *Bacardi Corp.*, 296 NLRB 1220, 1223 (1989). See also *Ohio Power Co.*, 216 NLRB 987, 991 (1975), *enfd.* 531 F.2d 1381 (6th Cir. 1976). Here, I find that the information requested by the Union in the August 5, 2021 RFI is necessary for the Union to negotiate a successor agreement with Respondent and, therefore, is presumptively relevant because it relates directly to unit employees' terms and conditions of employment. *G4S Secure Solutions*, 369 NLRB No. 7, slip op. at 1. (2018). (See also Jt. Exhs. 2-3.)

I further find that the Respondent violated Section 8(a)(5) and (1) by failing to provide the requested information contained in its August 5, 2021 RFI to Respondent. The Respondent argues that it has no obligation to provide this information because the 2018 CBA automatically renewed. As stated in section B above, however, I find that the 2018 CBA did not automatically renew and the Union is entitled to receive the requested information because it is necessary for the Union to negotiate a successor agreement with Respondent. For these reasons, I find that the Respondent violated Section 8(a)(5) and (1) of the Act as alleged in the complaint by failing to provide the Union with necessary and relevant information contained in the August 5, 2021 RFI which is also a violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. The Respondent, Good Samaritan Hospital, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Charging Party, the California Nurses Association (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

3. At all material times the Union has been the designated exclusive collective-bargaining representative of the following bargaining unit of the Respondent's employees and constitute a unit appropriate for the purposes of the collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time, regular part-time, and per diem registered nurses, including charge nurses.

Excluded: All other employees, employee health nurses, managerial employees, confidential employees, guards, and supervisors (including, but not limited to, Vice President of Patient Care Services, nursing directors, nursing managers, and house supervisors) as defined in the Act.

4. The Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to negotiate with the Union for a successor CBA on or after August 5, 2021.
5. The Respondent also violated Section 8(a)(5) and (1) of the Act as alleged in the complaint by failing also since August 5, 2021, to provide in a timely manner, relevant and necessary information to use in the bargaining process and for negotiating a successor CBA comprised of the information sought by the Union in its August 5, 2021 RFI to Respondent.
6. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent engaged in certain unfair labor practices and has violated Section 8(a)(5) and (1) of the Act, I shall order it to cease and desist, to recognize and bargain on request with the Union and, to take certain affirmative action designed to effectuate the policies of the Act. I do not find that Respondent's conduct was so egregious that an enhanced notice reading remedy is warranted.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁷

ORDER

Respondent, Good Samaritan Hospital, at Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with the California Nurses Association (Union), as the exclusive representative for purposes of collective bargaining for employees in the below-described unit with respect to rates of pay, wages, hours of employment,

⁷ 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.

and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement in the following unit:

5 Included: All full-time, regular part-time, and per diem registered nurses,
including charge nurses.

10 Excluded: All other employees, employee health nurses, managerial employees,
confidential employees, guards, and supervisors (including, but not limited to, Vice President of
Patient Care Services, nursing directors, nursing managers, and house supervisors) as defined in
the Act.

(b) Failing and refusing to negotiate in good faith with the Union a successor CBA since
August 5, 2021.

15 (c) Refusing to timely provide the Union with information that is relevant and necessary
to its role as Respondent's exclusive collective-bargaining representative, including information
for bargaining and negotiating a successor CBA; and

20 (d) In any like or related manner interfering with, coercing, or restraining employees in
the exercise of their Section 7 rights.

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

25 (a) Upon request, bargain collectively with the above-named labor organization as
the exclusive representative for purposes of collective bargaining for employees in the above-
described bargaining unit with respect to rates of pay, wages, hours of employment, and other
terms and conditions of employment, and, if an understanding is reached, embody such
understanding in a signed agreement.

30 (b) Within 14 days after service by the Region, immediately provide the Union with
copies of the information it requested on August 5, 2021, related to the Union's intent to bargain
and negotiate a successor CBA to the 2018 CBA.

35 (c) Within 14 days after service by the Region, post at its Los Angeles facilities copies
of the attached notice marked Appendix , on forms provided by the Regional Director for Region
31 after being signed by the Respondent's authorized representative, for 60 consecutive days in
conspicuous places all places where notices to employees are customarily posted, including 1225
Wilshire Blvd., Los Angeles, California 90017, the facility located at 637 South Lucas Rd., Los
Angeles, California 90017, and the facility located at 1245 Wilshire Blvd., Los Angeles,
40 California 90017 and all employee bulletin boards. In addition to physical posting of notices,
Respondent shall email copies of the notices to all employees employed by the Employer at its
Los Angeles facilities and distribute the notices electronically, such as by email, posting on an
intranet or an internet site, and/or other electronic means, if the Respondent customarily
communicates with its employees by such means; and

45

(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 Respondent has taken to comply.

5 Dated, Washington, D.C. August 30, 2022

A handwritten signature in black ink, appearing to read "Gerald Michael Etchingham". The signature is written in a cursive, flowing style.

Gerald Michael Etchingham
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

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 Federal labor law and has
ordered us to post and obey this notice:**

FEDERAL LAW GIVES YOU THE RIGHT TO:

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

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT fail or refuse to bargain collectively, upon request with the California Nurses Association (“Union”), as the exclusive collective bargaining representative of our employees in the appropriate unit described-below with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement in the following unit (unit):

Included: All full-time, regular part-time, and per diem registered nurses, including charge nurses.

Excluded: All other employees, employee health nurses, managerial employees, confidential employees, guards, and supervisors (including, but not limited to, Vice President of Patient Care Services, nursing directors, nursing managers, and house supervisors) as defined in the Act.

WE WILL NOT fail and refuse to negotiate in good faith a successor CBA with the Union.

WE WILL NOT refuse to provide the Union with information that is relevant and necessary to its role as your bargaining representative and for use in negotiating a successor CBA.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL bargain collectively, upon request, with the above-named labor organization as the exclusive representative for purposes of collective bargaining for employees in the above-described bargaining unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL immediately provide the Union with copies of the information it requested on August 5, 2021 related to the Union's intent to bargain and negotiate a successor CBA to the 2018 CBA.

GOOD SAMARITAN HOSPITAL

(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. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy 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 or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667- 6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlr.gov.

11150 West Olympic Boulevard, Suite 700, Los Angeles, CA 90064-1824
(310) 235-7351, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at <https://www.nlr.gov/case/31-CA-282566> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



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 MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (310) 235-7424.