Ascension Health
A Fall from Grace
Workers’ Rights Abuses at Ascension Health’s Michigan Hospitals

July 15, 2010

Interfaith Worker Justice
In May 2010, Interfaith Worker Justice (IWJ) received a request for assistance from workers and union representatives at three Catholic hospitals in Michigan that are owned by Ascension Health. IWJ responded by requesting a meeting with Ascension management in St. Louis and by initiating a fact-finding delegation of religious leaders that met with employees of the three medical centers: St. John Macomb-Oakland Hospitals in Warren and Madison Heights, Genesys Regional Medical Center in Grand Blanc, and Borgess Medical Center in Kalamazoo.

Delegation members heard disturbing reports of explicit anti-union behavior by hospital management. The same tactics of fear and intimidation commonly used by for-profit corporations were widely reported by the workers at these non-profit Catholic health care facilities. Workers from different hospitals, bargaining units and locations expressed, with alarming similarity, management tactics that have deteriorated employee morale and that appear to be coordinated by the Ascension corporate parent.

These hospital workers also consistently expressed concerns that due to unilateral staffing changes made by management, they are being put in situations that compromise their abilities to provide safe, therapeutic and effective care in a compassionate manner. Some reported being forced to work in specialized units without adequate training and orientation. The workers believe this is both dangerous for patients and disrespectful of nurses and health care professionals.

As a result of this fact-finding process, the delegation members are convinced that the three hospitals are engaging in comprehensive, coordinated anti-union activities aimed, at best, to dramatically diminish the working conditions and living standards of Ascension’s highly dedicated, unionized Michigan workforce; and, at worst, to break the unions altogether. In either case, Ascension is clearly failing to abide by Catholic social teachings on the rights of workers.

The Interfaith Worker Justice delegation calls upon Ascension Health to return to its mission of non-profit, faith-based values and to respect workers’ rights by following the recommendations outlined in the United States Conference of Catholic Bishops publication, Respecting the Just Rights of Workers: Guidance and Options for Catholic Health Care and Unions, the Bishops Conference’s pastoral letter, Economic Justice for All, as well as the several Papal Encyclicals that urge respect for workers’ rights. The delegation also calls on Ascension to command its hospitals to cease their union-busting activities, to negotiate in good faith with the respective unions, and to direct its managers to treat employees with dignity and respect.

Considering the severity of our findings and the widespread occurrences of workers’ rights violations across numerous Ascension holdings in Michigan, the Interfaith Worker Justice delegation also calls upon Ascension to develop a Workers’ Rights Policy with IWJ and to conduct with IWJ annually a workers’ rights audit of its facilities nationwide.

We also call upon Ascension to pledge to call off all plans and threats to lockout its Michigan employees and to instead engage in the collective bargaining process with its Michigan unions, with the goal of reaching just and fair agreements.
INTERLUDE

Interfaith Worker Justice is a national organization that works with religious leaders from a variety of faith traditions on issues of worker justice. In May 2010, IWJ received a request for assistance from workers and union representatives at three Catholic hospitals in Michigan that are owned by Ascension Health. IWJ responded by initiating a fact-finding delegation composed of two IWJ national staff persons, a religious leader from the Cincinnati Interfaith Committee for Worker Justice and local Michigan religious leaders.

The delegation was led by Sr. Monica McGloin, a nurse and member of the Dominican Sisters of Hope*. The full delegation included:

- Sister Monica McGloin, Cincinnati Interfaith Committee for Worker Justice, Cincinnati OH
- Renaye Manley, IWJ national office, Chicago, IL
- Joan Smith, IWJ Detroit, Detroit, MI
- David Bennett, IWJ Detroit, Detroit, MI
- Sister Cathey DeSantis, Detroit Catholic Pastoral Alliance, Detroit, MI
- Father Normas Thomas, Sacred Heart Church, Detroit, MI
- Father Philipp Schmitter, Christ the King Parish, Flint, MI
- Richard Preston, Lansing, MI
- David Ivers, Detroit AFL-CIO*, Detroit, MI
- Rabbi Robert Marx, Saugatuck, MI
- Bishop Thomas Gumbleton, Detroit, MI

