

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**FREDERICK J. CALATRELLO,  
REGIONAL DIRECTOR, REGION 8  
OF THE NATIONAL LABOR RELATIONS  
BOARD, FOR AND ON BEHALF OF THE  
NATIONAL LABOR RELATIONS BOARD**

**Petitioner**

**and**

**CIVIL NO.**

**DHSC, LLC, D/B/A AFFINITY MEDICAL CENTER**

**Respondent**

**PETITION FOR INJUNCTIVE RELIEF UNDER SECTION 10(j)  
OF THE NATIONAL LABOR RELATIONS ACT**

To the Honorable, the Judges of the United States District Court for the Northern District of Ohio, Eastern Division.

Frederick J. Calatrello, Regional Director for Region 8 of the National Labor Relations Board, herein called the Board, petitions this Court, for and on behalf of the Board, pursuant to Section 10(j) of the National Labor Relations Act (Act), as amended (61 Stat. 149; 73 Stat. 544; 29 U.S.C. § 160(j)), for appropriate injunctive relief pending the final disposition of the matters involved herein, based upon on an administrative complaint issued by the Acting General Counsel of the Board, alleging, *inter alia*, that DHSC, LLC, D/B/A Affinity Medical Center, herein called the Respondent, has engaged in, and is engaging in, acts and conduct in violation of Section 8(a)(1) (3) and (5) of the Act (29 U.S.C. § 158(a)(1),(3) and (5)). In support of this petition, Petitioner respectfully shows as follows:

1. Petitioner is the Regional Director of Region 8 of the Board, an Agency of the United States, and files this Petition for and on behalf of the Board.

2. Jurisdiction of this Court is invoked pursuant to Section 10(j) of the Act.

3. Respondent is now and has been an all material times, herein, a limited liability corporation duly organized under and existing by virtue of the laws of the State of Delaware, with an office and place of business in Massillon, Ohio, which is located in Stark County, within this judicial district.

4. (a) On September 26, 2012, the National Nurses Organizing Committee, herein called the Union, filed a charge with the Board in Case 8-CA-090083, which charge was amended on November 21, 2012, alleging, *inter alia*, that the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act. Copies of these charges are attached hereto as Exhibits A and B.

(b) On September 27, 2012, the Union filed a charge with the Board in Case 8-CA-090193, alleging, *inter alia*, that the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act. A copy of the charge is attached hereto as Exhibit C.

(c) On November 13, 2012, the Union filed a charge with the Board in Case 8-CA-093035, alleging, *inter alia*, that the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act. A copy of the charge is attached hereto as Exhibit D.

(d) On January 4, 2013, the Union filed a charge with the Board in Case 8-CA-095833, which charge was amended on February 22, 2013, alleging, *inter*

*alia*, that the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act. Copies of the charge and amended charge are attached hereto as Exhibits E and F.

5. (a) The aforesaid charges were referred to the Petitioner as Regional Director of Region 8 of the Board.

(b) Upon the charges described above in paragraphs 4(a) through 4(d), and after investigation of the charges in which the Respondent was given an opportunity to present evidence and legal arguments, the Acting General Counsel, on behalf of the Board, pursuant to Section 10(b) of the Act (29 U.S.C. § 160(b)), issued a Complaint and Notice of Hearing on December 18, 2102 in Case 08-CA-093035. Thereafter on January 29, 2013, the Acting General Counsel issued an Order Consolidating Cases, Complaint and Notice of Hearing in Cases 08-CA-090083 and 08-CA-090193. An Order Consolidating Cases, Complaint and Notice of Hearing in Cases 08-CA-090083, 8-CA-090193 and 08-CA-093035 issued on March 8, 2013. On March 29, 2013, the Acting General Counsel issued a Third Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, herein called the Consolidated Complaint, alleging that Respondent engaged in, and is engaging in, unfair labor practices as charged within the meaning of Section 8(a)(1)(3) and (5) of the Act. A copy of the Complaints and Orders are attached hereto as Exhibits G, H, I and J.

