Delaware County Memorial Hospital, a Division of Crozer Keystone Health System *and* Crozer-Chester Medical Center, a Division of Crozer-Keystone Health System *and* Pennsylvania Association of Staff Nurses and Allied Professionals.
Cases 04–CA–172296 and 04–CA–172313

March 7, 2018

DECISION AND ORDER

BY MEMBERS PEARCE, MCFERRAN, AND EMANUEL

On February 21, 2017, Administrative Law Judge Benjamin W. Green issued the attached decision. The Respondents filed exceptions and a supporting brief. The General Counsel filed an answering brief, and the Charging Party filed a brief in opposition. The Respondents filed reply briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the judge's decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Delaware County Memorial Hospital, a Division of Crozer-Keystone Health System, Upper Darby, Pennsylvania, and the Respondent, Crozer-Chester Medical Center, a Division of Crozer-Keystone Health System, Upland, Pennsylvania, their officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. March 7, 2018

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Mark Gaston Pearce, Member

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Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER EMANUEL, dissenting in part.

In this case, the Board must determine the extent of the opposing parties' rights under Section 8(a)(5) and 8(b)(3) of the National Labor Relations Act (NLRA or Act)[1] to

[1] The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] To prepare for effects bargaining over the Respondents' acquisition by a third party, the Union requested production of the Asset Purchase Agreement (APA) governing the sale. The judge found that the Respondents violated Sec. 8(a)(5) and (1) of the Act by refusing the Union's request based on an unsupported claim of confidentiality. We agree. Although the dissent frames the issue in terms of the Union's "demand (for) full access to the APA" while the Respondents merely "[sought] to protect certain confidential aspects of the agreement," he does not dispute that the Respondents at no time substantiated their asserted confidentiality interest. By failing to explain the basis for their claim of confidentiality, which the judge found unclear even as of the hearing, and by failing to offer an accommodation to the Union's request for the entire APA and its attachments, the Respondents waived their confidentiality defense. *Postal Service*, 364 NLRB No. 27, slip op. at 2–3 (2016) (ordering the immediate production of all requested documents, unredacted and without any confidentiality agreement, as the employer, by failing to timely assert a confidentiality interest or propose an accommodation, waived its opportunity to raise those defenses), reconsideration denied Case 05–CA–119507 (NLRB Aug. 26, 2016) (unpublished decision), enfd. *United States Postal Service v. NLRB*, Appeal No. 16-1313 (D.C. Cir. July 17, 2017) (unpublished decision on stipulation for consent judgment).

Although our colleague joins in finding the 8(a)(5) violation, he disagrees with our determination of the appropriate remedy for the Respondents' unlawful conduct. In accordance with applicable precedent, we order the Respondents to produce the APA in its entirety. Our colleague asserts that the Respondents should only be required to produce the nonconfidential relevant portions of the APA, and should engage in accommodative bargaining over the confidential relevant portions. The Respondents, however, were required to engage in accommodative bargaining at the time they first asserted a confidentiality interest, regardless of what the Union said in response. By not doing so, they unfairly imposed, and unjustly reaped the benefit of, an additional year of delay upon an uninformed bargaining partner. While we do not find that either party's conduct was exemplary, the Respondents failed to fulfill the obligations attached to their asserted confidentiality defense. Accordingly, contrary to the dissent, our remedy is not punitive; it comports with our precedent and the Act's purpose to promote collective bargaining. *Postal Service*, supra, slip op. at 2; *Midwest Division d/b/a Menorah Medical Center*, 362 NLRB No. 193, slip op. at 3–7 (2015), enfd. in relevant part, 867 F.3d 1288 (D.C. Cir. 2017); *Howard Industries*, 360 NLRB 891 (2014); *West Penn Power Co*., 339 NLRB 585, 585–586 (2003), enfd. in relevant part 394 F.3d 233 (4th Cir. 2005). The dissent's approach, on the other hand, frustrates collective bargaining. If, as the dissent contends, a respondent must be afforded the opportunity to commence accommodation negotiations at the remedial stage, there is little incentive for it to engage in such negotiation at the time it asserts a confidentiality claim in response to the information request. The resulting lengthy delay rewards the party that has violated its statutory obligation.

[1] Sec. 8(a)(5) of the Act makes it an unfair labor practice (ULP) for an employer to refuse to bargain collectively in good faith, and Sec. 8(b)(3) makes it a ULP for a union to refuse to bargain collectively in good faith. The requirement of good faith is imposed by Sec. 8(d), which defines the phrase "bargain collectively" for purposes of the Act.

discover or protect an Asset Purchase Agreement (APA) regarding the sale of Crozer-Keystone Health System (Crozer). The Pennsylvania Association of Staff Nurses and Allied Professionals (Union) demands full access to the entire APA, but two Crozer divisions, Respondents Delaware County Memorial Hospital and Crozer-Chester Medical Center, seek to protect certain confidential aspects of the agreement. As the judge and the majority acknowledge, both the Respondents and the Union took unreasonable positions contrary to their respective rights and obligations under the Act.

For its part, the Union repeatedly insisted on receiving a copy of the APA, including all schedules and attachments, in its entirety, taking the position that (in the judge's words) "it had the exclusive right to determine relevance" and that the Respondents had no right to determine which portions of the APA (and its schedules and attachments) were relevant to the Union's duty to represent the unit employees in effects bargaining and which were not. The Union also conditioned any discussion of the Respondents' confidentiality concerns on the Respondents' agreement that the entire APA, with schedules and attachments, would be "forthcoming." On the other side, the Respondents—perhaps in reaction to the Union's extreme position—refused to disclose *any* portions of the APA, even those that undisputedly were non-confidential and relevant for purposes of effects bargaining.