*Organizations listed for identification purposes only

All three hospitals are part of the Ascension Health system. Ascension Health was created on November 1, 1999, by the union of the Daughters of Charity National Health System based in St. Louis, Missouri and the Sisters of St. Joseph Health System based in Ann Arbor, Michigan. In December 2002, Carondelet Health System based in St. Louis, Missouri merged with Ascension Health. Today Ascension Health is the largest Catholic health system in the United States and third largest health system of any type in the U.S., employing over 110,000 people nationwide. Approximately 6,000 employees are unionized and of these, approximately 4,000 are employed in Michigan.

Workers and union representatives from St. John Macomb-Oakland Hospitals (part of the St. John Health System), Genesys Regional Medical Center and Borgess Medical Center were invited to attend three listening sessions to share their concerns. The meetings were held on May 25, 2010, in Madison Heights, May 26, 2010, in Flint and May 27, 2010, in Kalamazoo. The delegation heard from 29 workers representing direct service providers, including registered nurses from Borgess, who are represented by the Michigan Nurses Association, which is affiliated with National Nurses United; licensed practical nurses, technicians, paramedics, EMTs and registered nurses from Genesys, who are represented by the Teamsters; certified nursing assistants at Genesys, who are represented by AFSCME; and support staff from St. John Macomb-Oakland, who are represented by OPEIU.

The delegation also invited Ascension Health executives in St. Louis and the CEOs of all three medical centers to meet separately with the faith delegation to share their perspectives. All parties declined the invitations and failed to make any of their managers available to meet with the delegation.

The delegation identified many common themes among the three hospitals that troubled us deeply. Workers and the union representatives that our delegation interviewed were very concerned that the previously established collective bargaining relationship had significantly deteriorated. Workers from different facilities, bargaining units and locations expressed, with alarming similarity, management

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tactics that have deteriorated employee morale and that appear to be coordinated by the Ascension corporate parent. The same attorney is being used by two of the three facilities as the lead consultant for collective bargaining. Workers are concerned that Ascension has adopted a business model that no longer reflects its values and those of Catholic social teaching in regards to employees. This inconsistency with the public mission and values of their branded Catholic identity was a core theme in discussions with workers.

Delegation members heard disturbing reports of employer conduct during contract negotiations. The same tactics of fear and intimidation commonly used by for-profit corporations were widely reported by these workers at Catholic health care facilities.

The ethical controversy extends beyond Ascension’s labor relations practices and policies. In an attached memorandum, Dr. Marick Masters, a professor of business at Wayne State University, reports on the costly fallout from Ascension’s various anti-trust, Medicare fraud and labor law violations.

These findings, and our recommendations for how Ascension can place itself back in line with its mission, with the Catholic faith and with Catholic social teachings, are detailed in the following report.

Signed,
Sister Monica McGloon and
Renaye Manley, Interfaith Worker Justice
All three hospitals we visited are part of the Ascension Health system. Ascension Health was created on November 1, 1999, by the union of the Daughters of Charity National Health System based in St. Louis, Missouri and the Sisters of St. Joseph Health System based in Ann Arbor, Michigan. In December 2002, Carondelet Health System based in St. Louis, Missouri merged with Ascension Health.

Today Ascension Health is the largest Catholic non-profit health system in the United States. Ascension is comprised of 37 health systems or centers in 20 states, totaling over 570 hospitals, clinics, rehabilitation centers, labs, and other facilities, and employs over 110,000 people nationwide. Approximately 6,000 employees are unionized and of these, approximately 4,000 are employed in Michigan.

