

**DECLARATION OF DON CARMODY**

I, Don Carmody, declare:

1. Since 1998, I have represented Community Health Systems Professional Services Corporation in connection with assorted labor relations matters involving various hospitals and other entities affiliated with Community Health Systems, Inc. ("C.H.S."), including, during all material times relative to the above-captioned matter, DHSC, LLC, d/b/a Affinity Medical Center ("Affinity").

2. I submit this Declaration in support of the opposition being filed by Affinity to the Petition for Injunction under Section 10(j) of the National Labor Relations Act.

3. From 1970 to 1975, I was employed by the National Labor Relations Board (the "N.L.R.B.") as a Field Examiner in the New York Regional Office (Region 2) of the N.L.R.B. Following my graduation from Fordham University School of Law in 1975, I have practiced labor law as a private attorney, primarily representing employers. Throughout this entire period, I have served as the "Chief Spokesman" in countless collective bargaining negotiations, having negotiated numerous collective bargaining agreements in a myriad of industries, including health care.

4. On or about March 13, 2012, I met with two representatives of the California Nurses Association / National Nurses Organizing Committee ("C.N.A.") in Oakland, California, for the purpose of discussing an agreement which would define: (a) certain terms and conditions to govern any organizing which might be conducted by the C.N.A. among Registered Nurses employed by some hospitals affiliated with C.H.S.; (b) the procedures that the Parties, which include C.N.A. and Affinity, would adhere to regarding the election; and (c) a framework for the negotiation of any initial collective bargaining agreement in the event the C.N.A. was certified by the N.L.R.B. as the exclusive collective bargaining agent for any Registered Nurses covered by the agreement. The C.N.A. representatives with whom I met on this occasion were Mike



Griffing, Field Director of the C.N.A., and David Johnson, the National Director of Organizing for the C.N.A.

5. During the meeting described in Paragraph (4), above, I reached an agreement in principle with Messrs. Griffing and Johnson, which was eventually reduced to writing in a “Proposed Labor Relations Agreement.”

6. During the meeting described in Paragraph (4), above, Messrs. Griffing and Johnson assumed the responsibility to prepare an initial draft of the Proposed Labor Relations Agreement. Thereafter, several drafts of the Proposed Labor Relations Agreement were exchanged via E-Mail transmission between and among Messrs. Griffing and Johnson and me during the months of March and April of 2012. The Proposed Labor Relations Agreement is attached as Exhibit A.

7. The Proposed Labor Relations Agreement incorporates an “Election Procedure Agreement” which defines certain terms and conditions to govern any organizing which might be conducted by the C.N.A. among Registered Nurses employed by some hospitals affiliated with C.H.S. (See Exhibit B to this Declaration, Page 20). Pursuant to the Proposed Labor Relations Agreement – particularly certain provisions of the Election Procedure Agreement – the C.N.A. would be entitled to commence organizing among Registered Nurses employed by any CHS-affiliated hospital covered by the Proposed Labor Relations Agreement (a “covered hospital”) by service of a “Notice of Intent to Organize.” The Election Procedure Agreement further provided that, in order for a C.N.A. “Notice of Intent to Organize” to be effective, the C.N.A. would have to serve any such “Notice of Intent to Organize” within forty-eight (48) hours of being notified by any covered hospital that it had received written notification from another labor organization specified in the Election Procedure Agreement (the “other specified labor organization”) that the other specified labor organization was commencing its own organizing activities among employees other than Registered Nurses employed by the covered hospital (a “Non-RN Notice of Intent to Organize”).

8. At all relevant times, with regard to the C.N.A.'s organizing activities at Affinity, and until certain election-related conduct, the Parties conducted themselves in a manner consistent with the terms of the Proposed Labor Relations Agreement by their words and actions. Hereafter, I refer to this implied-in-fact contract as the "Agreement."

9. On July 3, 2012, I received an email from Jane Lawhon, legal counsel for C.N.A., in which Ms. Lawhon provided the Notice of Intent to Organize on behalf of C.N.A. (See Exhibit C to this Declaration.) I received this email from Ms. Lawhon within forty-eight (48) hours after Affinity (a "covered hospital") notified C.N.A. of its receipt of a Non-RN Notice of Intent to Organize, which expressly acknowledges the C.N.A.'s intent to proceed according to the terms of the Agreement described in Paragraph 7.

**Evidence That Affinity And C.N.A. Have An Enforceable Agreement**

10. In compliance with terms and conditions of the Agreement, the following transpired at Affinity, as provided for in the Agreement:

- a. Affinity provided the C.N.A. with a list of the names of the Registered Nurses employed by Affinity, which included personal information about each Registered Nurse, some of which the C.N.A. would not have access to through conventional N.L.R.B. policies and procedures, including the Registered Nurse's name, job title/department, shift information, home address, home phone number, and email address, as provided to Affinity by any Registered Nurse, as well as "updates" of such a list.
- b. A "Joint Training Session" was conducted among the management of Affinity on July 9, 2012
- c. A "Joint Public Announcement" was conducted with the Registered Nurses at Affinity on July 10, 2012.

- d. Throughout the entire period of organizing among the Registered Nurses employed by Affinity, the C.N.A. was allowed enhanced “exterior” and “interior” access to the premises of Affinity, including access to break rooms, including break rooms in patient care areas of Affinity, and to conference rooms and the cafeteria.
- e. Affinity maintained strict “neutrality,” and avoided making any comment about unionization.
- f. The C.N.A. submitted all printed literature to Affinity for “pre-screening” prior to distributing or posting the literature at Affinity.
- g. Both Parties deployed “rapid responder” teams to Affinity.
- h. Affinity granted an employee in the C.N.A.’s identified bargaining unit an unpaid leave of absence, for purposes of organizing-related efforts.
- i. The Parties participated in telephonic arbitration proceedings in connection with disputes which arose under the terms and conditions of the Agreement; although not all arbitrated, the Parties generated nearly thirty (30) matters, which were administered pursuant to the procedures set forth in the Agreement.
- j. The C.N.A. initiated about twenty-five (25) of the arbitration or dispute resolution matters pursuant to the procedures set forth in the Agreement.
- k. A “Petition for Certification of Representative” was filed by the C.N.A. with the N.L.R.B., which processed the Petition in a highly expeditious manner, unconventional in normal N.L.R.B. processes.
- l. Pursuant to the Agreement, Affinity and the C.N.A. entered into a “Consent Election Agreement” and caused the same to be filed with the N.L.R.B.

**Conduct Subsequent to the Election**

11. The election contemplated by the Agreement was held on August 29, 2012. Pursuant to the Agreement, Affinity filed Objections with the N.L.R.B. Also pursuant to the Agreement, Affinity requested the N.L.R.B. defer the processing of its Objections and the process of determining challenged ballots in abeyance and notified the N.L.R.B. that the Parties had agreed to resolution of the election objections and challenges by submission to the exclusive jurisdiction of an arbitrator. This position is entirely consistent with the position taken by the C.N.A. in a matter involving a “covered hospital” in Barstow, California, where the C.N.A. insisted that the arbitrator possessed exclusive jurisdiction to decide *any* objections to the election, regardless of whether the objection arose from the conduct of N.L.R.B. or party conduct.

12. As a result of disputes arising from other “covered hospital” matters, including the referenced hospital in Barstow, California, as well as a matter involving Fallbrook Hospital Corporation d/b/a Fallbrook Hospital, the parties did not execute the Proposed Labor Relations Agreement.

13. In all material respects described in this Declaration, between July 3, 2012, and at least until September 28, 2012, both the C.N.A and Affinity conducted themselves according to the Agreement, which included the Proposed Labor Relations Agreement and the Election Procedure Agreement. On September 28, 2012, the C.N.A. invoked a specific dispute resolution provision of the Election Procedures Agreement in regard to a dispute about facility access.