I agree that the Respondents' failure to provide any portion of the APA—i.e., those portions that were non-confidential and relevant for purposes of effects bargaining—constituted a violation of Section 8(a)(5). However, I find the remedy proposed by my colleagues to be punitive. See *Outokumpu Stainless USA, LLC f/k/a Thyssenkrupp Stainless USA, LLC*, 365 NLRB No. 127, slip op. at 11 fn. 8 (2017) (Member Miscimarra, dissenting) ("It is well established that the Board's remedial authority does not include the right to impose punitive measures, even when the parties have committed violations of the Act."). While my colleagues rely on *Postal Service*, 364 NLRB No. 27 (2016), enfd. *United States Postal Service v.* NLRB, Appeal No. 16–1313 (D.C. Cir. July 17, 2017), for their remedy, I find that case distinguishable. Unlike in *Postal Service*, and as noted by the judge and my colleagues, both parties were at fault here.[2] Therefore, while my colleagues are concerned that ordering accommodative bargaining would reward the Respondents, in my opinion, ordering the Respondents to produce the entire APA without any conditions unfairly rewards the Union. The Respondents have legitimate confidentiality interests that deserve protection, and the Union had no right to insist on the blanket disclosure of these documents, nor could the Union preclude the Respondents from withholding nonrelevant portions or redacting confidential portions of those documents. Thus, I dissent from the remedy ordered by the judge and upheld by my colleagues, which requires the Respondents to produce the APA in its entirety, including all schedules and attachments.

Accordingly, I would find that the Respondents violated Section 8(a)(5) by failing, on request, to furnish the Union with the non-confidential portions of the APA that were relevant to effects bargaining, and I would order the Respondents to remedy this unlawful conduct by providing such relevant and non-confidential portions of the APA to the Union and engaging in accommodative bargaining over the remaining confidential relevant portions.

Dated, Washington, D.C. March 7, 2018

William J. Emanuel Member

[2] The remaining cases cited by the majority are distinguishable for the same reason.

NATIONAL LABOR RELATIONS BOARD

Fallon Schumsky, Esq. and *Lea Alvo-Sadiky, Esq.,* for the General Counsel.
Jonathan Walters, Esq., for the Union.
Todd A. Dawson, Esq. and *Louis J. Cannon, Esq.*, for the Respondent.

DECISION

STATEMENT OF THE CASE

BENJAMIN W. GREEN, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania, on December 5, 2016.[1] The charges were filed by the Pennsylvania Association of Staff Nurses and Allied Professionals (the Union) on March 22. On June 29, separate complaints issued against Respondents Delaware County Memorial Hospital (DCMH) and Crozer-Chester Medical Center (CCMS), both divisions of Crozer-Keystone Health System (Crozer). The cases were consolidated by order dated July 7. The Respondents filed answers to the complaints on July 13. An order amending the complaints issued on November 23. The amended complaints allege that the Respondents failed to furnish the Union with the Asset Purchase Agreement (APA), including all attachments and schedules, for the sale of Crozer to Prospect Medical Holdings, Inc. (Prospect). For the reasons discussed below, I find that the Respondents violated the Act as alleged in the complaints.

On the entire record, including my observation of the demeanor of the witnesses, and after considering post-hearing

[1] All dates refer to 2016 unless stated otherwise herein.

briefs that were filed by the General Counsel, the Respondents, and the Union, I make these

FINDINGS OF FACT

I. JURISDICTION

The parties agree and I find that the Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and have been health-care institutions within the meaning of Section 2(14) of the Act. The parties further agree that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Crozer health system includes four hospitals—the two Respondents, Springfield Hospital, and Taylor Hospital—as well as ambulatory care facilities and medical offices. (Jt. Exh. 1; Tr. 141.)

Elizabeth Bilotta is Crozer's vice president for human resources and was the only witness called by the Respondents. (Tr. 140) Bilotta has held this position with Crozer for 3 years and has worked in human resources for 36 years. At the Crozer facilities, five unions represent ten bargaining units. Bilotta acted as the lead negotiator in bargaining with these unions until the date of the sale of Crozer to Prospect and since then she has remained involved in strategy and negotiations. (Tr. 140–141.) Bilotta testified that she fields information requests from unions on a regular basis. (Tr. 143.) Upon receipt of an information request, it is her practice to determine whether the information is directly relevant to bargaining unit employees and then proceed as follows if she determines that it is not (Tr. 143–144):

> Sometimes I'll provide all the information that is relevant and I'll respond in my response as to what I'm not providing and why I don't view it to be relevant, and that we're willing to continue to have discussions about it. Or I try to engage in discussion around what's the information they're looking for and is there some other way to accomplish the request.

The Union represents two units of employees at CCMC and two units of employees at DCMH. (Tr. 14.) At CCMC, the Union represents a unit of about 525 nurses and a unit of about 100 paramedics. (Tr. 14–17; GC Exh. 2–4.) The Union has had a bargaining relationship with CCMC for at least 16 years with a series of collective-bargaining agreements. The current contract for the CCMC nurse unit is effective June 9, 2014 through June 8, 2019 (GC Exh. 2) and the current contract for the original CCMC paramedics unit is effective December 22, 2014 to December 21, 2019 (GC Exh. 3–4). On January 8, the Board issued a certification that added previously unrepresented PRN paramedics and clinical assistants to the original paramedics unit. (Tr. 15; GC Exh. 1.) At DCMH, the Union represents a unit of about 300 registered nurses and a unit of about 100 technical employees. (Tr. 18–20; Jt. Exh. 1.) The DCMH units are recently organized.[2] The parties stipulated and I find that the DCMH and CCMC units are appropriate.[3] (Jt. Exh. 1; GC Exh. 1.)

The General Counsel called as witnesses Union Executive Director William Cruice and Union Staff Representative Andrew Gaffney. (Tr. 14, 77, 99.) Cruice and Gaffney both testified that they had seen asset purchase agreements in connection with prior sales of other entities that employed employees represented by the Union. (Tr. 23–24, 114–115.)

The Union first heard rumors about a possible sale of Crozer to Prospect in about the fall of 2015. (Tr. 37, 78.) Thereafter, the Union had meetings with Prospect attorney Jay Krupin and Krupin indicated that Prospect would recognize the Union.[4] (Tr. 95.)