By revenue, Ascension is America’s third-largest health system. Ascension Health is classified by the IRS as a non-profit 501(c)(3) organization. Without its non-profit status, Ascension would be number 220 on the Fortune 500.

The President and CEO of Ascension Health is Anthony Tersigni, EdD, FACHE. He was appointed to this position in 2004 after serving as COO and Executive Vice President of Ascension since 2001. Tersigni was recruited into hospital management from his post as the finance director with the Republican Party of South East Michigan. Tersigni’s total compensation was $2.75 million in 2008.

For the year ending June 30, 2009, Ascension’s total operating revenue was $14.3 billion and total income from operations was $371 million. Ascension ended the year with net assets of $8.3 billion. Thirty-seven percent of Ascension’s net patient service revenue is paid by Medicare. Another twenty percent is paid by state Medicaid programs.

In March 2010, Ascension was awarded a series of tax-exempt revenue bonds totaling $1.35 billion by the Michigan Hospital Finance Authority and similar authorities in Wisconsin, Tennessee, Texas and Connecticut to raise low-cost capital using taxpayer funds.
Decline in Quality of and Access to Care

According to the workers, management at all three hospitals have changed staffing levels and practices, leading to a decline in the quality of care. Nurses are being asked to do more with less. Full time positions have been replaced by part time staff or eliminated. Genesys wants to demote all Licensed Practical Nurses to technicians, which will result in decreased responsibilities for them and increased work for Registered Nurses. Genesys management is making these decisions with no input from staff.

Workers believe that understaffing of units has led to increased patient infections and falls. It has also led to high-stress situations where they want to provide quality care but are hampered due to a lack of staff or time. They believe that declining quality of care is inevitable due to staffing cuts.

Another outcome of the hospitals’ staffing practices is that nurses do not have sufficient time to talk with patients and families, providing less than necessary amounts of time for assessments and patient teaching. Borgess Medical Center nurses noted that an official complaint has been filed with the State of Michigan regarding several incidents that compromised patient care. The State has opened an investigation to review each of these incidents. The nurses were genuine in their commitment for their patients and consistently expressed concerns that they were put in situations that compromised their ability to provide safe, therapeutic and effective care in a compassionate manner.

Nurses from Borgess gave examples of being called two hours before a shift ends and told to send a staff person home. This results in a last minute increase in patients for the remaining nurses. New staffing procedures have created situations where nurses have also been called while on their way to work and told not to come in. That may create an inconvenience for the staff person; however, more critically, staff may be called in to work during a shift to respond to staff shortages. Workers understand the need for flexibility but feel that the lack of dialogue with nurses on patient care issues is hurting all parties. The delegation was concerned about the impact of such staffing shifts on both patients and staff members.

Workers said they were asked to work in specialized units without adequate training and orientation. The workers believe this is both dangerous for patients and disrespectful of nurses and professionals.

In some facilities, workers complained about equipment and supplies not being available and thus making it difficult for employees to perform their work. Some of the equipment issues appear related to the outsourcing of maintenance to a non-union company. Workers believe that the outsourcing of clerical work has led to serious errors and costly violations of government regulations. Genesys has settled with the U.S. Department of Justice twice in the past year for alleged Medicare overbilling, for amounts of $669,000 and $931,000, respectively.

In the St. John Health System, employees are concerned about the closing of facilities in poor neighborhoods and the building of facilities in higher income suburban areas. Ascension was criticized by public officials and the NAACP for closing hospitals in poor areas of Detroit and opening new ones in wealthy suburbs. This has led to decreased accessibility to health care for low-income, especially elderly people. Ascension’s mission contains an explicit commitment to serve the poor. Workers believe that moving facilities away from low-income communities is a violation of their mission.
There is a significant morale problem in all three facilities. Workers believe that their collective voice and their job security are under attack. They recounted to us the story of one Ascension hospital where workers were led to believe that the hospital was being sold to another provider. They came to work one day and learned that the hospital was closing. Hospital closings have led to the lay off of hundreds of employees.

