

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

WILLIAM BEAUMONT HOSPITAL

and

Case 07-CA-093885

JERI ANTILLA, an Individual

Darlene Haas Awada, Esq.

for the General Counsel.

John P. Hancock, Jr., Esq., and Rebecca S. Davies, Esq., Butzel Long,
for the Respondent.

DECISION

STATEMENT OF THE CASE

SUSAN A. FLYNN, Administrative Law Judge. This case was tried in Detroit, Michigan, on May 14–16, 2013. The Charging Party filed the charge on November 28, 2012, and the General Counsel issued the complaint on March 28, 2013.

The complaint alleges that the Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act) by discharging employees Jeri Antilla and DeAnna Brandt due to their alleged protected concerted activities. The Respondent filed an answer denying the essential allegations of the complaint and raising affirmative defenses.

The General Counsel orally amended the complaint at the beginning of the trial alleging that the Respondent, through its agent, Anne Ronk, orally promulgated an overly broad rule prohibiting employees from talking with other employees regarding an investigation into alleged misconduct. The General Counsel again orally amended the complaint during the second day of trial alleging that the Respondent promulgated and maintained the Code of Conduct for Surgical Services and Perianesthesia that includes rules that are overly broad and which employees would reasonably construe as discouraging Section 7 activities. The General Counsel asserts these actions also violate Section 8(a)(1) of the Act. The Respondent denies that the allegations constitute violations of the Act and further contends that the allegation pertaining to the Code of Conduct was untimely raised.

After the trial, the parties filed briefs, which I have read and considered. Based on the entire record in this case, including the testimony of the witnesses and my observation of their demeanor, I make the following

FINDINGS OF FACT

JURISDICTION

5 The Respondent operates a hospital in Royal Oak, Michigan. During a representative 1-year period, the Respondent derived gross annual revenue in excess of \$100,000, and purchased and received goods and materials valued in excess of \$5,000 directly from suppliers located outside the State of Michigan. Accordingly, I find, and Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

10 The Respondent also admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

ALLEGED UNFAIR LABOR PRACTICES

A. BACKGROUND

20 The Respondent operates several hospitals including one in Royal Oak, Michigan, that includes a Family Birth Center (FBC). The hospital CEO is Shane Cerone; the hospital administrator is Maureen Bowman; the human resources representative is Amy Giannosa. In the Family Birth Center, the director of Women, Children and Psychiatric Services (Maternal Child Health) is Anne Ronk. She supervises the Nurse Manager, Patricia Knudsen, who has 24/7 responsibility for operations. Knudsen supervises the two associate nurse managers: Alissa Amlin (afternoon shift) and Tonyie Andrews-Johnson (midnight shift).

30 The Family Birth Center includes 20–21 labor/delivery beds, 9 triage beds, and 4 operating rooms (ORs). In the event of a problem, the newborn would be sent to the newborn intensive care unit (NICU). The Charging Party, Jeri Antilla, is a Registered Nurse (RN); DeAnna Brandt is a certified surgical technician. Both worked in the FBC although Brandt also worked at times in the Children's Surgery Center.

35 The employees of the Respondent's hospitals, including William Beaumont Hospital in Royal Oak, are not unionized.

B. CODE OF CONDUCT

40 Since at least October 9, 2009, the Respondent has maintained a Code of Conduct for Surgical Services and Perianesthesia, which has been distributed to employees. (R. Exh. 6.)

The Code reads as follows, in pertinent part:

45 Conduct on the part of a Beaumont employee or physician that is inappropriate or detrimental to patient care of [sic] Hospital operation or that impedes harmonious interactions and relationships will not be tolerated. Transgressors shall be subject to appropriate remedial or corrective action. Improper conduct or inappropriate behavior or

defiance in the following example [sic], which includes but not limited [sic] to the following:

5 Willful and intentional threats, intimidation, harassment, humiliation, or coercion of employees, physicians, patients, or visitors.

Profane and abusive language directed at employees, physicians, patients or visitors.

Behavior that is rude, condescending or otherwise socially unacceptable.

Intentional misrepresentation of information.

10 Verbal comments or physical gestures directed at others that exceed the bounds of fair criticism.

...Negative or disparaging comments about the moral character or professional capabilities of an employee or physician made to employees, physicians, patients, or visitors.

15 Behavior that is disruptive to maintaining a safe and healing environment or that is counter to promoting teamwork.

C. WORKING CONDITIONS

20 The nursing staff works on two shifts: days and nights. The weekend night shift (referred to as midnights) generally works from 7 p.m. to 7 a.m., on Friday, Saturday, and Sunday nights. There is a charge nurse¹ on duty on midnights but there is rarely any manager on duty on midnights, although occasionally Andrews-Johnson works Sunday nights. On an average night, there may be 9 to 12 nurses on duty, with a total of approximately 30 nurses assigned to the night shift. (Tr. 603, 604, 653.)

25 Nurses may transfer between shifts when a position becomes vacant. In such instances, management calls and offers the position to the most senior nurse on the other shift, who could accept or decline. Most nurses prefer the day shift, so experienced nurses are pulled from the night shift to the day shift, and their slots filled by newer, less experienced nurses. New nurses 30 would only be assigned one patient, while the more experienced nurses may be responsible for two or three. Thus, experienced nurses are expected to handle their own patients, as well as assist the less experienced nurses in performing their duties, which causes stress among the nursing staff. In addition, the midnight shift was chronically understaffed at the relevant time period, although the reasons for that are unclear. (Tr. 510, 515-516, 517.)

35 It is the hospital's practice to assign preceptors (experienced nurses) to mentor new nurses. The new nurse shadows the preceptor and gradually begins performing tasks herself, as she becomes more confident. The period of orientation lasts a minimum of 12 weeks.

40 D. RESPONSE TO A SENTINEL EVENT

In December 2011, a "sentinel event" occurred. A sentinel event is defined as a serious incident; in this case, a newborn died unexpectedly. An investigation was conducted and it was

¹ Charge nurses are not supervisors.

determined there were numerous reasons for the child's death. Among those reasons were lack of communication between nursing staff especially during handoffs (when nurses changed shifts) and failure to provide assistance when requested by a nurse. A 4-hour mandatory training session was then presented on four dates in January and February 2012, attempting to address the problems identified in order to ensure there was no recurrence, with a focus on communication.

On March 5, 2012, the hospital CEO, Shane Cerone, went to the midnight shift and met individually with several nurses, seeking feedback and input about the work environment. (R. Exh. 16.) Neither Antilla nor Brandt spoke to Cerone.