14. After the election, Affinity determined that the C.N.A. breached the Agreement by failing and refusing to arbitrate election-related disputes as required by the provisions described in the Election Procedure Agreement and in other manners.

15. In all material respects, Affinity upheld its performance obligations under the Agreement.

16. Attached hereto as Exhibit A is a true and correct copy of the Proposed Labor Relations Agreement.

17. Attached hereto as Exhibit B is a true and correct copy of the Election Procedures Agreement.

18. Attached hereto is Exhibit C is a true and correct copy of an E-Mail communication I received from Ms. Lawhon on July 3, 2012.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and if called upon as a witness I could and would competently testify thereto.

Dated: August 12, 2013

  
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Don T. Carmody

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**C O N F I D E N T I A L**  
**LABOR RELATIONS AGREEMENT**

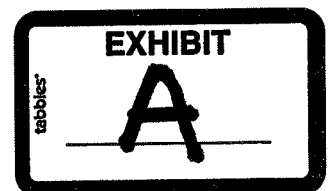
**PREAMBLE**

Community Health Systems Professional Services Corporation, a Delaware corporation and an indirect, wholly-owned subsidiary of Community Health Systems, Inc. (“CHSPSC”), as manager of and on behalf of the employers at the Hospitals previously agreed to between CNA/NNOC and CHSPSC (each an “Employer”) as defined below and the California Nurses Association/National Nurses Organizing Committee (“CNA/NNOC”), recognize their mutual interest in providing quality care for patients and quality jobs for healthcare employees. We intend that our relationship be one of mutual respect. CHSPSC and CNA/NNOC plan to work together to improve the lives of the people and communities we serve. We commit ourselves to creating a relationship that resolves issues between us in a manner that not only reduces conflict, but also fosters a growing appreciation of our respective missions.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS (this “Agreement”):

**1. Elections at Hospitals Mutually-Agreed Upon for Organizing:**

CNA/NNOC shall have the right to request an election or elections at Hospitals mutually-agreed upon by the Parties in writing, subject to the requirements of the Election Procedure Agreement attached hereto as “Exhibit A” to this Agreement (the “Election Procedure Agreement”). If such request is made, each respective Included Facility shall agree to such



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election(s) to determine whether employees at the Included Facility which is the subject of each such request desire to be represented by CNA/NNOC.

**2. Excluded Facilities.**

CNA/NNOC shall not seek to become, including by engaging in organizing activity where the purpose would relate to becoming, the collective bargaining representative of employees at any Hospital not mutually-agreed upon as provided in Section 1 (“Excluded Facility”). Notwithstanding the foregoing, if any other labor organization files a bona fide NLRB petition in any unit in any Excluded Facility, CNA/NNOC shall have the right to intervene in such petition, provided CNA/NNOC has not directly or indirectly contributed to the other labor organization having sought to file such petition. If prior to the election, the other labor organization withdraws its petition, CNA/NNOC shall not pursue an election in furtherance of that petition thereafter, and shall take whatever action is defined by the NLRB for dismissal of that petition.

Neither CHSPSC nor a CHS Affiliate shall grant voluntary recognition to any other labor organization at an Excluded Facility; and if CHSPSC or a CHS Affiliate enters into a comparable “Election Procedure Agreement” with another labor organization covering employees of an Excluded Facility, CNA/NNOC shall be offered the same opportunity at the time of its execution by the other labor organization.

**3. General Definitions.** For purposes of this Agreement:

a. “CHS” means Community Health Systems, Inc., its subsidiaries and affiliates, including Community Health Systems Professional Services Corporation.



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ensure that Hospital representatives who attend grievance meetings or other meetings where local disputes are discussed are fully informed of the dispute and empowered to resolve them.

(2) CHSPSC, CHS Affiliates, and CNA/NNOC commit to a productive and respectful bargaining process around the negotiation of collective bargaining agreements. All parties in the negotiations agree to bargain in good faith with the objective of reaching a collective bargaining agreement in an expeditious manner. The parties will hold regular bargaining sessions with decision-makers in attendance, or immediately accessible, at the appropriate times, will conduct themselves professionally, and will make good-faith proposals to the other side. If either party perceives that the other party is not conducting itself in a manner consistent with the above commitments, or if the parties reach an impasse in the negotiations, either side may request that national representatives from CHSPSC and CNA/NNOC intervene in the process in an attempt to resolve the dispute. When such a request is made, the national representatives of CHSPSC and CNA/NNOC will convene promptly, together with both parties' local representatives, with the intent of resolving the dispute and moving the bargaining process forward in a constructive manner.

At any CHS Affiliate where CNA/NNOC is the collective bargaining representative, CHSPSC and/or the CHS Affiliate and CNA/NNOC commit that they will cooperate with each other in order to produce fully executed, written collective bargaining agreements (including, when requested, in booklet form for distribution to members) within thirty days following the conclusion of the parties' negotiations.

(3) The parties acknowledge that the Union which is and/or becomes the exclusive bargaining representative for employees at a CHS Affiliate pursuant to this Agreement may have local disputes that arise during the course of this Agreement, which may include disagreements over bargaining, grievances, policy matters, or other disputes arising from the labor-

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management relationship. CNA/NNOC has the right and obligation to engage in bargaining, representation and employee advocacy on behalf of the employees they represent. CNA/NNOC and CHS Affiliates are permitted to engage in lawful Local Campaign Activities around such local disputes, including picketing or other public demonstrations, strikes/lock-outs, pursuit of governmental action, and/or communicating with members of the public (including the media), provided that any such Local Campaign Activity complies with any effective, applicable collective bargaining agreement. Furthermore, any such Local Campaign Activity, including public communications, must be factual, focus on the merits of the particular issue in debate, address differences without personal attacks, and be directed toward the CHS Affiliate which is a party to the dispute, and must not be directed toward CHSPSC and/or any CHS Affiliate, other than the CHS Affiliate which is a party to the dispute.

(4) The parties further recognize that nothing in this Agreement hinders CNA/NNOC's communications within the Union. CNA/NNOC is permitted to communicate freely with its staff and leadership and with the employees whom they represent at Existing Facilities or whom they seek to represent at the Hospitals mutually-agreed upon for organizing pursuant to Section 1 (subject to the requirements of the Election Procedure Agreement and the Standstill Agreement). Likewise, CHS is free to communicate with its staff and management (subject to the requirements of the Election Procedure Agreement and the Standstill Agreement). The parties will institute strong protective measures to ensure that internal communications are not released to any individuals and/or entities not subject to this Agreement, including the news media (a "third party"). CNA/NNOC acknowledges that it will not use officers, staff, and/or members to circumvent the commitments made in this Section 4.a. Likewise, CHS and CHS

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Affiliates acknowledge that it will not use its officers, managers, or employees to circumvent the commitments made in this Section 4.a.

In the unlikely event that internal union communications which would otherwise violate the Labor Relations Agreement are released to a third party, the CNA/NNOC will issue a corrective notice in the same forum where the internal communication has appeared. Likewise, if internal CHS communications which would otherwise violate the Labor Relations Agreement are released to a third party, CHS and/or the CHS Affiliate (as the case may be) will issue a corrective notice in the same forum where the internal communication has appeared.

If either party believes that the corrective notice is inadequate to remedy the situation, then the aggrieved party may raise the issue with the Arbitrator within 48 hours. The Arbitrator must render a decision and remedy within 24 hours.