A primary concern of the employees is that the hospitals are driven more by profit than mission. The delegation heard about two long-term staff members at Genesys who were fired. In one case, an employee had worked at the hospital for 27 years and was denied unemployment compensation. After a hearing regarding the unemployment claim, one of the managers texted to another, “Job well done! We won the case!” The hospital officials were celebrating the fact that they “won” a hearing denying the employee’s claim for unemployment compensation. The employer has a right to challenge the unemployment claim but should remain sensitive and respectful.

Another employee was on leave caring for her seriously ill mother. Her request for an extension of her leave was denied. Management determined that she had violated their “code of conduct”, which led to her being fired. The situation seemed to revolve around the request for leave under the code of conduct that was subject to discipline in a way that was significantly different from the collective bargaining agreement terms for missing work. The supervisor then used her discretion to discipline the employee under the code of conduct and pursued termination. This is just one of several examples that was relayed to the delegation.

Employees are required to follow arbitrary rules. For instance, interactions with patients are subject to discipline under a “code of conduct” that is applied inconsistently. Workers claim that reasonable requests for time off are denied, that they are not respected, and that they are intimidated and harassed. Policies are rigidly enforced and structures that enabled staff to give input have been eliminated. Rather than being supportive, managers seem to create opportunities to “catch” staff breaking one of the “rules” and then enforcing discipline.

In order to be hired, employees are required to pledge to specific behaviors and attitudes. That pledge is printed on the back of their ID cards. They are periodically quizzed regarding the pledge. Employees find this practice demeaning and believe that they are, and always have been, committed to quality patient care.

Workers reported some managers using trickery to entrap them into not following hospital policy. One example is when a Genesys department manager called another department and asked for a specific person who did not work there. She was told that the person was not there and ended the call. The employee who answered the phone was later reprimanded because he “should have been more helpful to the caller.”

And in yet another example of the lack of compassion and flexibility on management’s part, several Genesys employees who were not able to get to the hospital or who arrived late - after a snowstorm dumped multiple feet of snow on the Flint area - were disciplined.

These management practices have led to an atmosphere of fear and tension that permeates the hospital and negatively impacts staff, patients and families. What makes this even more difficult is that many of the workers have been with their institutions for a long time. They remember when they used to enjoy coming to work, and when they felt that management was mission focused and patient care and well-being was the priority.

Tense Management / Personnel Relationships

A Fall from Grace: Workers’ Rights Abuses at Ascension Health’s Michigan Hospitals
The delegation heard stories and reviewed documents that convinced it that all three hospitals are engaging in anti-union activities. Ascension pulls out all the stops, using its immense power as a large health care corporation, to de-unionize or make ineffectual the unions in Michigan that represent its employees. In the process, this Catholic institution has created much suffering among the very caregivers it counts on to fulfill its mission of healing.

Anti-union behavior ranges from subtle to overt. It seems clear to the delegation that the hospitals want to decertify the unions or use any other means to have unilateral control. Management has advocated contract changes that would allow them to make unilateral changes in the terms and conditions of employment at any time.

Until recently, both Genesys and Borgess had a long and positive history of working with union representatives in a mutually respectful manner. Using a shared management model, they had been able to work out differences, negotiate contracts and represent workers as needed. There has not been a strike at Borgess for 30 years. As mentioned above, there was a positive atmosphere in the hospitals and people wanted to work there because they believed in the mission. According to both the workers and the union representatives, this has changed dramatically.

At Borgess, management has recruited replacement nurses “in case” the union calls a strike, despite the fact that there has not been a vote regarding a strike and only members can make such a decision. In addition, management has retained a recruiting firm known to hire replacement workers and has taken replacement workers to the hospital units to meet the existing workers—a provocative action that nurses believe is intended to intimidate them. A nurse was approached by her supervisor and was solicited to sign a petition to decertify the union.