(c) On January 2, 2013, Respondent filed its Answer to Case 08-CA-093035 denying the commission of any unfair labor practices. On January 15, 2013, Respondent filed its Amended Answer to Case 08-CA-093035. On February 8, 2013,

Respondent filed its Second Amended Answer to Case 08-CA-093035. Copies of said Respondent's Answers are attached hereto as Exhibit K, L and M.

(d) On February 11, 2013, Respondent filed its Answer to Cases 08-CA-090083 and 08-CA-090193 denying the commission of any unfair labor practices. A copy of said Respondent's Answer is attached hereto as Exhibit N.

(e) On April 12, 2013, Respondent filed its Answer to Cases 08-CA-090083, 08-CA-090193, 08-CA-093035 and 08-CA-095833 denying the commission of any unfair labor practices. A copy of said Respondent's Amended Answer is attached hereto as Exhibit O.

(f) On April 28, 2013, Respondent filed its First Amended Answer to Cases 08-CA-090083, 08-CA-090193, 08-CA-093035 and 08-CA-095833 denying the commission of any unfair labor practices. A copy of said Respondent's First Amended Answer is attached hereto as Exhibit P.

(e) An expedited administrative hearing on the Third Order Consolidated and Amended Complaint was held before the Honorable Arthur J. Amchan, Administrative Law Judge, herein, the Administrative Law Judge, in Cleveland, Ohio on April 29<sup>th</sup> through May 3<sup>rd</sup> 2013.

(f) During the administrative hearing, the Administrative Law Judge granted Counsel for the Acting General Counsel's Motion to Amend the Consolidated Complaint alleging an addition threat allegation<sup>1</sup> in paragraph 13(b) of the Third Order Consolidated and Amended Complaint.

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<sup>1</sup> Paragraph 13(b) of the Third Order Consolidating Amended Complaint now reads: On or about the first week of January or shortly thereafter the exact date being unknown, Respondent by Kress coercively shredded assignment despite objection forms in the presence of registered nurses and said that she could not accept these forms from employees and thereby prevented the employees from engaging in union

(g) On July 1, 2013, the Administrative Law Judge issued his decision finding that Respondent has been in violation of:

- (i) Section 8(a)(5) of the Act in failing to recognize and bargain with the Union;
- (ii) Section 8(a)(1) of the Act by denying the Union and Union organizer Michelle Mahon access to all areas of its property;
- (iii) Section 8(a)(1) by threatening to plaster Assignment Despite Objection (ADO) forms on the forehead of any employee who submitted a form; more closely scrutinizing patient charts; stating how much she would enjoy disciplining a prominent union supporter; and by retaliating against employees by reducing the number of nurses in the ICU.
- (iv) Section 8(a)(3) and (1) of the Act by disciplining Ann Wayt, terminating her employment and reporting Ann Wayt to the Ohio State Board of Nursing. Exhibit Q.

6. There is reasonable cause to believe that the allegations set forth in the Consolidated Complaint, as amended, are true and that Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) (3) and (5) of the Act, affecting commerce within the meaning of Section 2(6) and 2(7) of the Act (29 U.S.C. § 152(6) and (7)) for which a remedy will be ordered by the Board, but that the Board's order for such remedy will be frustrated without temporary injunctive relief sought herein. Petitioner asserts that it prevailed in the underlying administrative proceedings and established that Respondent has engaged in, and is engaging in, unfair

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and/or concerted activities and to discourage employees from engaging in these activities in violation of Section 8(a)(1) of the Act.

labor practices in violation of Section 8(a)(1) and (3) of the Act by, *inter alia.*: (1) refusing to recognize and bargain with the Union; (2) threatening to physically harm employees who engaged in protected concerted and/or union activity by completing Assignment Despite Objection forms; (3) scrutinizing employees' work in view of employees because of their protected concerted and/or union activities; (4) coercively telling employees that it would enjoy disciplining an employee, a known union supporter; (5) denying the Union access to all areas of its facility; (6) disciplining, discharging and then reporting employee Ann Wayt to the State Board of Nursing because of her union and/or protected concerted activities; (7) imposing more onerous working conditions on employees by decreasing staffing levels because employees engaged in protected concerted and/or union activities. In support thereof, and in support of the request for injunctive relief, Petitioner shows as follows:

7. At all material times, Respondent has been a Delaware limited liability company with an office and place of business in Massillon, Ohio, (Respondent's Massillon facility), where it is engaged in the operation of an acute care hospital providing inpatient and outpatient care.

8. Annually, Respondent, in conducting its business operations described above in paragraph 7, derives gross revenue in excess of \$250,000.

9. Annually, Respondent, in conducting its business operations described above in paragraph 7, purchases and receives at its Massillon, Ohio facility goods valued in excess of \$50,000 directly from points outside the State of Ohio.

10. At all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

11. At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

12. At all material times the following individual has been an agent of Respondent within the meaning of Section 2(13) of the Act:

Unnamed Attorney

13. At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Jan Ellis - Human Resources Director

Angela Boyle - Vice President of Human Resources

Paula Zinsmeister - Manager Orthopedic Unit

Jeramie Montabone - Manager Cardiovascular Operating Room

Susan Kress - Manager Cardiovascular Intensive Care Unit

Jason McDonald - Orthopedic and Therapy Department  
Director

Patricia Kline - Facility Compliance Officer and Risk  
Manager

John Perone - Director of Pharmacy

William Osterman - Chief Nursing Officer

14. The following employees of Respondent, called the Unit, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time, and per diem Registered Nurses, including those who serve as relief charge nurses, employed by the Employer at its 875 Eighth Street N.E. Massillon, Ohio facility, but excluding all other employees, including managers, confidential employees, physicians, employees of outside registries and other agencies supplying labor to the Employer, already represented employees, guards and supervisors as defined in the Act, as amended.

15. On October 5, 2012, the Board, based upon the results of a representation election, certified the Union as the exclusive collective-bargaining representative of the Unit.

16. At all times since October 5, 2012, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

17. On October 16, 2012 and October 26, 2012, by electronic mail transmission; on October 17, 2012, in person and in writing; and on November 2, 2012, by letter, the Union requested that Respondent recognize the Union as the exclusive collective-bargaining representative of the Unit and bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

18. Since on or about October 16, 2012, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.



19. (a) On or about July 6, 2012, Respondent granted the Union access to areas within Respondent's facility.

(b) On or about September 19, 2012, union representative Michelle Mahon, in representing employee Ann Wayt, submitted a letter on Wayt's behalf to the Employer.

(c) On or about September 26, 2012, after receipt of the September 19, 2012 letter, Respondent, by Unnamed Attorney Agent, denied the Union access to all areas of Respondent's property.

20. On or about September 12, 2012, Respondent, by Jason McDonald, threatened to terminate Ann Wayt for requesting union representation at a meeting with Respondent that she reasonably believed could result in discipline.

21. On or about October 19, 2012, or shortly thereafter, the exact date being unknown, Respondent, by Susan Kress, interrogated an employee about her union interest, support and activities.

22. About the first week of December 2012, or shortly thereafter, the exact date being unknown, Respondent, by Kress, threatened to physically harm employees who engaged in protected concerted and/or union activity by completing Assignment Despite Objection Forms.

23. (a) About the first week of December 2012, or shortly thereafter, the exact date being unknown, Respondent, by Kress, more severely scrutinized employees' work in view of employees because of their protected concerted and/or union activities.

(b) While engaging in the activity set forth in paragraph (23)(a) above, Respondent, by Kress, coercively stated that she would enjoy disciplining an employee, a known union supporter, as a result of her more severe scrutiny of employees' work.

24. (a) On or about September 5, 2012, Respondent disciplined its employee Ann Wayt.

(b) On or about September 26, 2012, Respondent terminated its employee Ann Wayt.