The following week, one nurse was added 7 nights a week (the equivalent of three nurses) despite no budgeting for such positions, based on the nurses' complaints about inadequate staffing. (Tr. 535.) Later that year, in the summer, additional nurses were hired, approximately 16 in total. Most were graduate nurses, with no experience; a few had some experience but not in labor and delivery. Two new nurses, Dusta Dukic and Nadia Futalo, began on the midnight shift and did their orientation on that shift; the others received orientation on the day shift, then transitioned to the midnight shift by September 2012. Thus, at the relevant time period, on an average midnight shift, most of the RNs had little experience.

E. PROTECTED CONCERTED ACTIVITY

Many nurses complained to each other about the problems on the midnight shift, especially understaffing and the effects of having a large number of inexperienced or less experienced nurses on that shift, causing a heavier burden to fall on the more experienced nurses. They also felt the situation was unsafe for the patients, and some had concerns about the possibility of losing their nursing licenses if they were held responsible for an error committed by a new nurse on one of their patients.

The Charging Party, Antilla, was one of the nurses who would discuss these issues and complain about problems on the midnight shift. (Tr. 191). Those discussions often occurred at the nursing station, but sometimes also occurred in the patients' rooms. Antilla testified that she also talked to Amlin about one of the new nurses, Dusta Kukic, after she had precepted her. That feedback was in response to an email from Amlin asking about a particular incident. (GC Exh. 9.) Antilla also said that she had commented to Andrews-Johnson that Andrews-Johnson had scheduled a new nurse for triage when an experienced nurse was needed. Neither of those instances involved concerted activity.

DeAnna Brandt was a surgical technician, and therefore was usually in the OR. However, she, too, discussed the problems of understaffing and inexperienced nurses with nurses. (Tr. 246-247.) In addition, she raised concerns about performance deficiencies with the charge nurses. Brandt testified that she brought such concerns to the charge nurses almost nightly, that she did not characterize as complaints but rather as areas she noted where the nurses needed improvement or extra guidance. She said she also reported back to preceptors about new nurses' performance.

Brandt testified that she did not have the opportunity to talk to Andrews-Johnson about her concerns because Andrews-Johnson was rarely on duty on midnights (Tr. 297-298, 325-326).

However, she did testify to a meeting they had on April 16, 2012, when she was issued her performance evaluation. Brandt added written comments regarding a nurse named Maggie and her being unfamiliar with Surgiflo or how to do sponge counts; that newer nurses were unfamiliar with surgical instruments; and that charge nurses sometimes did not call her to open an OR before the patient was brought in. (GC Exh. 18.) Brandt said that Andrews-Johnson did not read those written comments. (Tr. 242.) Brandt testified that she had raised similar concerns with Ronk when Ronk had come to the floor to discuss renovations, although Ronk had told her she was not there to discuss such issues, just the renovations. (Tr. 241-242.)

Lori Post, an RN, testified that she engaged in discussions about short staffing and the inexperienced nurses. (Tr. 74-75, 88-89.) She was unaware whether anyone raised these concerns with management; she did not, other than talking to Cerone earlier, in March 2012. She had told him the unit was unsafe due to short staffing, and that she believed “something” was going to happen. Post felt that, since Diane Glinski had been fired (ostensibly for bullying)² approximately 2 weeks after she had spoken to Cerone, most nurses then “clammed up” around management for fear of retaliation.

F. MANAGEMENT AWARENESS OF PROTECTED CONCERTED ACTIVITY

Ronk was unaware of these discussions amongst staff about new nurses and safety concerns. (Tr. 514-515, 536.)

Andrews-Johnson was aware that Antilla and Brandt talked to other nurses about staffing and safety issues working with the new nurses. (Tr. 587-589.) Some of the nurses came to her with their concerns, which she encouraged, so the matters could be addressed. (Tr. 588.)

G. NEW NURSE’S RESIGNATION

One of the new nurses, Tina Wadie, failed to report for duty on October 22, 2012. She called out sick that day, then sent an email on October 23, 2012, to Amlin, Andrews-Johnson, and Lindsay Decker, clinical nurse specialist. In it, she stated that she would not be returning to work although this was her “dream job,” since she seemed not to be well-suited for the job and due to bullying and intimidation by unnamed senior nurses. (R. Exh. 9.) Andrews-Johnson forwarded the email to HR and the clinical nurse specialist. (Tr. 573-574.)

This situation concerned management. Ronk felt that Wadie was considered the best qualified of the new hires, and she expected the more experienced nurses to help, not intimidate and drive away, the newer nurses. (Tr. 539.) Andrews-Johnson was concerned that Wadie quit her dream job, without notice, and that Wadie said it made her ill to think about coming to work. (Tr. 574.) The allegations Wadie made in her email, such as the statement about the “right way” and the “night way” of doing things and the need to move patients on within 1 hour, suggested that proper procedures were not being followed on midnights or were being rushed. (Tr. 575-576.)

² The record shows that Glinski was not in fact fired. She resigned after being confronted about misbehavior (including showing photos of a deceased infant). There were no allegations of bullying against her. (Tr. 520, 567; GC Exh. 25(g).)

On October 24, Giannosa was asked by her boss, Mike Dixon, director of Human Resources, to conduct an exit interview with Wadie. She was directed to ask whether Wadie would be willing to talk to hospital recruiters about taking a position in another unit. Wadie agreed and returned to work.

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Giannosa talked to Wadie on at least one other occasion, and Wadie named four employees as problems: Antilla, Brandt, Post, and Michele Wonch. (R. Exh.10; GC Exh. 27.) Wadie told Giannosa that Brandt was nasty, huffy, not nice at all, belittling about everything, sarcastic, condescending, rolling eyes, and made negative comments no matter what you do. Wadie reported that Antilla said there is a “night way” of doing things, sat around a lot and complained about the unit, other new nurses say she is a bully. Tiffany (last name not reported), Antilla, and Post made comments about new nurses and about their nursing licenses.

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After speaking with Wadie, Giannosa sent an email to Alonzo Lewis, VP of Maternal Child Health and Women’s Health, Bowman, Ronk, Amlin, and Andrews-Johnson, as well as Dixon, Jennifer Mattucci, Employment Manager, and three recruiters: Marilyn Koski, Laura Velzy, and April Hornyak, advising them of certain issues raised by Wadie and that the concerns would be addressed. (GC Exh. 26.)