Nurses have received calls at home from an outside agency recruiting replacement workers to work at Borgess in the event of a strike. Such management behavior in the midst of contract negotiations, especially in such a challenging economic environment, is not conducive to fair collective bargaining and is antithetical to Catholic social teaching.
At Borgess Medical Center, nurses’ testimony leads us to believe that this behavior is part of an orchestrated plan to decertify the union or use any other means to have unilateral control. Instead of building on the foundation of the existing agreement, the current management of Borgess wants to tear it apart. Management wants to rip out almost two-thirds of the entire agreement – 59 pages – even though it has not articulated a single problem with any of the terms contained on those pages. It wants the contract to be changed to “policy,” which would allow management to make unilateral changes at any time. The hospital continues to insist on unilateral control over an array of terms and conditions of employment that have been collectively bargained for decades, and the right to engage in direct dealing with the members directly, bypassing the union.

Furthermore, Borgess has insisted on removing patient and employee protections from the contract and utilized a campaign of fear and intimidation while interfering in the rights of nurses to be represented by their union. Nurses reported that management has interrogated employees regarding their support for the union, videotaped and monitored employees engaged in union activity, and has threatened to impose economic penalties if employees rejected management’s demands to eliminate many of the substantive protections regarding conditions of employment.

Registered nurses from Borgess noted that unfair labor practice charges have been filed with the National Labor Relations Board (NLRB), citing 32 violations of the federal law by Borgess. Finding merit on many of these charges following a three-month investigation, the NLRB issued a complaint against Borgess on July 12, 2010, alleging that the hospital violated federal labor laws on multiple counts. Specifically, the Labor Board charged Borgess with the illegal restraint and coercion of employees in violation of section 8(a)(1) the National Labor Relations Act; unlawful discrimination against employees in the terms and conditions of employment in violation of sections 8(a)(1) and 8(a)(3) of the act; and of refusing to bargain in good faith with the union in violation of sections 8(a)(1) and 8(a)(5) of the act. Significantly, the NLRB has charged Borgess with adopting an illegal bargaining strategy at the inception of the negotiations, and that it insisted on contract proposals that violated the duty to bargain in good faith. A hearing before an administrative law judge has been scheduled for October 4, 2010.

The NLRB Region 7 Office has also dismissed an unfair labor practice charge filed by Borgess against the Michigan Nurses Association. The Board found no merit in the company’s allegations that the union failed to bargain in good faith, engaged in improper behavior or restrained or coerced employees in the exercise of their rights. The NLRB Regional Office also weighed in on Borgess’ demands to eliminate contractual provisions guaranteeing the right of nurses to have a voice on patient care issues and, instead, allowing nurses to have “input” that management is free to disregard. According to the region’s Summary Report of the case:

The accuracy of MNA’s public statements that BMC was “refusing to give the nurses a voice in providing safe patient care” depends on whether substituting “input” for contractual guarantees would leave the RNs with a meaningful say on scheduling and workload conflicts. It was determined that MNA’s statement is not an unreasonable one.

At Genesys, management wants to dramatically decrease employee benefits, including the elimination of employees’ defined benefit pensions. The current pension would allow these workers who have dedicated their entire careers to Genesys to retire with dignity. At least $6240 is paid into the average employee’s pension plan each year, and more for those who work overtime. But Genesys now wants to cut this amount to an average of $1620 per year. Some employees stand to lose up to $800,000 in retirement benefits over their lifetime. Cutting workers’ retirement by an average of 75% - a conservative estimate at
that - is especially cruel and does not seem to fit with Ascension’s claims that it is dedicated to a compassionate and just society.

Genesys has used the firm IRI Consultants to advise them. IRI Consultants is known for its anti-union perspective on labor relations. For example, IRI has specific information on its website opposing the Employee Free Choice Act and offering assistance to companies in identifying union organizing campaigns. Employees believe the IRI representative replaced staff committees that previously met to discuss labor management and patient quality issues.