On January 8, Crozer emailed the Union a draft letter to be sent by Crozer President and Chief Executive Officer Joan K. Richards to all Crozer physicians and employees. The draft letter indicated that Prospect had signed a "Definitive Agreement" to acquire Crozer, and stated (GC Exh. 5):

> I think you will be pleased that—under the Definitive Agreement with Prospect—many things at Crozer-Keystone will *not* change.
>
> - Our hospitals, physician network, and other facilities will continue to operate under their current names.
> - All of our hospitals will remain open.
> - Prospect will offer to hire active non-union employees in good standing at the rate of pay, title and seniority level at time of close, subject to standard pre-employment screening processes.
> - Crozer-Keystone unionized employees in good standing will be offered employment subject to initial terms set by Prospect. Prospect will meet with the various labor organizations that represent Crozer-Keystone employees and enter into appropriate recognition agreements with them.
> - Critical service lines such as ED, trauma, burn, behavioral health, maternity, neonatal intensive care and pediatrics will stay in place or be expanded.
> - We will provide wellness, health education, and other community of programs at similar levels, some through a new Foundation.
>
> The things that *will* change will position our hospitals and network for the future.
>
> - All properties, plants and equipment owned by Crozer-Keystone or used in the operation of the health system will be acquired by Prospect.
> - Prospect will make capital investments in the Crozer-

[2] The Board certified the Union as the bargaining representative of the DCMH RN unit on January 28, 2016 and DCMH technical employee unit on March 1, 2016. (Jt. Exh. 1.)

[3] The specific unit descriptions are set forth in the complaints and Joint Exhibit 1. Further, in its post-hearing brief, the Charging Party moved that I take administrative notice of the representation proceedings in cases *Crozer Chester Medical Center,* 04–RC–164030 and *Delaware County Memorial Hospital*, 04–RC–168746, and I do so.

[4] Gaffney did not recall meeting with Krupin until June 2016. (Tr. 37–38.) Cruice did not recall the exact date of a meeting with Krupin, but testified that it could have occurred in November 2015. I do not find the approximate dates of these meetings to be significant.

> Keystone system totaling at least $200 million over the next five years. This will dramatically increase our ability to modernize, attract more patients, and expand service to the community.
> - Prospect will assume Crozer-Keystone's outstanding pension liability, funding $100 million of the obligation at closing and providing distributions to pay all benefits owed to pension participants and beneficiaries within five years of the closing date.
> - Prospect, as a for-profit corporation, will support our towns and counties with tax revenue.

On January 18, Gaffney sent an email to Bilotta, copying Cruice and Union Staff Representative Paul Muller, requesting the APA with all attachments and schedules. (GC Exh. 6.) The email stated:

> Now that the Crozer-Keystone and Prospect Medical have finalized their agreement, the union is requesting the complete Asset Purchase Agreement and all attachments and schedule[s] of the agreement. Upon receipt of the agreement, we will review and you can expect a request for effects bargaining shortly after. As always if you have any questions about this request feel free to contact me.

Cruice and Gaffney testified that they expected the APA to reflect changes in the terms and conditions of employment of unit employees, information as to the extent the Crozer operation would close, continue, move or expand, the potential loss or increase of unit work, layoffs, hiring, and detailed financial information about the employers after the sale. Particularly, the Union believed the APA would reveal to what extent the pension plan would be fully funded. Gaffney testified that the APA would also help the Union determine whether Prospect would be a successor with an obligation to bargain with the Union after the sale. (Tr. 24–26, 57–58, 64–65, 79.)

On February 10, having received no response to his email of January 18, Gaffney sent another email to Bilotta reiterating the Union's request for the APA. (GC Exh. 7)

The same day, February 10, Bilotta replied to the Union with an email that stated as follows (GC Exh. 8):

> Sorry for my delay in getting back to you. I was researching your request but also has been out of the office.
>
> I am unable to give you a copy of the APA at this time because it is confidential and proprietary. Also, it is covered by the terms of a confidentiality agreement to which Crozier is subject. Last, the entire APA is not relevant for effects bargaining over the terms and conditions of employment of bargaining unit members. We are open to considering alternative requests you may have.

On February 11, Cruice responded to Bilotta with the following email, which rejected the Respondents' offer to make alternative requests (GC Exh. 9):

> We were hoping to avoid involving the Labor Board in our request for the APA but we intend to file a charge if Crozer Administration continues to refuse to provide the APA, including attachments and schedules. If your email is intended as an offer to negotiate over confidentiality, the union is prepared to bargain over confidentiality, provided there is an understanding that the APA, with attachments and schedules, will be forthcoming.

Following this email exchange, Bilotta authorized former Crozer counsel Dan Johns to reach out to Union Counsel Jonathan Walters with an offer to produce portions of the APA rather than the entire document.[5] (Tr. 148–149.)

On March 17, the parties held a bargaining session regarding the Delaware RN unit that was attended by, among others, Bilotta, Cruice and Gaffney.[6] (Tr. 30–31, 91–92, 108–109, 150–151.) The Union inquired about the status of its request for the entire APA and whether the Respondents' position had changed. Bilotta indicated that the Respondents' position had not changed. Rather, she asserted that portions of the APA were irrelevant and asked whether the Union would accept only the relevant portions. Cruice reiterated that the Union wanted the entire document and again raised the prospect of filing a charge. (Tr. 108–109, 152.)

With regard to this March 17 bargaining session, Bilotta testified, "I recall Bill sort of being annoyed obviously and saying that he felt like we were in the light and they were in the dark,… and they had a right to this entire document." (Tr. 151.) Gaffney testified that Bilotta "offered up the relevant portions of the APA. Bill responded that the hospital wasn't able to decide what was relevant and what wasn't, and that we needed the whole document." (Tr. 30.) Cruice testified that Bilotta said "they would be willing to determine what was rele-

[5] The Respondents did not call Johns or Walters to testify and I sustained a hearsay objection to testimony by Bilotta regarding the substance of any alleged conversations between Johns and Walters. This testimony would have been double hearsay regarding an out-of-court conversation between Johns and Bilotta regarding an out-of-court conversation between Johns and Walters. The Respondents argued that Bilotta should have been allowed to testify under FRE 803 to statements that constitute a present sense impression or then-existing state of mind. However, the state of mind of Bilotta and Johns are not at issue and the statements would not have described events occurring while or immediately after the declarants were perceiving them. Alternatively, the Respondents contended that Bilotta should have been allowed to testify regarding an offer made by Johns to Walters because such an offer was not being offered for its truth and, I assume, constituted a verbal act. This would arguably apply if Johns were called to testify that he made such an out-of-court statement, but he was not and Bilotta has no personal knowledge of what Johns allegedly said to Walters. Nevertheless, the Respondents were allowed to make the following offer of proof (Tr. 150):

> So if Ms. Bilotta were allowed to testify on this point, she would testify that Mr. Johns had a conversation with Mr. Walters and immediately after that conversation he reported to Ms. Bilotta that an offer had been made to talk about employee related sections of the APA, and at the same time a confidentiality agreement with respect to those portions, and that offer was refused and the Union reiterated its demand for the entire document and all attachments.