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H. INVESTIGATION

Based on Wadie’s statements to her, Giannosa decided to proceed with an investigation.

Then, on October 26, the situation was discussed at a meeting attended by Giannosa, Ronk, Andrews-Johnson, and Amlin; Knudsen was present by telephone (as she was out on extended sick leave). A plan of action was agreed to, that is, that an investigation would be conducted. (Tr. 578–580.) Giannosa assigned that responsibility to Andrews-Johnson, as the first-line supervisor. She was to talk to the newer nurses about their experience on the midnight shift, without mentioning any individuals’ names. These were to be open-ended conversations to see if the nurses raised any concerns. (Tr. 538, 540–541.) Giannosa testified that Andrews-Johnson was to interview a random selection from among the nurses hired in the past couple of years.

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Andrews-Johnson took notes of each interview and then sent emails to the management group, summarizing the discussion following each one. (R. Exh. 13; Tr. 580.)

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At their October 31 meeting, the group reviewed the interview notes that Andrews-Johnson had gathered to date. A preliminary consensus was reached based on the feedback received to date that two employees (Antilla and Brandt) should be terminated and two (Post and Wonch) counseled. (R. Exh. 11; Tr. 541–542, 566.) Andrews-Johnson continued to conduct interviews thereafter.

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I. INITIAL MEETING WITH BRANDT AND NONDISCUSSION ORDER GIVEN

Initial meetings were held with Antilla and Brandt, to advise them of the nature of the charges against them and provide them the opportunity to reply or to resign before disciplinary action was taken. Ronk met with Brandt, and Andrews-Johnson and Amlin met with Antilla.

45

On November 2, Amlin told Brandt to see Ronk. Brandt testified that Ronk told her that a nurse had quit and said that Brandt had been mean, nasty, and rude to her, and that an investigation would be conducted. She said Wadie as well as other new nurses had named her as nasty and rude. Ronk inquired whether she had taken any communication classes, and Brandt
5 said she had not. Ronk encouraged her to take some, and said the hospital would pay her for her time in the classes. Ronk further told Brandt to think about her actions and the situation, and that they would talk again after the investigation. Brandt said she was concerned that she might be fired and felt she needed to consult an attorney; Ronk replied that she was not allowed to discuss this with anyone, not even an attorney, as this was hospital business. (Tr. 257, 550; GC Exh. 34.)
10 Ronk, however, testified that she instructed Brandt not to discuss the matter with anyone on the unit. (Tr. 550.) I find Ronk more credible than Brandt regarding their conversation, and specifically regarding the nondiscussion instruction. First, Ronk made contemporaneous notes of the conversation. Second, from those notes it is clear that Ronk made the remark in response to Brandt's statement that she would be approaching the new nurses that weekend to introduce
15 herself and offer any assistance they might want.

Brandt did not discuss the matter with anyone. Ronk admitted in her testimony that she did advise Brandt not to discuss the matter with anyone on staff, as the matter was still under investigation and she was concerned (given the nature of the complaints against Brandt) that
20 such discussions may result in additional allegations of intimidation. Ronk's notes of the meeting confirm that she instructed Brandt not to discuss the meeting with anyone else in the unit (GC Exh. 34).

Brandt later sent Ronk emails indicating that she had registered for classes and that she
25 had applied for other positions at the hospital, outside the FBC. (GC Exhs. 19, 20.)

J. INITIAL MEETING WITH ANTILLA

On November 5, Antilla was asked to meet with Andrews-Johnson and Amlin. She was told
30 that her name had been brought up by a few nurses as being negative, about making comments about her nursing license being on the line and other remarks about new staff, and how she felt new nurses shouldn't be working in labor and delivery. Andrews-Johnson asked Antilla for her side, and Antilla agreed that she had made the three remarks. She said she had expressed concerns about not just her license, but other nurses' nursing licenses. She noted that previously,
35 nurses had been required to have 1-2 years' experience before being assigned to labor and delivery, which was a specialty area, and that longer training periods (orientation) or a nurse residency program would be advisable. She was told that her negativity could be construed as intimidating and bullying, that she had been negative in early 2012 but had improved, and now was being negative again. She was told the reports of her negativity came from new nurses, but
40 no names were revealed. Ultimately, Antilla was encouraged to prepare a reply, and that HR would call her after the investigation was conducted. (R. Exh. 25.)

After meeting with Antilla, Andrews-Johnson reported to Giannosa, Ronk, and Amlin what
45 had transpired. (Tr. 585.)

K. DECISIONS TO DISCIPLINE

Ronk testified that decisions to discipline were made by management and HR. In this instance, the final decisions were made at a meeting on November 8, by Ronk, Knudsen, and Giannosa, with any input from Andrews-Johnson and Amlin. The decision to terminate Antilla and Brandt was based on the statements provided by a number of staff nurses in the course of Andrews-Johnson's investigation, as well as the statements by Wadie. Those statements were accepted as true.

Hospital policy provided that progressive discipline was not required when the infraction was serious, including improper conduct. (R. Exh. 14.) Giannosa testified that Antilla and Brandt's behavior was severe enough to warrant termination because it was a safety concern, as bullying affected the nurses' interactions with each other, discouraged nurses from requesting assistance, and had contributed to the sentinel event of December 2011. (Tr. 453-454, 465-466.) Ronk testified that bullying and intimidating behavior has no place in a labor and delivery setting where teamwork is critical. Such behavior "impedes communication, open communication, staff feeling free to ask questions, ask for help, and that can put a patient's safety at risk." (Tr. 544.)

Although there was no specific testimony as to which manager drafted the basic termination language, it would appear that it was Andrews-Johnson, as the first-line supervisor and the individual who conducted the investigations. She did review the termination documents with Giannosa. (Tr. 39-40, 472.) Giannosa edited and added to them, specifically adding language under the form's future expectations section, as per hospital policy, then returned them to management for review. (GC Exhs. 4, 5; Tr. 41-42, 48, 472, 475.) The documents were signed by all necessary parties and issued to Antilla and Brandt.

Brandt was fired for exhibiting mean, nasty, intimidating, and bullying behavior. (Tr. 472; GC Exh. 5.)

Antilla was fired for exhibiting negative, intimidating, and bullying behavior. (Tr. 475; GC Exh. 4.)