Genesys, like Borgess, is also acting in a manner that shows an orchestrated plan to ignore contractual obligations and bust its employees’ union. Genesys unilaterally closed its ambulance service without bargaining, as required by the union contract. Genesys also changed many job responsibilities of its licensed practical nurses without negotiating with the union, and has just recently implemented new human resource policies without negotiating with the union. The local union has filed unfair labor practice charges with the NLRB regarding these actions. The NLRB is also investigating charges filed against Genesys that are similar to those found in the complaint against Borgess, including charges of retaliating and discriminating against employees exercising their rights to engage in protected union activities, and unlawfully interrogating and coercing employees about their union activities.

The abrupt change in management behavior at Genesys seems to have occurred when Ascension replaced Genesys’ CEO with a new CEO who had Ascension experience. During one meeting the delegation learned that St. John Hospital & Medical Center in Detroit is currently dealing with a lawsuit filed by some nurses. Although there was a nursing shortage in Detroit, salaries at all the area hospitals were low. The nurses filed a suit accusing the hospitals of wage fixing. St. John has settled this lawsuit for $13.5 million, and efforts are being made to obtain class action status for this lawsuit. The CEO of St. John during the wage fixing period is now the CEO of Genesys.

Workers at most of the hospitals in the Detroit-area St. John Health System are not unionized. They received materials from hospital management warning against joining a union. During the course of an organizing drive, one of the union representatives found an “Authorization for Representation” card under her windshield wiper. The card stated in part, “Many people at SJH are very interested but looking for more information. Have been threatened by management. Please keep working at this.” Union staff and workers met saw this as an example of workers who want the opportunity for union representation but are clearly afraid due to threats to their jobs. Workers at St. John report an atmosphere of fear, which is exacerbated by the recent closing of two affiliated institutions.

The Ascension Health system employs Hall Render, a law firm based in Indianapolis, Indiana. Ascension has paid Hall Render up to $3.5 million a year for their services. This law firm hired a Michigan attorney who previously worked for a local firm noted for its anti-union stance. This attorney is working with St. John and Genesys in their contract negotiations. Employees believe that his primary role is to end unionization in these facilities. Borgess Medical Center is represented by an anti-union law firm from Kalamazoo.
Ascension Has Shifted from a Focus on Mission to Focus on Profit

The website of Ascension Health states:

*Like other Catholic healthcare systems, Ascension is directed by the Church to care for those most in need. Our Catholic philosophy permeates our national health ministries and our promise to provide Healthcare That Works, Healthcare That is Safe, and Healthcare That Leaves No One Behind. In support of our healing Mission, and driven by compassion and dedication to care for those in need, Ascension Health has become a leading voice for Catholic healthcare in the United States. We envision a future filled with hope for our national health ministries and those we serve. We are dedicated to spiritually centered holistic care, and are advocates for a compassionate and just society. With your continued support and prayers, we have every reason to envision vibrant future in Catholic health ministry.*

The workers who spoke with delegation members remember a time when not only they but also the institutions they work for were committed to a common mission. In the testimony, there was a tone of sadness because workers feel that they have been marginalized, that they have become a means to an end, and that they are no longer treated with dignity and respect. The workers believe that the primary focus of their hospitals is profit, and their right to have a voice (clearly stated in Catholic social teaching) has been abolished.

As one worker said, “The way [management] treats people is not Catholic. There is no compassion and love. Money is all that matters.” While it is hard to document these feelings, the testimony we heard convinced delegation members of its truth. The delegation wondered how an organization that “advocates for a compassionate and just society” decides that a licensed practical nurse – someone who has earned this title – is now a technician? How does an organization that promises “healthcare that is safe” demand that nurses’ contractual right to advocate for their patients be eliminated?