[6] Bilotta credibly testified that the APA was discussed on March 17 and not discussed during a bargaining session held on March 31. Cruice and Gaffney testified that the APA was discussed during at least one bargaining session in March, but were uncertain of the date. I find that the APA was discussed on March 17 and not discussed on March 31.

vant and share that with the Union." Cruice did not specifically recall whether he said that the Union was entitled to determine what is relevant, but testified that this was the Union's position. (Tr. 91–92, 133.)

On March 18, Bilotta sent an email to the Union attaching a letter that outlined in greater detail the Respondents' position with regard to the information request (GC Exh. 10):

> As you know, I indicated to Bill Cruice at the negotiation session yesterday that l had been working on your follow-up request for the Asset Purchase Agreement and Schedules. I specifically told Bill that I had a face-to-face meeting with Prospect scheduled for the week of March 28, 2016, and this was one of the agenda items. Since Bill indicated he had an issue with the timeliness of our response and didn't seem interested for me to wait to have further discussions with Prospect, I did not want to wait further to provide Grazer's response.
>
> The Crozer Keystone Health System ("CKHS") is in receipt of your second email requesting certain information concerning the acquisition of the Health System by Prospect Medical Holdings, Inc. ("Prospect"). Specifically, you requested "the complete Asset Purchase Agreement [between CKHS and Prospect) and all attachments and schedules of the agreement." Your email suggests that PASNAP requests such information In order to prepare for effects bargaining regarding the acquisition.
>
> As an Initial matter, CKHS objects to the request on the basis that it is premature, overbroad and seeks irrelevant information. Indeed, as you know, the CKHS transaction with Prospect is contingent upon regulatory approval that has not yet occurred and as of this point, has not yet even been scheduled. Additionally, as you may be aware, Daniel Johns and Jonathan Walters, CKHS and PASNAP's attorneys, respectively, recently discussed this request. On behalf of CKHS, Mr. Johns offered to discuss with PASNAP the potential for production of those portions of the Asset Purchase Agreement and any attachments and schedules thereto that relate to or affect CKHS employees, including those who are members of PASNAP, Mr. Walters refused this offer, stating that PASNAP wants everything. PASNAP offered nothing more to explain why the entire document is relevant or needed for it to fulfill its functions as bargaining representative for certain CKHS employees. We again renew that offer to discuss which portions of the documents are relevant to PASNAP's role as bargaining representative with respect to effects bargaining. Please let me know if you would like to have further discussions on this issue.
>
> CKHS further objects to the request on the basis that it seeks confidential and proprietary information this subject to legal prohibitions on disclosure. As Mr. Johns explained to Mr. Walters, the entire Asset Purchase Agreement is the subject of a confidentiality agreement between CKHS and Prospect that CKHS is legally obliged to follow. Therefore, to the extent the parties were able to reach agreement on the production of any relevant portion of the Agreement, before CKHS can turn over anything contained in the Agreement, PASNAP must agree to the terms of a confidentiality agreement acceptable to CKHS and Prospect that adequately protects CKH and Prospect's confidential and proprietary interests in those portions of the Asset Purchase Agreement to which PASSNAP may be entitled.

In both her February 10 email and March 18 letter, Bilotta appeared to indicate that both Crozer and Prospect had confidentiality concerns about disclosure of the entire APA. However, at trial, Bilotta clarified that she was attempting to obtain authorization from Prospect to disclose the APA and that her inability to do so was the only reason for her refusal to produce the entire document. (Tr. 169–170.) Bilotta did not indicate that Crozer had its own independent confidentiality concerns.

On April 29, the parties held contract negotiations for the DCMH nursing unit. During this bargaining session, Bilotta asked whether the Union had changed its position and would accept less than the entire APA. The Union said it would not. Bilotta did not identify portions of the APA it deemed irrelevant and confidential. (Tr. 130, 153.)

In about late-May, two other unions requested that Crozer provide them with portions of the APA. (Tr. 163; R. Exh. 6.) The following is an email, dated May 20, that Bilotta sent to a group of recipients including Prospect General Counsel Ellen Shin and Crozer General Counsel Don Legried (R. Exh. 6):

> Lance Geren, attorney for 1199C and UNOP, has requested redacted pieces of the APA. Specifically he has requested "sections of the APA that say what Prospect is going to assume and not assume relative to employees".
>
> We currently have the open ULP with PASNAP on their request for the entire APA and all schedules. They have continuously refused to accept anything less than the entire document and we have responded to all the questions from the Board Agent and are awaiting their response. Based on 1199C's request for portions of the APA that are specifically related to the employees, we believe that we need to seriously consider providing the redacted sections. Given the confidentiality statements and position of both organizations to maintain confidentiality of the APA, can you both discuss how you want us to proceed.

Legried responded with an email that stated, "I believe we should provide relevant redacted excerpts from the APA to 1199c and UNOP. This is essentially what we previously offered to PASNAP as a compromise." (R. Exh. 6.) Accordingly, Bilotta prepared a redacted version of the APA and gave it to Prospect. (Tr. 163–164.)

In late-May and June, the parties designated 3 days for bargaining over the effects of the sale. The Union did not have the APA before or during these bargaining sessions. During these bargaining sessions, the Union agreed to switch unit employees' health insurance plan from the Crozer plan to the Prospect plan. Further, Prospect agreed to recognize the Union as the representative of the DCMH bargaining units and to begin negotiations for initial contracts. Prospect also agreed to begin negotiating with the Union regarding the CCMS PRN paramedics and clinical assistants who had been added to the paramedics unit. Otherwise, according to Bilotta, the sessions consisted mostly of her fielding questions regarding changes in benefits.

(Tr. 32–33, 116–117, 156.)

On June 3, Crozer filed a petition in the Delaware County Court of Common Pleas (Orphan Court Division) seeking approval of the sale to Prospect. This petition included the body of the APA without the schedules and attachments. (Tr. 111; Jt. Exh. 1.)