(5) CHS, CHS Affiliates, and their Existing Facilities shall not engage in any efforts to encourage or support the decertification of CNA/NNOC. However, in the event that a decertification petition is filed, CHS and/or CHS Affiliates are permitted to file responsive and other required documents with the NLRB so long as they are consistent with this Subsection (5).

b. The parties recognize and accept that, in the future, they may differ publicly over public policy issues or legislative proposals. This Agreement shall not constrain the parties from communicating with the government and members of the public about electoral campaigns, issue education, lobbying and legislative matters, as long as such communication does not single out CNA/NNOC or CHS and/or CHS Affiliates.

c. The parties do not desire or intend by any terms set forth in this Agreement to interfere with any official governmental proceeding or investigation. It is expressly understood

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by the parties that this Agreement is in no way intended to encourage or commit any violation of law or unlawful interference with any official governmental proceeding or investigation.

d. The parties agree that they will not assist or otherwise utilize agents or third parties (including CHS Affiliates) to accomplish what they cannot do directly under this Agreement. This Subsection shall not diminish CNA/NNOC's rights and responsibilities contained in Section 4.a (3). Neither CHS Affiliates nor local area CNA/NNOC leaders shall be considered "agents" of either CHS or CNA/NNOC, respectively, absent proof of agency in connection to the specific conduct at issue.

**5. CNA/NNOC Commitments to CHS.**

a. CNA/NNOC and CHS agree to work together to resolve disagreements or disputes through direct discussion rather than appeal to outside persons(s), agenc(y)ies, organization(s) or authorit(y)ies. The phrase "rather than appeal to outside persons(s), agenc(y)ies, organization(s) or authorit(y)ies" includes any act, conduct, or effort, including media contacts, designed to cause any such outside person(s), agenc(y)ies, organization(s) or authorit(y)ies participating, intervening, taking a position, or otherwise becoming involved in the disagreement or dispute to the detriment of one of the parties.

b. CNA/NNOC and its leadership, officers, employees, and agents authorized to engage in conduct directly related to compliance with this Agreement agree not to make or cause to be made any public statements that disparage, or damage the reputation of CHS, officers, directors, attorneys or employees. This provision shall be interpreted broadly to prohibit any public communication that portrays CHS, officers, directors, attorneys or employees, in a negative light or which could reasonably be interpreted to disparage CHS, regardless of the subjective intent of CNA/NNOC and its leadership, officers, and employees.

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c. CNA/NNOC agrees to cease and refrain from engaging in any other manner of negative publicity and activity directed at CHS or any of its (their) officers, directors, attorneys or employees. Such negative activities include but are not limited to pickets, demonstrations, marches, handbilling, boycotts, interference with the recruitment of physicians and/or other personnel, and/or the dissemination of negative information via print and/or broadcast media.

d. CNA/NNOC will not initiate or pursue any legal, administrative, regulatory, or legislative activity against CHS, including filing or pursuing any claims, complaints, or charges (“Claims”) against CHS.

(1) Notwithstanding the foregoing, CNA/NNOC is permitted to pursue judicial or governmental action with respect to a local dispute arising from contractual or employment-related issues at Included or Existing Facilities including seeking enforcement of employee’s rights under federal, state or local law, as long as the relief sought is limited to CNA/NNOC-represented employees at the respective Included and Existing Facilities.

e. Unless it is necessary to protect the anonymity of an employee represented by, or an individual who directly communicates with, the CNA/NNOC, or unless requested otherwise by a government agency or court, and subject to any applicable rules of civil or criminal procedure, CNA/NNOC agrees to notify CHS in writing immediately upon learning that CNA/NNOC or any of its leadership, officers, employees, or members is to be compelled to provide testimony, documents or any form of assistance in any Claim against CHS.

f. Unless it is necessary to protect the anonymity of an employee represented by, or an individual who directly communicates with, the CNA/NNOC, or unless requested otherwise by a government agency or court, and subject to any applicable rules of civil or criminal

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procedure, CNA/NNOC agrees to notify CHS in writing immediately upon learning that it or any of its leadership, officers, employees, or members has or intends to provide testimony, documents, or any other information in connection with any government investigation of CHS.

g. Nothing set forth in this Agreement shall prevent CNA/NNOC or its leadership, officers, employees, or members from cooperating with any federal, state, or local governmental investigation.

h. Nothing set forth in this Agreement shall prevent CNA/NNOC or its leadership, officers, employees, or members from testifying and doing so truthfully in connection with any litigation, arbitration or administrative proceeding when compelled by subpoena, regulation or court order to do so.

i. The CNA/NNOC, subject to the terms and conditions of this Subsection 5.i, shall provide meaningful support to CHS and/or any CHS Affiliate in the pursuit of any acquisition of each and every business entity designated by CHS and/or any CHS Affiliate for acquisition. The CNA/NNOC shall not be obligated to provide the support described in this Subsection 5. i in connection with any acquisition which poses a bona fide conflict of interest between such an acquisition and any employees represented by the CNA/NNOC.

j. The provisions of Subsection 5.a., 5.b., 5.c., and 5.d. shall not apply to nor restrict any activities permitted under the provisions of Section 4, Mutual Respect and Commitment to Problem-Solving of this Agreement.

**6. CHS Commitments to CNA/NNOC**

a. CHS and its directors, officers, employees, and agents authorized to engage in conduct directly related to compliance with this Agreement agree not to make or cause to be made any public statements that disparage, or damage the reputation of CNA/NNOC, including

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their leadership, officers, employees, attorneys or members. This provision shall be interpreted broadly to prohibit any public communication that portrays CNA/NNOC, including their leadership, officers, employees, attorneys or members in a negative light or which could reasonably be interpreted to disparage CNA/NNOC, regardless of the subjective intent of CHS and its directors, officers and employees.

b. CHS agrees to cease and refrain from engaging in any other manner of negative publicity and activity directed at CNA/NNOC and/or its leadership, officers, employees, attorneys or members. Such negative activities include but are not limited to pickets, demonstrations, marches, handbilling, boycotts, and/or the dissemination of negative information via print and/or broadcast media.

c. CHS will not initiate or pursue any legal, administrative, regulatory, or legislative activity against CNA/NNOC, including filing or pursuing any Claims against CNA/NNOC. CHS agrees that it will not assist or otherwise utilize third parties (including CHS Affiliates or subsidiaries) to accomplish what it cannot do directly under this Agreement.

(1) Notwithstanding the foregoing, CHS is permitted to pursue judicial or governmental action with respect to a local dispute arising from contractual or employment-related issues at Included or Existing Facilities including seeking enforcement of an Included or Existing facility's rights under federal, state or local law, as long as the relief sought is limited to the respective Included and Existing Facilities.

d. Absent a compelling reason or unless requested otherwise by a government agency or court, CHS agrees to notify CNA/NNOC in writing immediately upon learning that CHS or any of its officers, directors or employees is to be compelled to provide testimony, documents or any form of assistance in any Claim against CNA/NNOC.



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e. Absent a compelling reason or unless requested otherwise by a government agency or court, CHS agrees to notify CNA/NNOC in writing immediately upon learning that it or any of its officers, directors or employees has or intends to provide testimony, documents, or any other information in connection with any government investigation of CNA/NNOC.

f. Nothing set forth in this Agreement shall prevent CHS or its officers, directors, employees from cooperating with any federal, state, or local governmental investigation.

g. Nothing set forth in this Agreement shall prevent CHS or its officers, directors, or employees from testifying and doing so truthfully in connection with any litigation, arbitration or administrative proceeding when compelled by subpoena, regulation or court order to do so.

7. **Compliance by Affiliates.** CHSPSC shall ensure that the CHS Affiliates or subsidiaries which own or control Hospitals mutually-agreed upon for organizing pursuant to Section 1, and New and Existing Facilities (to the extent New and Existing Facilities are covered by this Agreement) comply with this Agreement. CNA/NNOC shall ensure its compliance with this Agreement.

8. **Standstill Agreement.** The parties agree to address various transition issues leading up to any elections at the Hospitals mutually-agreed upon for organizing pursuant to Section 1 with the goal of obtaining compliance with the terms and conditions of this Agreement upon and after the effective date of this Agreement (Exhibit B).