Two nurses, Lori Post and Michele Wonch, were counseled. Neither was terminated because their conduct was not as severe as Antilla and Brandt's. Andrews-Johnson counseled Post; Knudsen was supposed to counsel Wonch. (Tr. 583, 605.) There is a memo in Post's file documenting that counseling but there is none in Wonch's file. (GC Exh. 25 j.) That counseling should have been conducted by Knudsen, as determined by the management group.³

³ While it is possible that either the counseling did not occur or that the documentation was not completed due to Knudsen being out on extended medical leave, such is pure speculation as there was no testimony on this point and there is no documentation that it ever occurred. (GC Exh. 25.)

L. ISSUANCE OF THE DISCIPLINE

1. Termination of Brandt

5 On November 8, Brandt was called to a meeting with Ronk, Andrews-Johnson, and Amlin. She was advised that her employment was being terminated and she was given the papers to read. (GC Exh. 5.) At the bottom, under background and related information, counselings from August 2006 and June 2011⁴ were noted. Brandt refused to sign the termination but received a copy. She testified that Ronk explained the Respondent's internal grievance process to her, but said that Bowman, who had signed off on the termination, would be the step 1 deciding official. She also said that Ronk said, "Good luck with that." Ronk denied making such remarks about Bowman or step 1. (Tr. 546.) Ronk testified that the meeting lasted approximately 5 minutes as Brandt asked no questions. (Tr. 546, 552.) Andrews-Johnson testified that Brandt said nothing, that Ronk did all the talking, reviewing the termination papers with Brandt. Andrews-Johnson corroborated Ronk's testimony that she did not make such reference to Bowman and the grievance procedure. (Tr. 582.) She agreed that the meeting was very short.

Brandt testified that she was not asked for her side of events. She never submitted a written reply to the charges.

Brandt did not file a grievance. She testified that she was not familiar with the grievance process, so she looked it up online but did not ask HR or anyone else any questions about it. She noted that there was a right of appeal to a panel after the first step. Nonetheless, she did not pursue her grievance rights.

I accept and credit the testimony of Ronk and Andrews-Johnson over that of Brandt. Brandt's testimony regarding looking up the grievance process online supports Ronk and Andrews-Johnson. Brandt may have felt that pursuing a grievance was pointless under the circumstances, but that was her perception, and not based on any attempts by management to discourage her.

2. Termination of Antilla

On November 9, Ronk asked to see Antilla before she began her shift. Antilla met with Ronk and Andrews-Johnson. Ronk told her that, in light of the investigation findings, she was being fired as the ringleader of negativity on the unit. Ronk said her name had been brought up, in a letter from a nurse who recently quit and in discussions with nursing staff, as being intimidating and bullying.

⁴ Brandt testified that she had no knowledge of an August 2006 counseling. However, in June 2011, she was written up for a Facebook posting. (GC Exhs. 16, 17.) Brandt had complained on Facebook about working nine shifts, plus covering for other surgical technicians. Ronk told her that she appreciated her hard work but that if she had a problem with someone, she should confront that person rather than post negative comments about the hospital on the internet. At that meeting, Brandt noted some safety concerns in the OR, such as when a nurse did not understand that she had contaminated the sterile field, as well as complaining about the lack of bathroom breaks during a 12-hour shift. Ronk had said she would address those concerns, and apparently did so. Brandt later sent Ronk an email saying she had gotten her break/s and indicating that all was well. (R. Exhs. 7, 8.)

Antilla then explained the stepstool incident to Ronk, that there had not been a stepstool in the room when it appeared it would be needed for a particular delivery, and that afterward, she told the new nurse that she needed to ensure that each delivery room had a stepstool, bag, and mask in case of emergency. She had then gone to the nurses' station and repeated this.

5 Antilla denied making any statement about the “right way” and the “night way.” She also denied saying she hated to work weekends with so many new nurses, since that was her preferred shift, for family reasons.⁵

10 Ronk then told her the hospital had a zero tolerance for bullying and intimidation, and that, therefore, she was being fired. Antilla then presented the reply letter that Amlin had encouraged her to write. (GC Exh. 12.) Ronk collected her badge, gave her Giannosa's phone number, and reviewed the grievance process with her.

15 Antilla filed a grievance. In her grievance, Antilla had indicated that she felt the problem was a personality conflict, that her statements were taken out of context, and that she had a good relationship with Wadie, as reflected in Wadie's Facebook posting. (GC Exh. 10.) She met with Ronk, Bowman, and Giannosa for step 1. She lost at the first step, so she filed an appeal to the panel, but lost that as well. She then filed the instant unfair labor practice charge.

20 III. LEGAL STANDARDS AND ANALYSIS

A. Terminations

25 The discipline or discharge of an employee violates Section 8(a)(1) of the Act if the employee was engaged in activity that is “concerted” within the meaning of Section 7 of the Act, the employer knew of the concerted nature of the employee's activity, the concerted activity was protected by the Act, and the discharge was motivated by the employee's protected concerted activity. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir 1981), cert denied 455 U.S. 989 (1982); *Correctional Medical Services*, 356 NLRB No. 48, slip op. at 2 (2010); *Naomi Knitting Plant*, 328 NLRB 1279, 1281 (1999) (quoting *FPC Holdings, Inc. v. NLRB*, 64 F.3d 935, 942 (4th Cir. 1995), enfd. 314 NLRB 1169 (1994)). If the General Counsel makes such an initial showing of discrimination, then the Respondent may overcome that inference by presenting evidence demonstrating that it would have taken the same action even in the absence of the employee's protected activity. See *Timekeeping Systems, Inc.*, 323 NLRB 244, 244 (1997); 35 *Williamette Industries*, 341 NLRB 560, 563 (2004).

40 Both Antilla and Brandt did routinely and frequently complain to peers about working conditions, such as understaffing on the midnight shift, and the problems associated with working with inexperienced nurses—additional burdens on the senior staff, risks to the patients, and the potential for losing nursing licenses. It is arguable whether these discussions in themselves initially constituted protected concerted activity, as there was no evidence whatsoever presented that any employee planned to take any action based upon those complaints and there was no concerted purpose, it was mere complaining. While Antilla testified that she “found her passion” in advocating for new nurses and obtaining longer orientation periods for

⁵ She did not address the statement that she hated working with the new nurses, just that part of the statement pertaining to working weekends.

them, it was established that she did not take any action in that direction with management, except in one conversation when she stated that she felt orientation periods should be longer.