On June 6, the Union obtained a copy of the APA without attached schedules from the Office of the Attorney General of the Commonwealth of Pennsylvania. (Jt. Exh. 1.) The APA contained the following list of schedules by number and title:

1.1(a)	Crozer Owned Real Property
1.1(b)	Crozer Personal Property
1.1(d)	Crozer Prepaid Expenses
1.1(f)	Crozer Contracts
1.1(k)	Crozer Intellectual Property
1.1(m)	Crozer Included Grants
1.1(o)	Crozer For Profit Affiliates, Joint Ventures and Other Affiliated Organizations
1.1(q)	Crozer Graduate Medical Education Programs
1.1(s)	Crozer Assumed Benefit Plan Assets
1.2(i)	Excluded Crozer Assets, Properties and Rights
1.2(j)	Excluded Crozer Contracts
1.2(k)	Excluded Crozer Non-Profit/Conditional Grants
1.3(b)	Crozer Capital Lease Obligations
1.3(i)	Crozer Severance/Termination Liabilities to Executive/Management Employees
1.3(k)	Crozer Retention bonuses
1.3(l)	Crozer Other Assumed Liabilities
1.4(c)	Excluded Crozer Claims and Obligations
2.2(b)	Sample Net working Capital Calculations
2.1(a)	Additional Purchase Price Deductions
2.3	Sample Other Adjustments Calculation
2.4	Crozer Pension Plan Actuarial Assumptions, Terms, and Conditions
4.1	Crozer Disclosure Schedule – List of Entities
4.2	Crozer Disclosure Schedule – Conflicts with other Agreements
4.4(a)	Crozer disclosure Schedule – GAAP Exceptions
4.4(c)	Crozer Disclosure Schedule – Accounts Receivable
4.4(d)	Crozer Disclosure Schedule – Liabilities/Obligations with Material Adverse Effect
4.5	Crozer disclosure Schedule – Certain Post-Balance Sheet Results
4.6	Crozer disclosure Schedule – Licenses
4.7	Crozer disclosure Schedule - Material Defects
4.8(a)	Crozer disclosure Schedule – Pending/Threatened Investigations or Surveys
4.8(b)	Crozer disclosure Schedule – Compliance with Laws
4.10	Crozer disclosure Schedule – Equipment Depreciation Schedule
4.11(b)	Crozer disclosure Schedule – Zoning Compliance
4.11(e)	Crozer disclosure Schedule – Tenant Leased Real Property
4.11(f)	Crozer disclosure Schedule - Landlord Leased Real Property
4.13	Crozer disclosure Schedule – Employee Benefits Plan
4.14	Crozer disclosure Schedule – Litigation or Proceedings
4.15	Crozer disclosure Schedule – Environmental Law/Permits
4.16	Crozer Disclosure Schedule – Hill-Burton and other Liens
4.18(a)	Crozer Disclosure Schedule – Labor, Unions, Collective Bargaining Agreements
4.18(b)	Crozer disclosure Schedule – WARN Act
4.19	Crozer disclosure Schedule – Material Contracts and Commitments
4.22	Crozer disclosure Schedule – Insurance Policies
4.23	Crozer disclosure Schedule – Cost Reports
4.24	Crozer disclosure Schedule – Medical Staff Matters
4.26	Crozer disclosure Schedule – Compliance Program
5.6(a)	Prospect Disclosure Schedule – Compliance with Laws
6.2(l)	Crozer Pension Contributions Schedule
6.3(a)	Permitted Pre-closing Crozer Contracts
6.3(c)	Crozer Executive Management personnel
6.3(f)	Permitted Pre-Closing Crozer Capital Expenditures
8.3	Crozer title Commitments, Permitted Encumbrances, Owned Real Property and Leased Real Property
8.7	Material Consents
10.1	Use of Purchase Price Proceeds; Projected Foundation funds
10.4	Crozer Key Management Personnel
11.10(a)	Prospect Post-closing Employee Benefits
11.20(a)	Prospect Comprehensive Support and Back Office Services
11.21	Closed Hospital Departments
14.5(a)	Specified Crozer Personnel for Knowledge Standard
14.5(b)	Specified Prospect Personnel for Knowledge Standard
14.8	Brokers

Although the Union did not have this list of schedules when it requested the entire APA with all schedules and attachments, Cruice was asked on direct examination to read through the schedules and indicate whether he could determine their relevance on the basis of the titles alone. Summarizing Cruice's testimony, according to him, the following schedules are relevant for the following reasons (Tr. 79–90):

- Interests in real property and other assets (1.1(a); 1.1(b); 1.2(i); 1.3(b); 4.11(e)(f)), intellectual property (1.1(k)), related organizations (1.1(o)), and closed hospital departments (11.21) are relevant to the possible expansion, contraction or movement of the operation to different locations, fields, and/or entities with a corresponding impact on the nature, availability and location of unit work.

- Pre-paid expenses (1.1(c)), assumed benefit plan assets (1.1(s)), retention bonuses (1.3(k)), pension plan actuarial assumptions, terms, and conditions (2.4), employee benefit plans (4.13), insurance plans (4.22), and pension contributions (6.2(l)) are relevant to show changes of employee benefits and whether benefits such as the pension plan will be fully funded.
- Assumed benefit plan assets (1.1(s)) and excluded Crozer grants (1.2(k)) are relevant to show any portions of the operation that Crozer was retaining and not transferring to Prospect or any benefits Crozer would continue to pay (despite the sale).
- Contracts with non-unit employees (1.1(d); 4.18(a)), severance/termination liabilities to executive/management employees (1.3(i)), retention bonuses (1.3(k)), employee benefit plans (4.13), and insurance plans (4.22) are relevant because they would better allow the Union to assert in negotiations that unit employees should be allowed to share in the same pay and benefits received by non-unit employees.
- Litigation and other employee claims/complaints (4.14; 4.18(b)) and information about the WARN Act (4.18(c)) are relevant to determine whether unit employees have any pending employment related claims against the Respondents and the legal rights of employees.
- Financial statements and information (4.4(a); 4.5), reimbursement reductions (4.8(b)), equipment depreciation (4.10), litigation or proceedings (4.14), and cost reports (4.23) are relevant to determine the financial condition of the new employer and its ability to pay for benefits that are subject to effects and contract bargaining.