9. **Successors and Closures.**

a. CHSPSC represents that it is not in the process of, as of the execution of this Agreement, selling, leasing, or in any other way transferring operations, in whole or in part, any of the Hospitals mutually-agreed upon for organizing pursuant to Section 1. CHSPSC also



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represents that it has no plans, as of the execution of this Agreement, to close any of these Hospitals mutually-agreed upon for organizing pursuant to Section 1. During the term of this Agreement, before any conveyance of an Included Facility or Existing Facility, CHSPSC or a CHS Affiliate shall obtain the agreement of any non-CHS affiliated entity that purchases, leases or in any other manner assumes control, in whole or in part, over such an Included Facility or Existing Facility to abide by the terms of this Agreement, including the Election Procedure Agreement and any CNA/NNOC's effective collective bargaining agreement, where applicable.

b. If a CHS Affiliate acquires a New Facility where the employees are represented by an CNA/NNOC, it shall assume any existing collective bargaining agreement between such facility and the CNA/NNOC, subject to the provisions set forth in the Side Letter on Framework for Bargaining (Exhibit C).

**10. Term.** This Agreement shall commence on the Effective Date and end on February 28, 2014 at 11:59pm.

**11. Arbitration (a)** The Parties agree to submit any unresolved disputes about compliance with or construction of this Agreement to final and binding arbitration before Ralph Berger. Ralph Berger shall be the permanent Arbitrator to resolve disputes under, interpret and enforce, and provide for remedies, consistent with this Section (11), with respect to any breach of this Agreement. If Ralph Berger is no longer able or willing to serve as the Arbitrator then a replacement arbitrator shall be selected by the parties from an agreed-upon panel of five (5) arbitrators. The parties shall agree upon the panel by June 1, 2012. The Arbitrator shall have discretion to establish procedures for the resolution of such disputes, including discovery and submission of evidence by the parties. Except for disputes arising under the Election Procedures Agreement (which are governed by the timetables provided for in the Election Procedure

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Agreement), the parties and the Arbitrator shall use their best efforts to resolve all disputes within fourteen (14) consecutive calendar days of the submission of the issue. The Arbitrator shall have the power to issue any and all remedies he/she deems to be just and proper, including compensatory damages, equitable relief, and attorney fees and costs, provided the remedy has been specifically sought by a party prior to the issuance of the decision of the Arbitrator, and provided further that the remedy is specifically designed to achieve compliance with this Agreement. Notwithstanding the foregoing, the Arbitrator will not be permitted to order any punitive relief.

In addition, if there are material and repeated breaches of the Election Procedure Agreement, the Arbitrator may do any of the following: if the material and repeated breaches are by CHS or CHS Affiliates, extend the time period allowed under the agreement to organize at the CHS Included Facility where the breaches occurred for an additional period not to extend beyond the Term of this Agreement (as defined in Section 10), or upon a showing of majority support among the employees in the petitioned-for bargaining unit with regard to which the Arbitrator had determined such breaches have occurred, order CHS and/or the CHS Affiliate to recognize CNA/NNOC as the bargaining representative for such unit and issue a bargaining order with CNA/NNOC for such unit; or if the material and repeated breaches are by the CNA/NNOC, require the CNA/NNOC to cease organizing activity at the Included Facility, or order that facility to become an Excluded Facility under this Agreement.

The Arbitrator's determinations under this Agreement, all related agreements and documents incorporated by reference, shall be binding on both parties. The parties shall jointly share the costs of the services of the Arbitrator under this Agreement, all related agreements and documents incorporated by reference.

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**(b) Appeals of Arbitration Decisions.** The Parties waive any and all rights they might otherwise have to appeal or in any way contest the decision of the Arbitrator, subject to this Subsection 11(b). If either party fails to comply with the decision of the Arbitrator, it hereby consents to enforcement of this Agreement and any decision of the Arbitrator in the pertinent federal district courts and appellate courts as provided for in Section 15 and waives any defenses it might have to such enforcement, subject to this Subsection 11(b).

Notwithstanding the foregoing, if the Arbitrator's decision finds that either party committed an egregious and significant violation of this Agreement, the aggrieved party shall have the right to pursue a limited judicial appeal of the Arbitrator's decision as follows. The aggrieved party shall serve a written notice upon the prevailing party within seven (7) consecutive calendar days of the Arbitrator's issuance of the decision that it intends to invoke this Subsection 11(b). The parties shall engage in mandatory mediation with the Arbitrator during the 14 calendar day period immediately following the service of any such notice to determine if the dispute can be resolved. If the mediation is not successful, the aggrieved party shall have the right to appeal the arbitrator's award under the Federal Arbitration Act and/or the Labor Management Relations Act in the Venue provided for in Section 15. The only ground for appeal shall be that the Arbitrator exceeded his/her power as defined in Section 11 of this Agreement. The parties acknowledge that if the court finds that the appeal was frivolous, it is entitled to impose sanctions (including attorneys fees and costs) on the losing party.

Subsection 11(b) does not apply to violations of the Election Procedure Agreement, which are governed by Paragraph 20 of the Election Procedure Agreement.

**12. Entire Agreement; Modifications;** This Agreement (together with the documents incorporated by reference in Paragraph (20)) constitutes the entire agreement of the parties

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relating to the subject matter hereof. This Agreement may be amended, modified, supplemented or terminated only by a written instrument executed by CHSPSC and CNA/NNOC, and no other consent or approval shall be required from any other person or entity, including intended third party beneficiaries.

a. **Confidentiality:** Each party agrees that the terms of this Agreement are confidential and shall not be disclosed to any other person or entity without the written consent of both parties hereto, unless necessary to obtain enforcement of or compliance with this Agreement, or unless ordered to do so by a court of competent jurisdiction, or otherwise required by applicable law. The parties acknowledge that each has received certain documents, materials and other information during the course of their respective evaluation and negotiation of this Agreement that are confidential in nature (the "Confidential Information"). Each of the parties agrees that it shall not at any time utilize any Confidential Information made available to it, or, directly or indirectly, disclose such Confidential Information regarding the other to any person or entity; provided, however, the receiving party may disclose Confidential Information to members of its and its Affiliates' leadership, officers, boards of directors, management employees, and advisors with a need to know, subject to the conditions that the receiving party: (a) notify such leadership, officers, board members, management employees and advisors that such Confidential Information is subject to the terms of a confidentiality agreement and (b) obtain such person's agreement to maintain the confidentiality of such Confidential Information. For purposes of this Agreement, Confidential Information shall not include any information which: (a) a party can demonstrate was already lawfully in its possession prior to the disclosure thereof by the other; (b) is known to the public and did not become so known through the fault of the receiving party; (c) becomes known to the public through no fault of the receiving party; (d) is later lawfully

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acquired by a party from other sources; (e) is required to be disclosed pursuant to the provisions of any state or United States statute or regulation issued by a duly authorized agency, board or commission thereof; or (f) is required to be disclosed by rule or order of any court of competent jurisdiction or otherwise required by law to be disclosed.

**b. Publicity.** The Parties shall agree not to issue any publicity, release or announcement concerning the execution of this Agreement. No other publicity, release or announcement concerning this Agreement shall be made without the advance written approval of the other party hereto, both as to the timing and content of such release, except as required in connection with securities and other laws. However, this Subsection shall not bar CNA/NNOC from communicating with its leadership and staff about the terms of this Agreement, nor CHS from communicating with CHS Affiliates, subject to the terms of the Standstill Agreement.

**c. Survival.** The parties each acknowledge and agree the provisions of this Section 12 shall survive any termination of this Agreement.

**d. Other Confidentiality Agreements.** The Parties further acknowledge and agree that their respective rights and obligations under this Section 12 shall replace and supersede any existing agreements of confidentiality with one another in their entirety.