As a result of this fact-finding process, the delegation members are convinced that the three hospitals: St. John Macomb-Oakland, Genesys Regional Medical Center, and Borgess Medical Center are engaging in anti-union activities.
Catholic Social Teaching Urges Respect for Workers’ Rights

Catholic Social Doctrine clearly states that labor unions are essential to the universal common good. As is explained in greater detail in the document, “Union Busting is a Mortal Sin,” issued recently by Catholic Scholars for Worker Justice, the Church’s doctrine on workers’ rights embodies 2000 years of Catholic teaching. In modern times, the Church’s teachings on workers’ rights date from Pope Leo XIII’s seminal 1891 encyclical, Rerum Novarum. Pope Leo endorsed “workmen’s associations” as “the most important” of all “institutions and organizations which afford opportune assistance to those in need.” Pope Leo advocated that unions “should multiply and be more effective.”

Pope John Paul II echoed that sentiment in his 1981 encyclical, Laborem Exercens. In that document, the Pope stated that, “[Workers have a right] to form associations for the purpose of defending the vital interests of those employed in the various professions….The experience of history teaches that organizations of this type are an indispensable element of social life, especially in modern industrialized societies.”

Pope Benedict XVI reaffirmed this teaching in his 2009 encyclical, Caritas In Veritate, when he stated that labor unions “have always been encouraged and supported by the Church.” He stated, “The repeated calls issued within the Church’s social doctrine, beginning with Rerum Novarum, for the promotion of workers’ associations that can defend [workers’] rights must therefore be honored today even more than in the past…”

The US Conference of Catholic Bishops has added to this social teaching. In their 1986 pastoral letter, Economic Justice for All, the bishops stated:

“The Church fully supports the right of workers to form unions or other associations to secure their rights to fair wages and working conditions. This is a specific application of the more general right to associate. In the words of Pope John Paul II, ‘The experience of history teaches that organizations of this type are an indispensable element of social life, especially in modern industrial societies.’

“No one may deny the right to organize without attacking human dignity itself. Therefore we firmly oppose organized efforts, such as those regrettably seen in this country, to break existing unions or prevent workers from organizing.”

In 2009, Respecting the Just Rights of Workers: Guidance and Options for Catholic Health Care and Unions was issued. This document was endorsed by the U.S. Conference of Catholic Bishops, the Catholic Health Association (the board of trustees of which is chaired by Ascension Health CEO Anthony Tersigni) and several labor organizations. It states:

“[C]reating and sustaining a workplace that provides equal employment opportunities, promotes employee participation, ensures employee safety and well-being, provides just compensation and benefits, and recognizes the rights of employees to organize and bargain collectively, are no less parts of Catholic social thought than the teachings concerning the fundamental right of access to health care…”

“The core of Catholic social thought emphasizes that ‘[p]roviding a just and fair workplace for workers is one way that Catholic Health Care can affirm the dignity of each worker and make a contribution to the common good.’ (Fair and Just, The Catholic Tradition) Fundamentally, ‘[w]orkers must be able to participate in the decisions made in the workplace that affect their lives and their livelihood.’

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The Interfaith Worker Justice delegation calls upon Ascension Health to:

- Contact the CEOs of the aforementioned facilities and require them to cease their anti-union activities, to call off all plans for and threats of a lock-out, and to inform the management that employees must be treated with dignity and respect.
- Require that all three health care institutions implement the process outlined in United States Conference of Catholic Bishops publication, *Respecting the Just Rights of Workers: Guidance and Options for Catholic Health Care and Unions*.
- Develop a “Workers’ Rights” policy with IWJ, and conduct a workers’ rights audit with IWJ annually at its facilities nationwide.

Calls upon St. John Macomb-Oakland to:

- Discontinue all anti-union activities.
- Negotiate in earnest with union-designated representatives for a fair and just collective bargaining agreement.
- Inform management staff of their commitment to Catholic social teaching, specifically related to worker rights and require that these rights be honored.
- Implement the process outlined in the United States Conference of Catholic Bishops publication, *Respecting the Just Rights of Workers: Guidance and Options for Catholic Health Care and Unions*.