Bilotta testified that the APA included a confidentiality provision that forbid Crozer from disclosing the APA or any portion thereof to the Union without Prospect's consent. (Tr. 145.) The APA does include the following provision on confidentiality in Section 12, which states in part as follows (Jt. Exh. 1):

> 12.1 **Confidential Information.** It is understood by the parties hereto that the information, documents, and instruments delivered to the Buyer or Sellers and their agents and the information, documents, and information delivered to Sellers by the Buyers and their agents, as well as the terms and conditions of this agreement, are of a confidential and proprietary nature (the "Confidential Information"). Each of the parties hereto agrees that both prior and subsequent to the Closing it will maintain the strict confidentiality of all such confidential Information and will only use such Confidential Information in connection with the negotiation of this Agreement or in compliance with the terms, conditions, and covenants hereof and will only disclose such Confidential Information to its duly authorized officers, members, directors, representatives, and agents (including consultants, attorneys, and accountants of each Party) and applicable government Entities in connection with any required notification or application for approval or exemptions therefrom. Each of the Parties hereto further agrees that if the transactions contemplated hereby are not consummated, upon written request, it will return all such documents and instructions and all copies thereof in its possession to the other Parties to this Agreement. Each of the Parties hereto recognizes that any breach of this Section 12.1 would result in irreparable harm to the other Parties to this Agreement and their Affiliates and that therefore either Sellers or buyers shall be entitled to an injunction to prohibit any such breach or anticipated breach, without the necessity of posting a bond, cash, or otherwise, in addition to all of their other legal and equitable remedies. Nothing in this Section 12.1, however, shall prohibit the use of such Confidential Information for such government filings as in the opinion of Sellers' counsel or Buyers' counsel are required by law or government regulations or are otherwise required to be disclosed pursuant to applicable state law. The Mutual Nondisclosure and Confidentiality Agreement, dated November 12, 2014, between the parties shall remain in full force and effect.

On June 16, Prospect DCMH, LLC and Prospect CCMS, LLC (Prospect CCMS) recognized the Union as the bargaining representative of the DCMH and CCMS units, respectively. Prospect CCMS also adopted the Union's collective-bargaining agreements with CCMS (except for a modification of the health care provision). (R. Exh. 1–5.)

On June 22, at the request of the Pennsylvania Attorney General's Office, Crozer provided the Union with copies of schedules 4.13 (Crozer disclosure Schedule – Employee Benefits Plan) and 4.18(a) (Crozer Disclosure Schedule – Labor, Unions, Collective Bargaining Agreements). (Jt. Exh. 1; Tr. 154–155.)

On July 1, Prospect formally purchased Crozer. (Jt. Exh. 1.)

ANALYSIS

I. LEGAL FRAMEWORK

The Act requires parties to bargain in good faith with some semblance of rational and reasonable interaction between them, and this in turn requires the production of information that will allow reasoned negotiations to take place. *Clemson Bros.*, *Inc.,* 290 NLRB 944, 944 fn. 5 (1988).

An employer must provide requested information that is "presumptively relevant" to the union's performance of its role as collective-bargaining representative where the union seeks information concerning wages, hours, and other terms and conditions of employment of unit employees. *Southern California Gas Co.*, 342 NLRB 613, 614 (2004). Conversely, a request for information pertaining to matters outside the bargaining unit is not presumptively relevant and relevance must be established by the requesting party. However, even where the requested information is not presumptively relevant, the burden to show relevance is not exceptionally heavy. Rather, the Board has adopted a liberal discovery-type standard. *Columbia College Chicago*, 363 NLRB No. 154 (2016); *A-1 Door & Building Solutions*, 356 NLRB 499, 500 (2011); *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994); *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983).

An employer's response to an information request must be reasonable. Accordingly, an employer must respond to a union's request for relevant information "either by complying with it or by stating its reasons for noncompliance within a reasonable period of time." *Columbia University*, 298 NLRB 941, 945 (1990). See also *Columbia College Chicago*, 363 NLRB No.

154 (2016) (quoting *National Steel Corp.*, 335 NLRB 747, 748 (2001) and *Keauhou Beach Hotel*, 298 NLRB 702 (1990), "[i]t is well established that an employer may not simply refuse to comply with an ambiguous or overbroad information request, but must request clarification and/or comply with the request to the extent it encompasses necessary and relevant information"). Further, a union is not required to accept a summary or representation of information that may be confirmed and verified by other materials. *Pet Dairy*, 345 NLRB 1222, 1223 (2005); *Wallace Metal Products, Inc.*, 244 NLRB 41 fn. 2 (1979). Once the request for information is received by an employer, the requesting union is "not required to do more as a precondition to establishing the right to have the information produced." *Ellsworth Sheet Metal, Inc.*, 232 NLRB 109, 109 (1977).

With regard to claims of confidentiality, the party asserting a claim of confidentiality bears the burden of proving it. *Washington Gas Light Co.*, 273 NLRB 116 (1984). Further, an employer asserting a confidentiality interest must affirmatively propose an accommodation such as redactions or a confidentiality agreement. *Postal Service*, 364 NLRB No. 27 (2016). By failing to propose such accommodations, the employer waives and forgoes its opportunity to do so. Id.

In prior cases, the Board has ordered the production of sales agreements for the purchase of employers where the agreements were requested by unions that represented employees employed by the seller. See e.g., *Sierra Intern*, *Inc.*, 319 NLRB 948, 950–951 (1995); *Transcript Newspapers*, 286 NLRB 124, 128 (1987), enfd. 856 F.2d 409 (1st Cir. 1988). The Board has not found such sales agreements to be presumptively relevant, but has ordered production by the seller in a number of cases for a number of reasons. These reasons include requests deemed relevant for effects bargaining (*Transcript Newspapers*, 286 NLRB at 128–129); whether the purchaser was a successor with a continued bargaining obligation vis-à-vis the union (*Sierra Intern, Inc.*, 319 NLRB at 950–951), whether the seller and purchaser would constitute a single employer, joint employer, or alter ego (*Compact Video Services, Inc.*, 319 NLRB 131, 142–144 (1995)), whether the seller and/or purchaser would be liable for pension benefits (*Super Valu Stores, Inc*., 279 NLRB 22, 26 (1986)), and for enforcement of specific provisions of the predecessor's contract (*Washington Star Company*, 273 NLRB 391, 397 (1984)).