(c) On or about September 26, 2012, Respondent discriminatorily referred and/or reported Ann Wayt to the Ohio State Board of Nursing.

(d) Respondent engaged in the conduct described above in paragraph 24 and its subparagraphs, because Wayt formed, joined and assisted the Union, engaged in union and/or concerted activities, and to discourage employees from engaging in these activities.

25. (a) About the first week of December 2012, or shortly thereafter, the exact date being unknown, Respondent, by Kress, imposed onerous working conditions on employees by decreasing staffing levels.

(b) Respondent engaged in the conduct described above in paragraph 25(a) because employees engaged in protected concerted and/or union activities, and to discourage employees from engaging in these activities.

26. By the conduct described above in paragraphs 18 through 25 and their subparagraphs, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

27. By the conduct described above in paragraphs 23 through 25, and their subparagraphs, Respondent has been discriminating in regard to the hire, tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

28. By the conduct described above in paragraph 18, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Sections 8(a)(1) and (5) of the Act.

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

30. The unfair labor practices of Respondent described above in paragraphs 18 through 25 and their subparagraphs have taken place within this judicial district.

31. Respondent's unfair labor practices, described above in paragraphs (18) through 25, have irreparably harmed, and are continuing to harm, employees of Respondent in the exercise of rights guaranteed them by Section 7 of the Act (29 U.S.C. §157). More specifically, Respondent's unfair labor practices have caused the following harm:

(a) Respondent's employee Ann Wayt has suffered significant economic harm through the loss of benefits and promotions, loss of work hours, and loss of pay and livelihood as a result of her unlawful discharge due to her Union activities;

(b) Respondent's unfair labor practice campaign has deprived its employees of Union representation by the union of their choosing; and

(c) Employees fear retaliation and discharge by Respondent, on an ongoing and daily basis, if they continue to show support for the Union.

32. Upon information and belief, unless injunctive relief is immediately obtained, it can fairly be anticipated that employees will permanently and irreversibly lose the benefits of the Board's processes and the exercise of statutory rights for the entire period required for Board adjudication, a harm which cannot be remedied in due course by the Board.

33. There is no adequate remedy at law for the irreparable harm being caused by Respondent's unfair labor practices, as described above in paragraphs 18 through 25 and their subparagraphs.

34. Upon information and belief, it may fairly be anticipated that unless Respondent's conduct of the unfair labor practices described above in paragraphs (18) through 25 and their subparagraphs is immediately enjoined and restrained, Respondent will continue to engage in those acts and conduct, or similar acts and conduct constituting unfair labor practices, during the proceedings before the Board and during any subsequent proceedings before a United States Court of Appeals, with the predictable result of continued interference with the rights of employees to engage in activities protected by Section 7 of the Act, with the result that employees will be deprived of their Section 7 rights under the Act, *inter alia*, to form, join, or assist a labor organization or to refrain from any and all such activities, employees will be denied their statutory right to freely express their choice as to representation or to be represented for collective-bargaining purposes by the Union, all to the detriment of the policies of the Act, the public interest, the interest of the employees involved, and the interest of the Union.

Together with the Respondent's unlawful refusal to recognize and bargain with the union, its unlawful discipline and discharge of an active union supporter and its continued unlawful conduct, including threats, interrogations and more onerous working conditions, it is reasonable to predict employee disaffection and subsequent adverse consequences to the Union's bargaining position that will not and cannot be remedied with an eventual Board order.