5 Ronk was initially not aware that staff, and specifically Antilla and Brandt, engaged in such discussions or other protected concerted activity until it was revealed in the course of the investigation into the bullying allegations.⁶ However, Andrews-Johnson had been aware of those discussions, and that Antilla and Brandt engaged in them. Some nurses brought their concerns directly to Andrews-Johnson and she encouraged them to do so. However, Andrews-Johnson noted in her investigation interview notes the complaints raised by Antilla and Brandt and others,
10 as reported by the interviewees. The other members of the management team, including Giannosa, learned of the complaints through Andrews-Johnson's interview notes. Subsequent to their gaining knowledge of the protected activity, management decided to terminate both Antilla and Brandt. Thus, the General Counsel has met her burden.

15 However, I find that the Respondent has established that both Antilla and Brandt would have been terminated absent their protected activity.

20 First, while not determinative, it has been established that other nurses who likewise engaged in similar discussions complaining about working conditions, were not terminated. Most nurses engaged in those conversations and several names were raised in Andrews-Johnson's investigation. Of the four who were deemed the primary offenders, only Antilla and Brandt were terminated. Post was only counseled. While there is no evidence that Wonch was in fact counseled as the management team agreed, that is immaterial, since the decision had clearly been made by the team to counsel her, and not to terminate her.
25

Second, management witnesses credibly testified, and both Antilla and Brandt agreed, that management did not discourage such conversations among the staff.

30 Third, the reasons that management has given for the terminations are significant and credible, and were sufficient to justify the terminations. The alleged misconduct must be viewed in context. The General Counsel chooses to interpret the allegations of negativity as directed toward protected concerted activity. I disagree. The hospital had experienced an unexpected infant death, and this was found to be due, at least in part, to nurses not cooperating with each other, not communicating effectively with each other. If new or inexperienced staff does not feel comfortable asking for assistance or asking questions for fear of being mocked, or humiliated, or yelled at, then there is indeed increased risk to patients. Whether one characterizes the conduct as
35 bullying or negative or demeaning is immaterial; it is the underlying conduct that is at issue, not the characterization.

40 Knudsen testified to being advised of bullying problems within her first month in her current job, in October 2011. (R. Exhs. 26, 27, 28.) An environmental survey (culture of safety survey) was then conducted. (Tr. 611, 615-618; R. Exh. 29.) Knudsen characterized negative behavior

⁶ Brandt emailed Ronk a document (comments) that Brandt had wanted attached to her performance appraisal the prior year. Ronk testified that she never read those comments, as the decision to terminate her employment was made at approximately the same time, so she had no reason to read the document. (Tr. 552-553.)

as intimidation, mocking, excessive criticism, hoarding knowledge; and behaviors that are not conducive to a safe environment. (Tr. 618.) Because of her concern about the staff comments in response to the survey, Knudsen felt that teambuilding and other training was in order. (Tr. 619.) However, the sentinel event occurred while the initial planning was taking place, that altered the strategy. (Tr. 61; R. Exh. 31.) The ensuing investigation into the sentinel event showed that communication, handoffs, and interpretation of fetal tracing, were significant contributing factors. (Tr. 621.) Therefore, a 4-hour mandatory training, or safety symposium, was presented for the nurses, to address those issues. (Tr. 622; R. Exhs. 30, 32, 33, 34, 36, 37, 38.) It was offered four times in January and February 2012.

Four culture of safety surveys were conducted in 2012, to see whether any progress had been made. (Tr. 634.) Several methods were available for staff to report concerns to management. (Tr. 639, 642.)

Then, despite these efforts, in October 2012, Wadie quit her job and gave, as one of the reasons, the treatment of her by other staff.

The management team accepted as true the statements made by the nurses to Andrews-Johnson. Those nurses had no reason to fabricate their reports, and their reports were consistent.

Brandt was fired for exhibiting mean, nasty, intimidating, and bullying behavior. (Tr. 472; GC Exh. 5.) Antilla was fired for exhibiting negative, intimidating, and bullying behavior. (Tr. 475; GC Exh. 4.) Giannosa credibly explained that negative behavior meant the negative attitude exhibited toward the new nurses, belittling, condescending, and demeaning behavior. (Tr. 475.) That is entirely distinct from complaining about working conditions.

Both Antilla and Brandt were terminated due to inappropriate conduct toward other employees, having nothing whatever to do with workplace grievances. They failed to interact with other staff in a professional manner, that was part of the cause for Wadie's resignation, and were uncooperative with other staff, worsening the situation about which they were purportedly so concerned. Neither Antilla nor Brandt acknowledged any awareness of the effect of their behavior and comments on the new nurses.

I accept and credit Ronk's testimony. Ronk testified that when she became aware in October/November 2012 that Antilla was discussing concerns about staffing with other staff, the fact that she was engaging in such discussions was not of concern to her. (Tr. 514, 536-537.) In fact, the hospital encouraged such discussions. Ronk testified that she would not consider it a problem for staff to discuss these concerns, but that it would be a concern to her as a manager if staff had concerns, because she would want to know about and address or remedy those concerns. (Tr. 515, 536.) Rather, Ronk testified that Antilla and Brandt were terminated because there is no place for bullying and intimidating behavior in a setting such as labor and delivery where teamwork is critical. (Tr. 544.) It impedes open communication, the freedom to ask questions, or to ask for help that can put a patient's safety at risk. (Tr. 544.) This had been made evident in the investigation into the December 2011 sentinel event.

I accept and credit Andrews-Johnson's testimony that the only things that were considered when making her decision to terminate the two were Wadie's feedback and the input from other

new nurses from her investigation. (Tr. 586.) The fact that Antilla and Brandt had discussed their concerns with each other, with her, or with other nurses was not a factor in the decision to terminate their employment (Tr. 588-589).

5 Most of the concerns raised by the nurses were well known to management.⁷ Management agreed that there were problems with understaffing, and hired more nurses. They were aware that new nurses needed training, and expected the senior staff to assist them during and after their orientation periods. The only area where management was not in agreement with the nurses' concerns was about the risk of losing their nursing licenses due to a mistake by another nurse.
10 However, I find that expressing that misplaced fear was not a factor in the decisions to terminate Antilla and Brandt, and that they would have been terminated even in the absence of making such statements.

15 The General Counsel notes that at least one employee who complained about the conduct at issue felt that "it wasn't really bullying." That is of no consequence. As I stated above, the characterization of the conduct is not important; it is the conduct itself that is important.

20 The General Counsel asserts that the allegations were too vague and that neither Antilla nor Brandt could fairly respond without further details. However, they were given descriptions of the conduct and statements at issue, and were given the opportunity to ask questions. Brandt asked no questions and did not file a grievance, electing not to present a defense. Antilla did respond in writing to the charges, and did file a grievance, although her efforts were unsuccessful.