II. THE RESPONDENTS' REFUSAL TO FURNISH REQUESTED INFORMATION

Here, on January 18, the Union requested the APA with all attachments and schedules, and Bilotta admitted, as early as February 10, that portions were relevant and subject to production. At this point, the Respondents were required to do more than vaguely assert that other portions of the APA were irrelevant and confidential. Rather, the Respondents were required to produce those portions they deemed relevant, identify the portions they were not willing to produce, and explain why the withheld portions were not forthcoming. *Columbia University*, 298 NLRB 941, 945 (1990). Indeed, Bilotta testified that this was her standard operating procedure and it is unclear why she did not follow it with regard to the APA. Although Bilotta testified that she sometimes attempts to clarify what information is being sought and alternative ways to comply with a request for information, the record contains no evidence that the instant request was either ambiguous or unduly burdensome. In fact, Bilotta ultimately prepared a redacted version of the APA in response to a request by two other unions and offered no explanation why that version was not provided to the Union.

Consistent with Bilotta's opinion (and she has extensive experience dealing with information requests), the Union did have reason to believe that the APA contained relevant information. The January 8 draft letter the Union received from Crozer indicated that the APA contained information about how the operation would change and not change under new management with regard to such things as employees' terms and conditions of employment, the name of the hospitals, the continuation or expansion of certain service lines, capital investments, standards of care, equipment, and property. Some of this information would be presumptively relevant while others, as explained by Cruice and Gaffney, would be relevant to the availability and location of unit work, the potential for layoffs and hiring, whether the pension plan would be fully funded, and whether non-unit employees were receiving pay or benefits the Union might want to negotiate (for parity) on behalf of unit employees.[7] And although the draft letter summarized what was in the APA, the Union was entitled to the actual document to verify the summary and obtain additional details. *Pet Dairy*, 345 NLRB 1222, 1223 (2005); *Wallace Metal Products, Inc.*, 244 NLRB 41 fn. 2 (1979).

Thus, by February, it was clear to both parties that the APA contained relevant information and needed to be produced in whole or in part. However, the parties were not in a position to have meaningful discussions about the scope of production because the Respondents (as the parties in possession of the APA) failed to indicate what portions they deemed irrelevant and confidential, or explain why. The Respondents also failed to propose any confidentiality accommodations such as redactions or a confidentiality agreement. Although the Respondents contend that the Union has engaged in improper speculation about those portions of the APA that might be relevant, this assertion is unwarranted because the Union was not given sufficient information to help parse the appropriate production of a document that was understood to be at least partially relevant.[8]

[7] See e.g., *Ohio Power Co.*, 216 NLRB 987, 992 (1975) (information regarding the nature and availability of employment opportunities for unit employees is relevant); *Brazos Electric Power Cooperative, Inc.*, 241 NLRB 1016, 1018 (1979), enfd. 615 F.2d 1100 (5th Cir. 1980) (information regarding the compensation of non-unit employees is relevant where the information may be used to obtain parity for unit employees).

[8] I do not find it necessary to determine whether the Union placed the Respondents on notice of the relevance of the APA. As noted above, Bilotta admits that, upon her own evaluation of the requested information, she determined that it was at least partially relevant. Therefore, the only issue was what portion (if any) would be withheld and the Respondents were best situated to initiate a discussion of that issue because they were in possession of the information. *Columbia College Chicago*, 363 NLRB No. 154 (2016); *National Steel Corp.*, 335 NLRB 747, 748 (2001); *Keauhou Beach Hotel*, 298 NLRB 702 (1990). Nevertheless, I do note that the Union indicated a desire to obtain the

The Respondents were not entitled to avoid or delay production of those portions of the APA they deemed relevant by soliciting alternative requests (as Bilotta did by email on February 11) or offering to discuss the information request (as Bilotta did by letter on March 18). Particularly, the Respondents were not entitled to withhold information they already had an obligation to provide as leverage in asking the Union to accept less than it may otherwise be entitled to receive. See *Sonat Marine, Inc.*, 279 NLRB 100, fn. 4 (1986) (Board found unlawful refusal to produce information where production was effectively conditioned on union waiving its right to negotiate over the underlying issue). Bilotta's testimony and internal emails indicate that the Respondents were withholding information "specifically related to employees" as "a compromise" to producing the entire document. Instead, the Respondents should have produced those portions of the APA they deemed relevant along with an explanation of what they were withholding so the parties could engage in meaningful discussions about the proper scope of production.

For its part, the Union did not defeat or interfere with the Respondents' ability to comply with their bargaining obligation by not calling to schedule discussions of the APA in response to Bilotta's letter of March 18 (or any inquiries that may have been made by Johns). The Respondents could have, at any time, sent an email to the Union with a redacted version of the APA, including the list of schedules, along with a draft confidentiality agreement and an explanation as to why certain information was being withheld.[9] The Union had no obligation to schedule meetings or solicit additional correspondence where the Respondents already had every opportunity to comply with their legal obligation and were failing to do so. See *Ellsworth Sheet Metal, Inc.*, 232 NLRB 109, 109 (1977).

I do not find it significant or a valid defense that the Union demanded the entire APA and took the position that it had the exclusive right to determine relevance. Admittedly, the latter position of the Union was not sustainable since the Union was essentially stating that it needed to see the entire document in order to determine what portions it was not entitled to see. However, because the Respondents never identified specific portions they wanted to withhold and never offered more than a conclusory assertion that certain unidentified portions were not relevant, the Union was not put to the test of altering its position.

Similarly, I do not find it significant or a valid defense that the Union did not offer to discuss confidentiality except upon the condition that the entire APA be produced. As noted above, an employer that asserts a confidentiality claim bears the burden of proving it and affirmatively proposing accommodations. *Postal Service*, 364 NLRB No. 27 (2016); *Washington Gas Light Co.*, 273 NLRB 116 (1984). The Respondents never identified portions of the APA they wanted to keep confidential from the Union and never proposed a confidentiality agreement restricting disclosure of the APA to third parties.[10] Accordingly, as with relevance, the Respondents never put the Union to the test of modifying its position on confidentiality.

Indeed, the Respondents have not, even at trial, articulated a valid confidentiality interest in the APA. First, although the Respondents claim that Section 12 of the APA prohibited them from disclosing the document without the consent of Prospect, the APA arguably allows for disclosure by the seller (Crozer) when, in its opinion, such disclosure is required by law. The relevant portion of Section 12 states:

> Nothing in this Section 12.1, however, shall prohibit the use of such Confidential Information for such government filings as in the opinion of Sellers' counsel or Buyers' counsel are required by law or government regulations or are otherwise required to be disclosed pursuant to applicable state law.