**13. Severability; No Merger.** If any provision, or part of any provision, of this Agreement is held to be invalid or unenforceable to any extent, then the remainder of this Agreement shall remain in full force and effect and such provision will be interpreted, construed or reformed to the extent reasonably required to render the same valid, enforceable and consistent with the original intent underlying such provision. The parties shall meet in good faith to reach a revised Agreement(s) on the subject matter of the provision. Specifically, if the elections under the

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Election Procedure Agreement cannot be held because of any action by the NLRB or a court, then the parties will meet immediately to discuss the next course of action and any amendments to this Agreement, including the Election Procedure Agreement that may be necessary. In the event that the parties cannot agree, they will submit the issue to binding arbitration before the Arbitrator.

**14. No Provisions Binding Until Signed.** Neither party to this Agreement shall be bound to any of its provisions solely by the presence of such provision in any draft hereof unless and until this Agreement is signed by such party. No draft of this Agreement prior to that which is signed between the parties shall be used by any party, or be admissible in any proceeding, to interpret the intent of the parties.

**15. Governing Law; Venue.** (a) **Venue:** The venue for any court proceeding arising out of, or related to, this Agreement shall be the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit, as appropriate.

(b) **Governing Law:** This Agreement shall be governed by federal law, to the extent federal law applies, as applied and/or interpreted, as the case may be, by the United States District Court for the District of Columbia and/or the United States Court of Appeals for the District of Columbia Circuit. This Agreement shall be governed, to the extent the law of a State applies, by the laws of the State(s) in which the Hospital(s) is/are located which is/are the subject of the court proceeding, as applied and/or interpreted, as the case may be, by the United States District Court for the District of Columbia and/or the United States Court of Appeals for the District of Columbia Circuit.

**FINAL—FOR APPROVAL**

**16. No Representations.** Neither party has relied on any verbal or written representations of the other party in deciding whether to enter into this Agreement.

**17. Approval:** CNA/NNOC is executing this Agreement subject to the approval of its Executive Director, Rose Ann DeMoro. CHSPSC is executing this Agreement subject to the approval of the Board of Directors of Community Health Systems Professional Services Corporation. This Agreement shall not be effective, and neither party shall be bound by it, until Ms. DeMoro and Community Health Systems Professional Services Corporation have mutually executed this Agreement and the parties have exchanged written notices, by email, stating that they have executed it. On the later date that such notice of execution is provided by one party to the other, this Agreement shall become effective ("Approval Date").

**18. Mutual Release:** The parties agree to release and forever discharge each other and any of their affiliates, officers, directors, employees, trustees, and agents from any and all claims, damages, charges, arbitrations and liability, causes of action of every kind and nature, whether known or unknown, whether discovered or undiscovered arising from any action or conduct of either party prior to the Effective Date. This release will not apply to any grievances and/or arbitration proceedings under collective bargaining agreements, or unfair labor practices that may be pending at the time of the Effective Date.

**19. Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall together constitute one agreement.

**20. Related Documents Incorporated By Reference:** This Agreement incorporates several documents by reference, all of which are considered part of this Labor Relations Agreement.

They are:

**FINAL—FOR APPROVAL**

- A. Election Procedure Agreement
- B. Standstill Agreement
- C. Side Letter on Framework for Bargaining
- D. Side Letter on Third-Party Conduct

*Remainder of Page Intentionally Left Blank.*

*Signature Page Follows.*



**FINAL—FOR APPROVAL**

**COMMUNITY HEALTH SYSTEMS  
PROFESSIONAL SERVICES  
CORPORATION**

\_\_\_\_\_

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Its: \_\_\_\_\_

**CALIFORNIA NURSES  
ASSOCIATION/NATIONAL NURSES  
ORGANIZING COMMITTEE**

\_\_\_\_\_

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Its: \_\_\_\_\_

## **ELECTION PROCEDURE AGREEMENT**

The Parties, California Nurses Association/National Nurses Organizing Committee (hereinafter “Union”), Community Health Systems Professional Services Corporation, a Delaware corporation and an indirect, wholly-owned subsidiary of Community Health Systems, Inc. (“CHSPSC”), as manager of and on behalf of the employers at the Hospitals previously agreed to between CNA/NNOC and CHSPSC (each an “Employer”), enter into the following of which this Election Procedure Agreement (hereinafter “EPA”) is a part, agree as follows:

### **EPA Timetable**

The parties agree that there shall be two stages of Union organizing of employees covered by this Agreement:

1. Organizing Period: The “organizing period” will commence when the Union gives the Employer written Notice of Intent to Organize and ends 75 consecutive calendar days following the service of the respective Notice of Intent to Organize, by which date the election(s) which is the subject of any respective Notice of Intent to Organize must be held by the National Labor Relations Board (“NLRB”). If, by no fault of the parties, the NLRB is unable to schedule an election by that date, and the parties have negotiated and submitted their consent agreement to the Regional Director of the NLRB by no later than one week before the end of the 75 day organizing period, the organizing period will be extended for at least 15 days. In the event it appears that the organizing period may have to be extended beyond 15 days, the parties will meet and confer to promptly resolve the duration of the pertinent organizing period. If the Employer does not provide lists consistent with Paragraph 7, the organizing period will also be extended in the same manner as the foregoing. In no event shall the organizing period be extended more than 15 consecutive calendar days beyond the term of the Labor Relations Agreement.



In the event any Included Facility notifies the CNA/NNOC, in writing, that a “Notice of Intent to Organize” has been filed with the Included Facility by the Service Employees International Union, CTW, CLC (SEIU”) and/or a Local Union Affiliate of the SEIU, the CNA/NNOC must give such Included Facility a Notice of Intent to Organize, as described above, within forty-eight (48) hours of the Included Facility’s notice to the CNA/NNOC, in order for the Notice of Intent to Organize to be effective; accordingly, in the event the CNA/NNOC fails to give such an Included Facility such a Notice of Intent to Organize, the CNA/NNOC shall not seek to become, including by engaging in organizing activity where the purpose would relate to becoming, the collective bargaining representative of the Registered Nurses employed by such Included Facility for the remaining duration of the Parties’ Labor Relations Agreement. In the event the CNA/NNOC gives an Included Facility such a Notice of Intent to Organize following the Included Facility’s notice to the CNA/NNOC that a “Notice of Intent to Organize” has been filed with the Included Facility by the SEIU and/or a Local Union Affiliate of the SEIU, the 72 hour period referred to in Section (12), below, shall be modified so as to facilitate an orientation/training session to be conducted by the CNA/NNOC jointly with the SEIU and/or the Local Union Affiliate of the SEIU.

2. Post-Election Period: The “post-election period” begins after the election which is the subject of any respective Notice of Intent to Organize is held, and continues until the election results are certified by the NLRB, and, if the Union is certified by the NLRB as the bargaining representative, continues to cover the resolution of the first contract.

3. [Intentionally left blank]

#### Consent Election

4. (a) The Employer will agree to an NLRB consent election in a bargaining unit defined in Sub-paragraph (b), below, petitioned for by Union. Pursuant to NLRB procedures, the Union must file a representation petition with the appropriate office of the NLRB. The selection of the election dates is subject to the parties' written agreement. The parties will make their best efforts to agree on appropriate voting times; however, if the parties do not agree, then the voting times will be 6:00 a.m.-8:30 a.m., 11:00 a.m.-2:00 p.m., and 6:00 p.m.- 8:30 p.m.

(b) The Union's representation petition shall designate the following unit:

All registered nurses.

The Union's representation petition for bargaining units will be in accordance with the Board's Health Care Rule on appropriate bargaining units in acute-care hospitals, NLRB Rules and Regulations Section 103.30.

(c) The NLRB will conduct the election and count the ballots. Any challenged ballots, challenges or objections to the election must be filed pursuant to Paragraph 20 of this Agreement, and all parties acknowledge and submit to the Arbitrator's exclusive authority to rule on such objections and any determinative challenges and the parties waive their rights to have the NLRB resolve any objections or determinative challenges. The parties will take all necessary steps to effectuate the arbitration process and the arbitrator's decision regarding objections and/or determinative challenges.

