UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION

In the Matter of

HOLY FAMILY HOSPITAL, STEWARD HEALTH CARE SYSTEM, LLC

and

MASSACHUSETTS NURSES ASSOCIATION (MNA)

CASES 01-CA-064076
01-CA-065318

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

The Massachusetts Nurses Association, herein called the Union, has charged in Cases 01-CA-064076 and 01-CA-065318 that Holy Family Hospital, Steward Health Care System, LLC, herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Sec. 151, et seq., herein called the Act. Based thereon, and in order to avoid unnecessary costs or delay, the Acting General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, ORDERS that these cases are consolidated.

These cases having been consolidated, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Order Consolidating Cases, Consolidated Complaint and Notice of Hearing and alleges as follows:

1. (a) The charge in Case 01-CA-064076 was filed by the Union on September 7, 2011, and a copy was served by regular mail on Respondent on September 8, 2011.

(b) The first amended charge in Case 01-CA-064076 was filed by the Union on November 21, 2011, and a copy was served by regular mail on Respondent on November 23, 2011.

(c) The charge in Case 01-CA-065318 was filed by the Union on September 26, 2011, and a copy was served by regular mail on Respondent on September 26, 2011.

(d) The first amended charge in Case 01-CA-065318 filed by the Union on November 21, 2011, and a copy was served by regular mail on Respondent on December 6, 2011.

2. At all material times, Respondent, a corporation with an office and principal place of business in Methuen, Massachusetts, herein called the Hospital, has been engaged in the operation of an acute care hospital.

3. (a) Annually, Respondent, in conducting its business operations described above in paragraph 2, derives gross revenues in excess of $250,000.

(b) Annually, Respondent, in conducting its business operations described above in paragraph 2, purchases and receives at the Hospital goods valued in excess of $5,000 directly from points outside the Commonwealth of Massachusetts.

4. 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.

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

6. 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:

Martha McDrury	----	Chief Nursing Officer/Chief Operating Officer
Cheryl Edwards	----	Director of Nursing Operations
Cathy Simoes	----	Clinical Manager for ICU/CCU
Janet Phillips	----	Evening Administrative Supervisor
Deborah Bradshaw	----	Director of Human Resources
Patty Guaron	----	Human Resources Representative

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

> All full time, regular part time and per diem (those who worked at least 120 hours in either of the two calendar quarters immediately prior to the eligibility date) Registered Nurses, Diabetes Educator, Cardiac Rehab Nurse, Oncology Nurse, Operating Nurse, Operating Room Service Leader and Case Managers employed by the Employer at its 70 East Street, Methuen, MA, location, but excluding all

other employees, Office Clerical Employees, Confidential Employees, Physicians, Clinical Leaders, Nurse Educator, Manager of Nursing Informatics, Guards and Supervisors as defined in the Act.

8. On July 22, 2011, the Union was certified as the exclusive collective-bargaining representative of the Unit.

9. At all times since July 22, 1011, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

10. On September 1, 2011, Respondent, by postings through the Hospital and by written memorandum, promulgated, and since then has maintained, a rule prohibiting employees from "wearing buttons with any insignia or message printed on them" in "areas involving direct patient contact" and stating that "violation of this policy may result in disciplinary action up to and including termination."

11. (a) On September 1, 2011, Respondent, by Cathy Simoes, enforced the rule described above in paragraph 10 by directing employees in the Intensive Care Unit (ICU) and the Critical Care Unit (CCU) to remove a button that read, as follows:

MNA
We Support
MARY

(b) On September 1, 2011, Respondent, by Janet Phillips and by various other supervisors whose identities are not presently known by the Acting General Counsel, enforced the rule described above in subparagraph 7(a) by directing employees to remove a button that read, as follows:

MNA
We Support
MARY

12. (a) On August 23, 2011, Respondent discharged its employee, Mary Ramirez, RN.

(b) On about September 16, 2011, Respondent reported Mary Ramirez, RN, to the Massachusetts Board of Registration in Nursing.

13. Respondent engaged in the conduct described above in paragraphs 10, 11, and 12 because its employees formed, joined, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

14. The subjects set forth in paragraphs 10 and 11 relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purpose of collective bargaining.

15. Respondent engaged in the conduct described above in paragraph 10 without prior notice to the Union or without affording the Union an opportunity to bargain with the Respondent with respect tot his conduct and the effects of this conduct.

16. By the conduct described above in paragraphs 10 and 11, Respondent has been interfering with, restraining, and coercing employees in the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

17. By the conduct described above in paragraphs 10, 11, 12, and 13, Respondent has been discriminating in regard to hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 7 of the Act in violation of Section 8(a)(3) and (1) of the Act.

18. By the conduct described above in paragraphs 10, 11, 14, and 15, 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 Section 8(a)(5) and (1) of the Act.

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

WHEREFORE, as part of the of the remedy of the unfair labor practices alleged above in paragraphs 12 and 13, the Acting General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of lump sum payment and taxes that would have been owned had there been no discrimination.

The Acting General Counsel seeks further, as part of the remedy for the unfair labor practices alleged above in paragraphs 12 and 13, an order requiring that the Respondent submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods.

The Acting General Counsel also seeks, as part of the remedy for the unfair labor practices alleged above in paragraphs 12 and 13, an order requiring Respondent to withdraw its report concerning Mary Ramirez from the Massachusetts Board of Registration in Nursing.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before January 12, 2011, or postmarked on or before January 11, 2012.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at http://www.nlrb.gov, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **February 14, 2012, at 10:00 a.m.**, at the Thomas P. O'Neill Jr. Federal Building, 10 Causeway Street, 6th Floor, Boston, Massachusetts 02222, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Boston, Massachusetts this 29th day of December, 2011.

Rosemary Pye, Regional Director
National Labor Relations Board
First Region
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, Massachusetts 02222-1072

(C CASES)

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

Form NLRB-4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Cases: 01-CA-064076 & 01-CA-065318

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hours, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b);

(2) Grounds must be set forth in ***detail***;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of the parties must be ascertained in advance by the requesting party and set forth in the request; ***and***

(5) Copies must be simultaneously served on all parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

DEBORAH BRADSHAW, REGIONAL DIRECTOR, HR
STEWARD HOLY FAMILY HOSPITAL
70 EAST STREET
METHUEN, MA 01844-4597

Certified No. 7009 0080 0002 1697 0186

SCOTT A. FAUST, ESQ.
VANESSA D. GILBRETH, ESQ.
PROSKAUER ROSE LLP
1 INTERNATIONAL PLACE, STE. 2700
BOSTON, MA 02110-2602

CARLOTTA STARKS, ASSOCIATE DIRECTOR
MASSACHUSETTS NURSES ASSOCIATION
CANTON CORPORATE CENTER
340 TURNPIKE STREET, 2ND FLOOR
CANTON, MA 02021