Second, even if Section 12 did prohibit disclosure to the Union (not for a "government filing") except upon mutual consent by Prospect and Crozer, the Union is not a party to the APA and was not consulted before the confidentiality provision was agreed upon. The fact that Crozer may have put itself between a legal rock and a hard place by agreeing to keep the APA confidential despite its statutory obligation to produce information under the Act is not the Union's concern.[11]

Finally, the record contains no explanation why either Crozer or Prospect actually believed that certain portions of the APA were confidential or proprietary. Indeed, Bilotta indicated that Crozer would have produced the entire APA if she could have obtained authorization from Prospect to do so (indicating that Crozer had no independent confidentiality interest in the document). Bilotta did not indicate whether she asked Prospect why it wanted to keep portions of the APA confidential and the record contains no evidence as to Prospect's reasoning. Absent some showing to that effect, the Respondents failed to meet their burden of proving a valid confidentiality interest in the APA.[12]

APA with all attachments and schedules for use in bargaining over the effects of the sale and experienced bargaining parties, such as these, could reasonably expect the Union to use that information in connection with upcoming contract negotiations as well.

[9] Alternatively, the Respondents could have done so in person during a bargaining session. Indeed, the Union inquired about the APA on March 17 and the parties discussed it again on April 29.

[10] Cruice expected the Respondents to propose a confidentiality agreement that would require the Union to keep the APA confidential from third parties (but, presumably, allow for production of the entire document to the Union). (Tr. 99.) He did not, apparently, consider whether the Respondents wanted to keep certain information confidential from the Union itself. However, it is noteworthy that, in her March 18 letter, Bilotta merely indicated that the Union would need to sign a confidentiality agreement regarding any relevant information that might be disclosed to the Union and did not assert that any relevant information was so confidential that even the Union could not see it.

[11] Respondent CCMC was particularly well situated to know that the confidentially provision in a private agreement with a third party would not necessarily raise a recognizable confidentiality interest in that agreement. In a prior case, an administrative law judge determined that the confidentiality clauses in certain third-party staffing agreements did not prevent the disclosure of those agreements to the bargaining representative of the employees of one of the contracting parties. *Crozer Chester Medical Center*, 2015 L.R.R.M. 183027, 2015 WL 2259320, slip op. at 26 (2015). I take administrative notice of this decision.

[12] I do not believe that Prospect is being denied due process because it was not a party to this case. Prospect owns Crozer and was notified

THE REMEDY

I will order the Respondents to produce to the Union the entire APA with all attachments and schedules. The Respondents were in possession of requested information it knew to be at least partially relevant and failed to (1) produce those portions that were relevant, (2) identify portions that were not being produced, and (3) explain why portions were being withheld. The Respondents are not now entitled to a second chance to assert objections to production that should have been raised in a timely manner when the request was initially made over a year ago. To do so would place the Respondents in a more advantageous position than they are now. *Postal Service*, 364 NLRB No. 27 (2016) (Board will not reward Respondents by ordering confidentiality accommodations that were not proposed with regard to a pilot production that was already complete); *West Penn Power Co.*, 339 NLRB 585, 586 (2003) (remedy is to provide the information, rather than to bargain over providing the information, because employer should have bargained over the burden of production at the time the information was requested).

Further, I do not find that the information request is moot. The successor status of Prospect is no longer an issue because, on June 16, Prospect agreed to recognize the Union. Further, the parties have already engaged in bargaining over effects. However, if the Union were to find something in the APA schedules that gave rise to a desire to resume effects bargaining, I see no reason why such negotiations could not be resuscitated. Further, the Union has an ongoing obligation to seek evidence relevant to the administration of existing contracts and is still negotiating the DCMH contracts (as well as the terms and conditions of employment of the PRN paramedics and clinical assistants who were recently added to the paramedics unit).

CONCLUSION OF LAW

The Respondents violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Asset Purchase Agreement, including all attachments and schedules, that was requested by the Pennsylvania Association of Staff Nurses and Allied Professionals on January 18, February 10, and February 11. Accordingly, on these findings of facts and conclusions of law and the entire record, I issue the following[13]

ORDER

The Respondent, Delaware County Memorial Hospital, a Division of Crozer-Keystone Health System, Upper Darby, Pennsylvania, and the Respondent, Crozer-Chester Medical Center, a Division of Crozer-Keystone Health System, Upland, Pennsylvania, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to provide information to the Pennsylvania Association of Staff Nurses and Allied Professionals that is relevant and necessary to conduct negotiations or otherwise perform its duties as the exclusive collective-bargaining representative of employees it represents at Delaware County Memorial Hospital and Crozer-Chester Medical Center.

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

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

(a) Promptly provide to the Pennsylvania Association of Staff Nurses and Allied Professionals the Asset Purchase Agreement, including all attachments and schedules, it requested on January 18, February 10 and 11, 2016.

(b) Within 14 days after service by the Region, post at the facility in Upper Darby, Pennsylvania, copies of the attached notice marked "Appendix A" and the facility in Upland, Pennsylvania, copies of the attached notice marked "Appendix B."[14] Copies of the notices, on forms provided by the Regional Director for Region 4, after being signed by authorized representatives of the Respondents, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken by the Respondents 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, one or both of the Respondents have gone out of business or closed a facility involved in these proceedings, the Respondent(s) shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondent(s) at any time since January 18, 2016.

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

Dated, Washington, D.C. February 21, 2017

APPENDIX A

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

of the pending ULP. (R. Exh. 6.) Prospect made no attempt to appear or present its position on confidentiality through a party that it owns.

[13] 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.

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notices 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."

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 fail or refuse to provide information to Pennsylvania Association of Staff Nurses and Allied Professionals (the Union) that is relevant and necessary to conduct negotiations or otherwise perform its duties as the exclusive collective-bargaining representative of employees the Union represents at Delaware County Memorial Hospital and Crozer-Chester Medical Center.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL promptly provide the Union with the Asset Purchase Agreement, including all attachments and schedules, for the sale of Crozer-Keystone Health System to Prospect Medical Holdings, Inc., that the Union requested on January 18, February 10, and February 11, 2016.

DELAWARE COUNTY MEMORIAL HOSPITAL

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/04-CA-172313 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

APPENDIX B

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.

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CROZER-CHESTER MEDICAL CENTER

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/04-CA-172296 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.