(d) If a majority of employees casting valid ballots in any election conducted by the NLRB in any of the units defined in Sub-paragraph (b), above, votes to be represented by the Union, then upon the certification of the election results by the NLRB, the Employer shall recognize the Union as the collective bargaining agent on behalf of the employees who are the subject of such NLRB Certification. The parties shall enter into negotiations in a good faith

effort to reach a collective bargaining agreement in accordance with the following timetable: Within two weeks of any such NLRB Certification, there will be an introductory session between the principal representatives of the union and the facility at which session the parties will schedule the first bargaining session for a date no later than thirty days following the date of such NLRB Certification.

5. Nothing in this Agreement diminishes any access or other rights guaranteed to the Union or employees by the National Labor Relations Act. The parties agree that they will use this Agreement and where not otherwise modified, the guidelines of the National Labor Relations Act, to ensure that a fair and representative election occurs in an appropriate unit as defined in Sub-paragraph 4(b), above, among properly eligible employees.

**Eligibility**

6. All employees who are employed on a full-time, regular part-time or per diem basis in the petitioned for unit, who are on the active payroll as of the date immediately preceding the date of the filing of the consent agreement and who are still employed at the time of voting shall be eligible to vote in the election except managers, supervisors, confidential employees, guards, physicians, employees of outside registries and other agencies supplying labor to the Employer, and employees already represented by a labor organization. (Per diem eligibility shall be determined in accordance with standard NLRB rules.) The parties shall confer over the issue of which nurses employed in a “charge nurse” capacity are properly excluded as supervisors. This status shall not result in a significantly higher ratio of nurse supervisors-to-unit nurses than is applicable at such units represented by the Union at other Hospitals.

If the parties are unable to agree on an exclusion of a particular charge nurse, the Arbitrator shall decide this issue. A permanent charge nurse may be excluded from a bargaining unit in the event the individual is an actual “supervisor.” This exclusion does not encompass an individual (a) who only serves as charge nurse on a periodic or rotational basis and not each time she/he is on duty; or (b) who simply rotates or substitutes for a permanent charge nurse.

### **Lists**

7. (a) The respective Included Facility shall provide to the Union the list of the eligible employees in the bargaining units specified in a respective Notice of Intent to Organize, in writing and in an electronic format (an “Employee List”). The Employee List shall contain the information generally provided in NLRB-conducted elections; specifically, the employee's name, job title/department, shift information, home address, home phone number, and email address, as provided to the Employer by the employee. Each Employee List shall also include separate page(s) which contain(s) the names of employees in each unit whom the respective Included Facility contends are excluded from the unit as managers, supervisors, or confidential employees, together with the job title/department, and the excluded category on which the Employer relies.

(b) An update of the Employee List, comprised of all new hires and terminations/quits, shall be provided to the Union within 48 hours following service of any respective Notice of Intent to Organize, or by the end of the second business day following any Saturday, Sunday or federal holiday on which the Union submits the respective Notice of Intent to Organize. This Employee List shall include the same employee information and be in the same format as the initial list described above.

(c) Within 24 hours of filing the consent agreement with the NLRB, the Employer shall provide the Union with a voter eligibility list for the unit which is the subject of the consent agreement both in writing and in an electronic format. The list shall contain the employee's name, job title/department, shift information, home address, home phone number, and email address as provided to the Employer by the employee. The parties shall immediately attempt to resolve any disagreements over the status of job classifications or individuals who should be included on the voter eligibility list or excluded from such list. Any remaining dispute regarding voter eligibility shall be resolved by allowing any employee whose eligibility remains in dispute to vote, subject to challenged ballot.

#### **Voting**

8. Employees shall vote on work or non-work time. Neither the Employer nor the Union shall provide any financial inducements to vote. The parties shall each be entitled to an equal number of observers at the election site. The observers must be non-supervisory employees. If an employee wishes to be an election observer, the Employer must make a good faith effort to allow the employee to be released to serve as an observer. The parties shall jointly share any cost associated with the voting.

#### **Ballot Counting**

9. The NLRB shall count the ballots immediately following the conclusion of voting. Both parties, as well as interested off-duty employees, may attend the counting of the ballots. The number of people allowed to attend the counting of the ballots will be determined by the parties prior to the actual count.

10. Resolution of Challenged Ballots and Election Objections: If challenged ballots are determinative of the result of any election, the Arbitrator shall resolve challenges to the

eligibility of voters. The Arbitrator shall have discretion to establish procedures for the resolution of such challenges, which may include submission of evidence by the Parties. The Arbitrator shall follow the NLRB's standard for resolution of challenged ballots. In all cases, however, the Arbitrator shall resolve challenges within fourteen (14) days of the election.

If a party wishes to file objections to the election based on allegations of significant violations of this EPA, either party must file such objections in writing with the Arbitrator within three (3) business days of the election, not including the date of the election, as well as filing objections with the NLRB pursuant to NLRB timelines and procedures. Pursuant to Paragraph 20, the Arbitrator shall resolve these objections within fourteen (14) days of his/her receipt of the objections. In the event any such objections are timely filed, both parties will request that the NLRB hold objections in abeyance pending the decision of the Arbitrator. Further, the parties shall take any additional steps necessary to effectuate the Arbitration process and the Arbitrator's decision.

#### **Standard of Conduct**

11. (a) The parties agree that the question of whether employees should be represented by the Union is one that employees should answer for themselves. The Employer agrees to be neutral on the question of unionization. No Employer officer, manager, supervisor, designee or agent shall make any comment, directly or indirectly, on this question. For purposes of this Paragraph, the parties also understand that the employees in the bargaining units voting under this EPA shall not be considered "agents" of either party absent proof of agency in connection to the specific conduct at issue.

(b) The parties shall issue a Joint Information sheet to be provided to employees who have questions on the EPA. The Union agrees that its message to employees regarding the



choice of whether to unionize shall be non-coercive and non-intimidating. The Union agrees to campaign in a positive and non-disruptive manner and not to engage in negative campaigning which disparages the hospital and management representatives. Rather, the Union's campaign will focus on how employees can address workplace issues through collective bargaining and union representation. It is not the parties' intent to inhibit the Union's discussion of working conditions.

(c) Neither the Union nor the Employer will threaten, intimidate, discriminate against, retaliate against, or take any adverse action against any employee based on his or her decision to support or oppose union representation. The Employer agrees that it shall not conduct an anti-union campaign and shall not utilize consultants for the purpose of seeking advice that violates, undermines or evades the terms of this Agreement or the parties' intention to abide by this Agreement in good faith. Likewise, no Employer officer, manager, supervisor, designee or agent shall provide assistance to any individual or group who may wish to pursue an anti- or pro-union campaign, including use of employer time, property or resources consistent with law and the policies of the Hospital at which an election is being conducted. Similarly, neither the Union, nor any Union officer, agent, member, or employee shall provide assistance to any individual or group, including any employees of the Hospital, to cause such individual to act in a manner inconsistent with the provisions of this EPA (including, but not limited to, screening of literature, communications, access, etc.). The Union agrees that it will not introduce major new issues or arguments in the campaign during the final 48 hours before a scheduled election unless a new major event occurs at that time which necessitates a response.

### **Orientation/Training**

12. All supervisors, managers and union organizers who are involved in an organizing campaign at a facility are expected to be familiar with the terms of the EPA. A joint orientation/training session shall be held for this group within 72 hours of the Union's Notice of Intent to Organize. In the event the CNA/NNOC gives an Included Facility such a Notice of Intent to Organize following the Included Facility's notice to the CNA/NNOC that a "Notice of Intent to Organize" has been filed with the Included Facility by the SEIU and/or a Local Union Affiliate of the SEIU, the 72 hour period referred to above shall be modified so as to facilitate an orientation/training session to be conducted by the CNA/NNOC jointly with the SEIU and/or the Local Union Affiliate of the SEIU.