25 The General Counsel makes much of Antilla's good performance and of the positive Facebook comments, and of Brandt's good performance as well, all of which are immaterial since the terminations were not based on performance, but on conduct. The management team looked at their performance but it did not outweigh the misconduct. It appears that Antilla exhibited a very different attitude toward the new nurses when they were coworkers than when she was acting as charge nurse or preceptor. And, as the record establishes, other senior nurses
30 were more hostile to the new nurses when Antilla was around than they were otherwise. Therefore, she was characterized as the ringleader. It had nothing to do with her complaints about working conditions. There is no dispute that Antilla was an excellent nurse; that fact was recognized by management who used her as a preceptor and as a charge nurse. That good performance does not outweigh the bad judgment she exercised in her conduct toward the new
35 nurses.

40 The General Counsel is troubled by the conduct of the investigation. Specifically, she argues that it was suspect because only some, and not all, of the new nurses were interviewed, and some of the interviewees were not new nurses. That is irrelevant, since positive or neutral reports would not cancel out the negative ones already received, and there was not a scintilla of evidence presented that Andrews-Johnson improperly selected interviewees or that any interviewee's report was improperly influenced. The General Counsel also expresses concern that Ronk had

⁷ Not only is there no policy prohibiting staff from discussing with each other any issues or concerns, but the hospital encouraged submission to management of such concerns, via several different methods, so such concerns could be addressed. (Tr. 521-533; R. Exhs. 17, 18, 19, 20, 21, 22, 23, 24.)

made her own decision that Antilla and Brandt should be terminated by October 29, before all interviews had been conducted. (GC Exh. 34; Tr. 566.) This is of no consequence; three negative reports had been received by that point. There is no magic number of negative reports that would support termination; one may be adequate. It was not necessary to interview all new nurses and certainly it was not necessary that all new nurses reported misconduct by Antilla and Brandt in order to support the terminations.

The General Counsel asserts that the Respondent departed from past practice in terminating Antilla and Brandt, since progressive discipline was not applied. However, no comparable situation had arisen in the past, and the hospital's personnel policy provided for termination without progressive discipline, in appropriate circumstances.

The General Counsel argues that Respondent had tolerated similar behavior in the past, in particular by Wonch. However, this hardly supports the General Counsel's allegation of retaliatory discharge, since Wonch engaged in the same discussions as Antilla and Brandt, and made the same complaints. If the Respondent were engaging in retaliation, then it would be expected that Wonch would have been fired as well. In any event, the allegations made in the past (as well as the current allegations) regarding Wonch were similar but were not of the same level of severity as those raised against Antilla and Brandt.

Finally, the General Counsel contends that Respondent relied upon shifting reasons for the terminations. She finds it significant that the Respondent's Position Statement referenced the Surgical Code of Conduct. That was counsel's opinion and, in any event, it is not a reason for the terminations; the reason was the misconduct. She also finds it compelling that matters such as Antilla's tongue ring were mentioned in the termination notice and that Brandt's conduct during her orientation period was noted. However, these are not different or shifting reasons; they are simply other instances of past problems that were noted. If they were not included in the termination notices, the result would be the same. The investigation was initiated due to complaints about mistreatment of new nurses and that was the reason for both terminations.

Therefore I recommend that these charges be dismissed as to both Antilla and Brandt.

B. Code of Conduct⁸

Determination of the legality of work rules requires a balancing of competing interests: the right of employees to organize or otherwise engage in protected activity and the right of employers to maintain a level of discipline in the workplace.

In determining whether an employer's work rules violate Section 8(a)(1), the Board has held that:

⁸ The Respondent alleges that this amendment was untimely raised, since the General Counsel became aware of the Code during the investigation some 5 months earlier yet failed to charge any violation until late in the trial. While the charge certainly was raised late in the game and no good reason for the delay was given, I find that the Respondent was not prejudiced by the delay. This is a legal argument only, no witnesses were relevant to the issue and none were called, and this charge would not affect the potential relief if retaliatory discharge were found. I therefore decline to reverse my ruling permitting the amendment.

[A]n employer violates Section 8(a)(1) when it maintains a work rule that reasonably tends to chill employees in the exercise of their Section 7 rights. *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998). In determining whether a challenged rule is unlawful, the Board must, however, give the rule a reasonable reading. It must refrain from reading particular phrases in isolation, and it must not presume improper interference with employee rights. *Id.* at 825, 827. Consistent with the foregoing, our inquiry into whether the maintenance of a challenged rule is unlawful begins with the issue of whether the rule *explicitly* restricts activities protected by Section 7....

If the rule does not explicitly restrict activity protected by Section 7, the violation is dependent upon a showing of one of the following: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights.

Lutheran Heritage Village-Livonia, 343 NLRB 646, 646-647 (2004); see *Lafayette Park Hotel*, NLRB 824, 825 (1998), *enfd. mem.* 203 F.3d 52 (D.C. Cir. 1999).

Thus, where the rules are likely to have a chilling effect on Section 7 rights, their maintenance may be an unfair labor practice even absent evidence of enforcement.

The Respondent's Code of Conduct does not explicitly restrict Section 7 activities, nor was it promulgated in response to union activity, nor has it been applied to restrict Section 7 activities. Thus, the issue at hand is whether employees would reasonably construe the Code of Conduct to prohibit Section 7 activity.

In *Lafayette*, *supra*, the court found a rule prohibiting conduct that does not support the Respondent hotel's goals and objectives to be lawful, as it is unreasonable to assume, without more, that remaining nonunion is one of those goals. The rules address other legitimate business concerns and the court found unreasonable the position that the rule was ambiguous as to "goals." However, the rule prohibiting making false, vicious, profane, or malicious statements toward or concerning the hotel or any employee was found to be a violation. There were similar results in *Cincinnati Suburban Press, Inc.*, 289 NLRB 966, 975 (1988) (statements are protected absent a showing of reckless disregard for the truth or maliciousness), and *American Cast Iron Pipe Co.*, 234 NLRB 1126, 1131 (1978) (false and inaccurate statements that are not malicious are protected). In the instant case, there is no general prohibition against making false statements. Rather, the Code prohibits intentional misrepresentation of information (which implies malice) and negative or disparaging comments about the moral character or professional capabilities of an employee or physician. The Code's introductory paragraph makes it clear that the hospital's concern is patient care, so, when read in context, the rule has nothing to do with protected activity.