35. Upon information and belief, to avoid the serious consequences set forth above, it is essential, just and proper, and appropriate for the purposes of effectuating the policies of the Act and the public interest, and avoiding substantial, irreparable, and immediate injury to such policies and interest, and in accordance with the purposes of Section 10(j) of the Act that, pending final disposition of the matters involved pending before the Board, Respondent be enjoined and restrained from the commission of the acts and conduct alleged above, similar acts and conduct or repetitions thereof, and be ordered to take the affirmative action set forth below in paragraph 2:

**WHEREFORE**, Petitioner prays:

1. That the Court issue an order directing Respondent to appear before this Court at a time and place fixed by the Court, and show cause, if any there be, why an injunction should not issue directing, enjoining and restraining Respondent, its officers, agents, servants, representatives, successors, and assigns, and all persons acting in concert or participation with them, pending the final disposition of the matters herein pending before the Board, to cease and desist from:

(a) Disciplining, discharging and reporting its employees to the State Board of Nursing because of their Union activities, sympathies, or support.

- (b) Refusing to recognize and bargain with the Union.
- (c) Denying the Union and Union organizer Michelle Mahon access to all areas of its property.
- (d) Scrutinizing employees' work in view of employees.
- (e) Telling employees that they would enjoy disciplining known union supporters.
- (f) Threatening to harm employees who submit Assignment Despite Objection Forms.
- (g) Imposing more onerous working conditions on employees because the employees engaged in protected concerted and/or union activities.
- (h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under Section 7 of the National Labor Relations Act.

2. That the Court requires Respondent to take the following affirmative actions:

- (a) Recognize, and upon request, bargain in good faith with the Union as the exclusive collective bargaining representative of the employees concerning their wages, hours and other terms and conditions of employment;
- (b) Within five (5) days of this Order offer, in writing, immediate interim reinstatement to Ann Wayt to her former job, at her previous wages and other terms or conditions of employment, displacing if necessary any worker(s) hired or transferred to replace her, or if her former job no longer exists, to a substantially equivalent position,

without prejudice to her seniority or any other rights or privileges previously enjoyed and not give effect to the discipline issued to her that is the subject of the complaint;

(c) Temporarily expunge from Wayt's personnel file any reference to the discipline and discharge alleged in the Complaint;

(d) Requiring Respondent to retract the report made to the Ohio State Board of Nursing concerning Ann Wayt.

(e) Cease and desist from interfering with, restraining, coercing, threatening, retaliating against and interrogating employees because of the exercise of their Section 7 rights.

3. Post copies of the District Court's Order at the Respondent's Massillon, Ohio facility in all locations where notices to employees are customarily posted. Such postings shall be maintained during the Board's administrative proceeding free from all obstructions and defacements, and agents of the Board shall be granted reasonable access to Respondent's Massillon, Ohio facility to monitor compliance with this posting requirement;

4. Within ten (10) days of the District Court's order, require Angela Boyle, Vice President of Human Resources or the highest ranking management official of Respondent's Massillon, Ohio facility to read the Court's Order to Respondent's employees described above in paragraph (14) employed at the Massillon, Ohio facility during employees' paid work time, in the presence of a Board Agent at a time and date selected by Petitioner to ensure the widest possible attendance of Respondent's employees, absent mutual agreement between Petitioner and Respondent. At the

Respondent's option, the Court's Order may be read to employees by a Board Agent in the presence of a responsible official of the Respondent.

5. Within twenty (20) days of the issuance of the District Court's Order authorizing injunctive relief under Section 10(j) of the Act, file an affidavit of compliance with the District Court, with service of a copy upon the Regional Director of Region 8 of the Board, describing with specificity all steps Respondent has taken to comply with the terms of the District Court's Order.

6. That upon return of said Order to Show Cause, the District Court issue an order enjoining and restraining Respondent in the manner set forth above.

7. That this District Court grants such further and other relief as may be just and proper.

Dated at Cleveland, Ohio, this 16<sup>th</sup> day of July, 2013.

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Frederick J. Calatrello, Petitioner  
Regional Director  
National Labor Relations Board  
Region 8

LAFE E. SOLOMON, Acting General Counsel

BARRY J. KEARNEY, Associate General Counsel

ALLEN BINSTOCK, Regional Attorney

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**CERTIFICATE OF SERVICE**

I certify that the foregoing Petition was served by mail and, where known, electronically this 16<sup>th</sup> day of July 2013 to the following:

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