The joint sessions are to emphasize the need for mutual respect, the importance of both parties' compliance with the Standards of Conduct and Access provisions, and the goal of rapid, cooperative problem-solving where incidents of alleged violations occur. National representatives from the Union and the Employer shall conduct the sessions. Likewise, non-eligible employees will be trained on the EPA's provisions governing management and union conduct, and the parties' agreement that the question of whether employees should be represented by the Union is one that employees should answer for themselves.

### **Pre-Screening of Literature**

13. The Union and the Hospital shall pre-screen all written literature distributed or posted to the employees. However, consistent with Paragraph 11, the Employer shall put out no literature regarding unionization other than the Joint Information sheet, except as outlined below. Before the Union uses any new piece of literature, it must first be submitted to the Employer's trained designated representative for review. Once the parties agree to language, a presumption

applies that the same language may be re-used in other elections at other hospitals covered by this EPA, provided that the same conditions apply. Nevertheless, the Union agrees to submit all literature to the Employer's representative for review prior to distribution. Literature shall be as close to the final form to be distributed as reasonably possible when submitted to the Employer's representative. Upon reasonable request from the Hospital, the Union shall provide documentary support for factual statements within the literature. If a reasonable request for documentation is made, the time periods set forth below shall not begin to run until proper supporting documents are received by the Hospital. If there is a dispute regarding whether the request is reasonable, the Union may avail itself of the arbitration process set forth in this EPA.

The Union may begin pre-screening literature with the Employer once a respective Notice of Intent to Organize has been given. If the other parties' trained representative does not approve the literature by the close of the same normal business day (Monday through Friday) if submitted for review before 10:00 a.m., or by the close of the next normal business day if submitted for review after 10:00 a.m., either party may submit the matter to the Arbitrator for the Arbitrator's review and immediate response. This process is intended to be completed within 48 hours from beginning to end. No level of the process may delay its movement to the next level. Until a dispute arising out of the pre-screening of any literature is resolved, the contested literature shall not be distributed in any manner.

If the Hospital believes a factual error has been conveyed by the Union in its organizing campaign at the Hospital, and the Union has failed to correct it within 48 hours after written notice of such factual error has been provided by the Hospital to the Union, the Employer may post or distribute a written correction of the factual error after pre-screening the literature under the same conditions above. Otherwise, the Hospital may only issue communications regarding

the union with the Union's express written agreement, and if such agreement is given, then such communications must go through the pre-screening process set forth in this Paragraph. The Union is permitted to withhold such express written agreement in its sole discretion, and its refusal to give such agreement and/or the reason for its refusal shall not be subject to either the arbitration provisions of Paragraph 11 of the Labor Relations Agreement or Paragraph 21 of this Election Procedure Agreement.

**Access**

14. (a) Upon execution of this EPA, the Employer shall grant representatives of the Union reasonable access to employees of the Hospital through the following means. The Employer will not give the impression of increased security due to organizing. Hospital security will not follow authorized Union representatives while walking through the Hospital or create the impression that any employee or Union staff are under surveillance.

**Exterior Access**

(b) Union representatives shall be given access to exterior areas where employees typically congregate and parking lots. No more than two non-employee union representatives may be in any one particular exterior area at one time.

(c) Union representatives shall also be given access at all entrances (doors into and out of the facility) to the Hospital and the grounds outside the facility to employees for the following number of Union supporters (including hospital employees) who may be present at any one entrance at any single time, and for so long as the Union supporters do not interfere with access to the entrance: One (1) Union supporter for every fifty (50) eligible voters, but in no event in excess of six (6) Union supporters. For purposes of this subparagraph, the number of

eligible employees shall include only those employees eligible in the units referenced in the Union's Notice(s) of Intent for that Facility.

**Interior Access**

(d) Four Union representatives will be given access to the cafeteria during normal operating hours. Moreover, one Union representative shall be permitted in each employee break room (or if no break room, the break area or its equivalent), as agreed to in writing between the parties, for a maximum total period of one and a half hours per each shift. The Union representatives shall respect the request of any employee who does not wish to engage in a discussion or accept literature. Union representatives will be permitted to exchange pleasantries on the way to break rooms, and may inform employees that the representative will be in the break room, provided that the representative shall not interfere with patient care or other work activities.

The physical juxtaposition of any break room being utilized by the Union pursuant to this subparagraph (d) to any fixed, physical work station for supervisors (which are in existence as of the date of the Notice of Intent to Organize for that Included Facility), including, by way of example only, a Nursing Station, shall not, by itself, be the basis of a claim by the Union of unlawful surveillance either before the National Labor Relations Board or a complaint under this EPA. Nevertheless, the Union may pursue such a claim or complaint of unlawful surveillance which challenges specific conduct so long as it is not based solely upon the juxtaposition of a break room to the fixed, physical work station for supervisors (which are in existence as of the date of the date of any Notice of Intent to Organize for that Included Facility).

(e) The Union shall be allowed to post a flyer on pre-selected bulletin boards designated by the parties, including, but not limited to, the existing bulletin boards in employee

breakrooms and at least one space in the cafeteria. The Union shall have the right to change these notices at any time so long as it limits the size of the notice to no more than eight and one-half by fourteen (14) inches. The Union is not responsible for removing unauthorized postings from the bulletin boards.

(f) The Union may reserve a Facility conference room not in the patient care area, subject to reasonable availability and established hospital procedures, for the purpose of meeting with employees eligible to vote under the EPA. Attendance shall be limited to Union employees, Union member organizers and eligible voters. If a conference room is not available during the desired time period, the parties shall designate a suitable meeting room as an alternative in a non-patient-care area of the hospital. To the extent feasible, this room shall not be located near supervisory or management offices.

(g) If the parties cannot mutually agree on access regarding any of these locations, they shall refer the matter to the Arbitrator for a determination by email, phone or fax within 24 hours of the referral.

(h) If a Union organizer violates the access provisions set forth in the EPA, s/he shall be issued a warning by the Employer through the Designated Union Representative, which may be contested before the Arbitrator within 24 hours by email, fax, or phone. The Arbitrator shall only find an access violation where the violation is material, not de minimis.

#### **Unpaid Leave of Absence**

15. No sooner than 2 weeks after a joint orientation/training session is conducted at any Included Facility being organized, the respective Included Facility will grant an unpaid leave of absence ("Unpaid Leave of Absence") for up to four (4) months each to three (3) employees from the Included Facility being organized. If the Included Facility being organized has fewer

than 200 total eligible voters, the number of employees permitted on an unpaid leave of absence shall be determined by the following formula: for every 100 eligible voters, one (1) employee (standard rounding principles will apply). Further, in circumstances where the Included Facility being organized has fewer than 200 total eligible voters, no more than two (2) employees from the same department are permitted on an unpaid leave of absence at the same time. Additionally, a respective Existing Facility will also grant an Unpaid Leave of Absence of up to four (4) months each (that is, a total of sixteen (16) weeks between March 1, 2012 and March 1, 2013, and a total of sixteen (16) weeks between March 1, 2013 and March 1, 2014), to a maximum of five (5) additional employees among all Existing Facilities at any one time, with no more than two (2) employees from any one Existing Facility, and no more than one (1) employee from any one Existing Facility that has fewer than two hundred (200) bargaining unit members.

Requests for Unpaid Leave of Absence shall be in writing, and will be made at least seven (7) calendar days in advance of the date the requested leave will commence. Additionally, Unpaid Leaves of Absence may not be conditioned upon the employee's use of his/her paid time off. The Employer must respond to the Union's request within 48 hours, along with information about the employee's accrued time off. Employees returning from such Leaves shall be returned to the position held prior to the Leave unless the employee would have been laid off or reassigned during the Leave in accordance with an applicable collective bargaining agreement or policies.

For purposes of this Paragraph (15), the number of eligible employees shall include only those employees eligible in the units referenced in the Union's Notice(s) of Intent to Organize for the respective Included Facility.