The D.C. Circuit Court distinguished the work rules found unlawful in *Lafayette* and *Flamingo*,⁹ restricting speech that is arguably related to protected activities (and merely false), from a rule prohibiting "abusive or threatening language" that seeks to maintain basic civility.

⁹ *Flamingo Hilton-Laughlin*, 330 NLRB 287 (1999).

Adtranz ABB Daimler-Benz Transportation, 331 NLRB 291 (2000), vacated in part 253 F.3d 19 (2001). The court noted that an employer’s effort to squelch criticism from employees, and threatening to punish “false” statements without evidence of malicious intent is quite different from demanding that employees comply with generally accepted notions of civility that does not, in itself, constitute an unfair labor practice. The court reiterated that it must be considered whether there was enforcement of the rule where the language may be protected, or mere maintenance of the rule. Significantly, the court also observed that threatening and abusive language is not inherent aspects of union organizing or other Section 7 activities. It specifically rejected the argument that the mere “unrealized potential” that “the rule could reasonably be interpreted as barring lawful union organizing propaganda” rendered it facially invalid. *Id.* at 25–26. Ultimately, it determined that “the Board’s position that the imposition of a broad prophylactic rule against abusive and threatening language is unlawful on its face is simply preposterous.” *Id.* at 25. The Board subsequently agreed with and adopted the court’s rationale when it decided *Lutheran Heritage* and *Palms Hotel*. In *Lutheran Heritage*, *supra*, the Board found prohibitions against verbal abuse, abusive, or profane language, or harassment to be lawful. The mere fact that the rule could be read to address Section 7 activity does not make it illegal. See *Lutheran Heritage*, *supra* at 647 (“we will not conclude that a reasonable employee would read the rule to apply to such activity simply because the rule *could* be interpreted that way”). Similarly, in *Palms Hotel & Casino*,¹⁰ the Board found lawful a rule that prohibits employees from engaging in conduct which is or has the effect of being injurious, offensive, threatening, intimidating, coercing, or interfering with other employees. “Nor are the rule’s terms so amorphous that reasonable employees would be incapable of grasping the expectation that they comport themselves with general notions of civility and decorum in the workplace.” *Id.* at 1368. “We are simply unwilling to engage in such speculation in order to condemn as unlawful a facially neutral work rule that is not aimed at Section 7 activity and was neither adopted in response to such activity nor enforced against it.” *Id.* at 1368.

However, the Board found unlawful a rule that prohibited loud, abusive, or foul language, as it was so broad that it could be interpreted as barring lawful union organizing propaganda. *Flamingo Hilton-Laughlin*, 330 NLRB at 295. The Board found unlawful a work rule that subjected employees to discipline for the “inability or unwillingness to work harmoniously with other employees.” *2 Sisters Food Group*, 357 NLRB No. 168, slip op. at 1 (2011). In that instance, the employer neglected to define those terms; the prohibition was merely one of a laundry list of rules and “was sufficiently imprecise that it could encompass any disagreement or conflict among employees including those related to Section 7.” *Id.*, slip op. at 2. Similarly, a rule prohibiting “any type of negative energy or attitudes” was deemed unlawful. *Roomstore*, 357 NLRB No. 143, slip op. at 1 fn. 3 (2011). A rule prohibiting “negative conversations” about managers was found unlawful, as it had no clarifying language. *Claremont Resort & Spa*, 344 NLRB 832, 836 (2005). In all of those instances, the rules were ambiguous, and those ambiguities must be resolved against the employer.

In the instant case, a reasonable reading of most of the rules shows they are unrelated to and do not prohibit Section 7 activities. To find otherwise would ignore the employer’s rights in the *Lafayette* balancing test and consider only potential employee rights.

¹⁰ *Palms Hotel & Casino*, 344 NLRB 1363 (2005).

The Beaumont Code at issue reads as follows:

- 5 Conduct on the part of a Beaumont employee or physician that is inappropriate or detrimental to patient care of [sic] Hospital operation or that impedes harmonious interactions and relationships will not be tolerated. Transgressors shall be subject to appropriate remedial or corrective action. Improper conduct or inappropriate behavior or defiance in the following example [sic], which includes but not
- 10 limited [sic] to the following:
- Willful and intentional threats, intimidation, harassment, humiliation, or coercion of employees, physicians, patients, or visitors.
 - Profane and abusive language directed at employees, physicians, patients or visitors.
 - 15 □ Behavior that is rude, condescending or otherwise socially unacceptable. Intentional misrepresentation of information.
 - Verbal comments or physical gestures directed at others that exceed the bounds of fair criticism.
 - 20 □ ...Negative or disparaging comments about the moral character or professional capabilities of an employee or physician made to employees, physicians, patients, or visitors.
 -Behavior that is disruptive to maintaining a safe and healing environment or that is counter to promoting teamwork.
- 25 (R. Exh. 6.)

30 Although the introductory paragraph references harmonious relationships, the Code goes on to define in the six bullets the specific types of conduct that are prohibited. The rules are put in context via reference to legitimate business concerns (i.e., patient care, hospital operations, and a safe healing environment), that would tend to restrict their application.

I find that a reasonable employee would read the rules in the context of the employment setting, a hospital, and understand the lawful purpose of the rules.

35 I find that two of the six work rules (rule 4—“Verbal comments or physical gestures directed at others that exceed the bounds of fair criticism” and rule 6 part 2—“Behavior ... that is counter to promoting teamwork”) challenged by the General Counsel violate Section 8(a)(1). Although neither Antilla nor Brandt nor any other employee was disciplined for violation of the Code, and no employee actually limited their activities based on the Code, those portions of the

40 Code do violate the Board’s standards and may reasonably chill the exercise of Section 7 rights. The two terms are ambiguous and undefined in the Code, even when read in context: “comments or gestures that exceed the bounds of fair criticism,” and “behavior that is counter to promoting teamwork.” Those terms may reasonably be interpreted as prohibiting lawful discussions or complaints that are protected by Section 7 of the Act. Although the Respondent has legitimate

45 concerns regarding appropriate staff behavior, and has a legitimate interest in promulgating work

rules to try to maintain a safe atmosphere in the workplace, those portions of the Code are overbroad and ambiguous. “Where ambiguities appear in employee work rules promulgated by an employer, the ambiguity must be resolved against the promulgator of the rule rather than the employees who are required to obey it.” See *Norris/O’Bannon*, 307 NLRB 1236, 1245 (1992).