**Rapid Response Team**

16. The Employer and the Union shall each designate a representative with decision-making authority at the Facility to resolve complaints about alleged violations of this EPA. If one party believes that the other party has violated this EPA, within 48 hours after the alleged violation, or as soon as reasonably possibly thereafter if the fact of violation was not reasonably discoverable within that time period, the complaining party shall state the complaint in writing and submit it to the other party's designated representative. The parties shall have a direct conversation within 24 hours, or as soon as reasonably possible in the event the complaint is submitted outside of normal business hours, to try to resolve the issue. If the 24 hour period occurs during a weekend or outside regular business hours, the parties will make every effort to communicate via email, fax or phone confirming receipt of the complaint and status of investigation. When the parties agree that a violation has occurred, and it is possible to correct, the party responsible for the violation will make a good faith effort to correct the problem immediately. If, however, the parties are unable to agree regarding the resolution of the alleged violation, the receiving party shall respond in writing to the written complaint within 48 hours after its receipt. The original written complaint and the written response must contain all facts that the respective parties knew of or that were reasonably discoverable at the time. Unresolved matters involving alleged violations of this EPA may be referred to the Arbitrator under this Agreement and the Arbitrator shall issue a decision within 24 hours by email, fax, or phone. However, a complaint that is not submitted in a timely fashion does not require a response from the other party and is not subject to review by the Arbitrator.



**Joint Public Announcement**

17. Representatives of the Employer and the Union shall participate in a Joint Public Announcement to all employees, which shall be presented at a general employee meeting conducted at each Included Facility on each shift (i.e., 3 times per day) during a 48 hour period beginning one week after the Union provides the Employer with respective Notice of Intent to Organize at the Included Facility. At each meeting, representatives of the Employer and the Union shall read the Joint Public Announcement and the Joint Information Sheet. The Joint Information Sheet shall also be distributed, but in no case shall it be hand distributed by supervisors. Based on the size of the facility and workforce, the Employer shall designate in advance a limited number of key supervisory staff per shift to attend the meeting. The Union will designate an equal number of organizers to attend the meeting. Employees in each voting group shall be encouraged to attend the meeting and all employees who attend shall be compensated for the time spent attending these meetings. Neither Union organizers nor Employer representatives shall be permitted to solicit or campaign during these meetings. The Employer will publicize by a mutually-agreed upon Meeting Notice the scheduled Joint Public Announcement to all Employees by e-mail and by memo; these shall be distributed in the manner by which hospital-wide memoranda are normally distributed. In no case, however, shall these notices be hand distributed by supervisors. The text of the Public Announcement and Joint Information Sheet are incorporated in this EPA as Attachments 2 and 3.

**Post-Election Access and Communications**

18. In the event one or more units elect the Union as their representative at a facility, the Employer will recognize a reasonable number of duly designated shop stewards in each such unit and instruct supervisors to meet with them in a good faith effort to resolve grievances which may

arise pending settlement of the contract. The parties also shall continue to abide by the access provision for cafeterias (up to 4 Union representatives), breakrooms (1 union representative per breakroom), exterior congregating areas for employees, parking lots; and access to bulletin boards; and periodic use of a facility conference room, until the parties reach a first contract. During this post-election period, breakroom access for organizers shall be limited to a maximum of 2 hours per breakroom per shift.

#### **Joint Training**

19. Within 45 days of the Union winning an election in any unit organized under this EPA, the Union and Employer agree to conduct a training program. This training will focus on labor-management problem-solving at the facility. Such training shall be conducted by the designated Arbitrator, or by mutual agreement, or another mediator agreed upon by the parties, or one selected from the Federal Mediation and Conciliation Service.

#### **Hospital Policies**

20. Where applicable, the Union and its representatives shall comply with the prevailing written policies of the respective Hospital which govern the general behavior of employees, patients, visitors, and other invitees upon the Hospital's premises, such as policies regulating HIPPA, smoking, possession firearms and noise abatement and similar policies. Such Hospital policies shall be identified by the Hospital, and reviewed with the Union's representatives, during the Orientation/Training provided for in Paragraph (12), above. To the extent that the parties cannot agree on the applicability of any Hospital policy to Union representatives, the Arbitrator will resolve the dispute.

**Arbitration**

21. If the parties are unable to resolve a dispute, either party may, upon approval of its respective national contract, submit the unresolved dispute about compliance with or construction of this EPA for final and binding resolution by Ralph Berger, the permanent Arbitrator selected pursuant to Section 11 of the Labor Relations Agreement for deciding any dispute under this EPA. The Arbitrator shall have discretion to establish procedures for the resolution of such disputes that may include submission of evidence by the Parties, and is authorized to develop and order remedies subject to the same parameters as those defined in Section 11 of the Labor Relations Agreement. All such disputes shall be resolved within 24 hours of submission of the issue to the Arbitrator, unless the issue arises after the election has taken place, in which case, the Arbitrator shall rule within 14 days of the submission of the issue. The Parties waive any and all rights they might otherwise have to appeal or in any way contest the decision of the Arbitrator. If either party fails to comply with the decision of the Arbitrator, it hereby consents to enforcement of this EPA and any decision of the Arbitrator in the United States District Court for the District of Columbia Circuit and the United States Court of Appeals for the District of Columbia Circuit, as appropriate, and waives any defenses it might have to such enforcement.

**COMMUNITY HEALTH SYSTEMS  
PROFESSIONAL SERVICES  
CORPORATION**

\_\_\_\_\_

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Its: \_\_\_\_\_

**CALIFORNIA NURSES  
ASSOCIATION/NATIONAL NURSES  
ORGANIZING COMMITTEE**

\_\_\_\_\_

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Its: \_\_\_\_\_

Tuesday, January 29, 2013 10:42:10 AM Eastern Standard Time

**Subject:** Fw: FW: RE: Affinity CVSICU access

**Date:** Monday, August 27, 2012 4:08:08 PM Eastern Daylight Time

**From:** doncarmody

**To:** Jim\_Carmody@chs.net, Jan Ellis

**CC:** William Adams, Mick Crowley, Travis Adams, Gerry O'Brien, Carmen DiRienzo, Bryan Carmody

Attorney / Client Privileged Communication

F.Y.I.

----- Forwarded Message -----

**From:** mark irvings <mli@markirvings.com>

**To:** Brendan White <bwhite@nationalnursesunited.org>

**Cc:** doncarmody <doncarmody@bellsouth.net>; Jane Lawhon (NNU) <jlawhon@nationalnursesunited.org>; Roy Hong <rhong@nationalnursesunited.org>; Laurel Webb <laurel.webb@selu.org>; Dora Chen <dora.chen@selu.org>

**Sent:** Mon, August 27, 2012 1:30:40 PM

**Subject:** Re: FW: RE: Affinity CVSICU access

As I indicated earlier I am in a mediation today and cannot do a conference call. Without the benefit of an employer response I only feel comfortable making a practical ruling . The hospital may escort a union representative to the cardiovascular ICU break room and then leave the representative there until the end of the access time. The escort may not stay in the break room while the union representative is there.

Mark Irvings

*Sent from my Verizon Wireless 4G LTE DROID*

Brendan White <bwhite@nationalnursesunited.org> wrote:

Dear Mr. Arbitrator—

It is now after 1 pm EDT and the Employer has yet to respond to NNOC's complaint. In fewer than five hours, NNOC is supposed to return to the CVSICU for the penultimate time before the vote on Wednesday, August 29, 2012. The Employer has made its position clear—it unjustly contends that NNOC organizers must have a security escort to access this unit. These restrictions are unprecedented and inexplicable, they were not negotiated, and they trench upon the purposes of the EPA. NNOC must be afforded access to the CVSICU without a security escort. We respectfully request that you rule on the papers before you.

Yours,

Brendan