5 However, I find that the other four challenged work rules (1, 2, 3, and 5) as well as the first portion of rule 6 in the Code of Conduct are clear and legitimate when read in context, and could not reasonably be interpreted as prohibiting lawful discussions or complaints. The first prohibits willful and intentional conduct; the second profane and abusive language; the third 10 rude, condescending and otherwise socially unacceptable behavior, as well as intentional misrepresentations (not merely false, and the intent requirement implies a showing of malice); the fifth pertains to statements regarding moral character or professional capabilities; and part 1 of rule 6 behavior disruptive to a safe and healing environment (a hospital), all of which are clear and legitimate, and cannot reasonably be read in context to prohibit protected activities.

15 Therefore, I find that two of the challenged work rules (rule 4—“Verbal comments or physical gestures directed at others that exceed the bounds of fair criticism” and rule 6 part 2—“Behavior ... that is counter to promoting teamwork”) violate Section 8(a)(1) as alleged but recommend that the charges as to work rules 1, 2, 3, 5, and 6 part 1 be dismissed.

20 C. Nondiscussion Instruction to Brandt

As discussed above, an employer may not impose work rules that reasonably tend to chill employees in the exercise of their Section 7 rights. *Lafayette Park*, supra at 825. The Board has held that to justify a prohibition on employee discussion of ongoing investigations, an employer 25 must show that it has a legitimate business justification that outweighs employees’ Section 7 rights. See *Hyundai America Shipping Agency*, 357 NLRB No. 80, slip op. at 15 (2011) (no legitimate and substantial justification where employer routinely prohibited employees from discussing matters under investigation).

30 While in *Caesar’s Palace*, 336 NLRB 271, 272 (2001), the confidentiality rule imposed during a drug investigation was held lawful where the rule was necessary to ensure the safety of witnesses and to preserve the integrity of the investigation, no similar rationale was asserted as the reason for the instruction given to Brandt. In *Banner Estrella Medical Center*, 358 NLRB No. 93 (2012), the Board found the employer’s generalized concern with, rather than a 35 determination of a necessity for, protecting the integrity of its investigations was insufficient to outweigh employees’ Section 7 rights. In order to minimize the impact on Section 7 rights, it is the employer’s burden “to first determine whether in any give[n] investigation witnesses need[ed] protection, evidence [was] in danger of being destroyed, testimony [was] in danger of being fabricated, or there [was] a need to prevent a cover up.” *Hyundai*, supra slip op. at 15.

40 In the instant case, the Respondent had no blanket confidentiality rule, and no such rule was routinely issued during investigations. (Tr. 551.) Indeed, even in this investigation where multiple individuals were named, the instruction was only issued to one employee, Brandt. It seems clear that the instruction was not preplanned, but was given in response to Brandt’s 45 statement to Ronk that she intended to talk to new nurses and offer to help them. Ronk testified that Andrews-Johnson had advised her that she had learned in the investigative interviews that staff was fearful of retaliation. (Tr. 550–551.) Ronk stated that she told Brandt not to discuss the

investigation with others on the unit since she feared the possibility of additional charges of bullying or intimidation.¹¹ However, while it may have been wise for Brandt to refrain from conversing with the new nurses as she planned, since she now knew that some of them had made negative reports about her, the instruction given to Brandt not to discuss the investigation was overbroad, and did prevent her from discussing the investigation with colleagues as she had the right to do.

Therefore, I find that the nondiscussion instruction issued by Ronk to Brandt violated Section 8(a)(1) of the Act as alleged.

CONCLUSIONS OF LAW

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

2. By issuing and maintaining portions of the Code of Conduct for Surgical Services and Perianesthesia, specifically “Verbal comments or physical gestures directed at others that exceed the bounds of fair criticism” and “Behavior ... that is counter to promoting teamwork,” the Respondent has violated Section 8(a)(1) of the Act.

3. By issuing a nondiscussion directive to an employee, the Respondent has violated Section 8(a)(1) of the Act.

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

5. The Respondent has not otherwise violated the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹²

ORDER

The Respondent, William Beaumont Hospital, located in Royal Oak, Michigan, its officers, agents, successors, and assigns, shall

¹¹ Protecting the integrity of the investigation was not given as a rationale. In any event, Andrews-Johnson’s investigation was well underway by November 2, the date the nondiscussion instruction was given to Brandt, so there could potentially have been only minimal effects on the investigation.

¹² 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.

1. Cease and desist from

5 (a) Issuing or maintaining rules which employees would reasonably construe to discourage engaging in protected concerted activities, specifically issuing or maintaining two portions of the Code of Conduct for Surgical Services and Perianesthesia: “Verbal comments or physical gestures directed at others that exceed the bounds of fair criticism” and “Behavior ... that is counter to promoting teamwork” and issuing nondiscussion directives to employees.

10 (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

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

15 (a) Rescind portions of the Code of Conduct for Surgical Services and Perianesthesia, specifically “Verbal comments or physical gestures directed at others that exceed the bounds of fair criticism” and “Behavior ... that is counter to promoting teamwork.”

20 (b) Within 14 days after service by the Region, post at its facility in Royal Oak, Michigan, copies of the attached notice marked “Appendix.”¹³ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since about October 1, 2012.

30 (c) Within 21 days after service by the Respondent, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

35 IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated: Washington, D.C. January 30, 2014

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Susan A. Flynn
Administrative Law Judge

¹³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

APPENDIX

NOTICE TO EMPLOYEES

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

The National Labor Relations Board has found that we violated 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 representatives 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 do anything to prevent you from exercising the above rights.

WE WILL NOT issue or maintain rules which employees would reasonably construe to discourage engaging in protected concerted activities, specifically, two portions of the Code of Conduct for Surgical Services and Perianesthesia: “Verbal comments or physical gestures directed at others that exceed the bounds of fair criticism” and “Behavior ... that is counter to promoting teamwork” nor will we issue nondiscussion directives to employees.

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

WE WILL rescind portions of the Code of Conduct for Surgical Services and Perianesthesia, specifically “Verbal comments or physical gestures directed at others that exceed the bounds of fair criticism” and “Behavior ... that is counter to promoting teamwork.”

WILLIAM BEAUMONT 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. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board’s Regional Office set forth below. 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.

477 Michigan Avenue, Room 300, Detroit, MI 48226-2543
(313) 226-3200, Hours of Operation: 8:15 a.m. to 4:45 p.m.

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

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED WITH ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE COMPLIANCE OFFICER, (313) 226-3200.