Calls upon Genesys Regional Medical Center to:

- Discontinue all union-busting activities.
- Negotiate in earnest with union-designated representatives for a fair and just collective bargaining agreement.
- Inform management staff of their commitment to Catholic social teaching, specifically related to worker rights and require that these rights be honored.
- Implement the process outlined in the United States Conference of Catholic Bishops publication, *Respecting the Just Rights of Workers: Guidance and Options for Catholic Health Care and Unions*.

Calls upon Borgess Medical Center to:

- Discontinue all union-busting activities.
- Negotiate in earnest with union-designated representatives for a fair and just collective bargaining agreement.
- Inform management staff of their commitment to Catholic social teaching, specifically related to worker rights and require that these rights be honored.
- Implement the process outlined in the United States Conference of Catholic Bishops publication, *Respecting the Just Rights of Workers: Guidance and Options for Catholic Health Care and Unions*.

Calls upon the local Church Authorities to:

- Require all Catholic healthcare facilities to implement the process outlined in the United States Conference of Catholic Bishops publication, *Respecting the Just Rights of Workers: Guidance and Options for Catholic Health Care and Unions*.
- Communicate their support for worker rights to the managements and workers at these facilities and to the general public, and recommend the aforementioned document be read by all - either through a letter to each Parish and Catholic Institution or through their local Catholic newspapers.
MEMORANDUM

TO: Interfaith Worker Justice
FROM: Marick F. Masters, Professor of Business at Wayne State University
RE: Ascension Health
DATE: June 2, 2010

In the United States of America, we have laws which protect the right of employees to form unions and bargain collectively to set terms and conditions of employment. These laws forbid employers from thwarting the ability of the parties to reach mutually acceptable terms and conditions by engaging in certain unfair labor practices. We also have laws that prohibit organizations from colluding to fix prices. These laws forbid employers from conspiring to suppress the wages of employees in labor markets. Furthermore, we have laws which prohibit the filing of false claims in order to receive inflated payments from governmental agencies that provide reimbursements for eligible services. These laws forbid organizations from filing false claims to receive reimbursement for services provided under Medicare and Medicaid.

Violations of any one of these prohibitions erode our system of laws and the underlying moral fabric of society. A singular violation committed in a large organization may reflect the aberrational conduct of a few misguided individuals. A string of violations raises serious questions about a possible pattern of abuses that beg careful investigation. This is especially in the case in charitable, nonprofit organizations that provide health care. These organizations enjoy legal and economic benefits as a result of their status and commit themselves to serving the larger good of society. Such organizations operate explicitly on the basis of legal, moral, and religious purposes that convey obligations to their customers, employees, and communities.

Ascension Health

Ascension Health is a large, charitable, nonprofit health care provider in the United States. According to its 2009 annual report, it consists of 38 “Health Ministries” located in 19 states and the District of Columbia. It employs approximately 113,000 “associates” with 20,000 affiliated physicians. In 2009, Ascension Health reported operating income of $371 million and net assets in excess of $8.27 billion. Its Ministries include several in the state of Michigan: Borgess Health, Genesys Health, and St. John Health.

The mission of Ascension Health is embedded in its Catholic roots. It is to be “advocates for a compassionate and just society through our actions and our words.” Ascension espouses a core of key ethical principles, which include the principles of respect for persons, human dignity, and the common good. According to a report initiated by the Committee on Domestic Justice and Human Development of the United States Conference of Catholic Bishops (USCCB), Catholic teaching affirms that “Catholic Health Care institutions should seek to provide structures for workers to have a voice in the workplace that is meaningful, non-threatening, creative, and informed” and that “Unions and employers will respect each other’s mission” (Respecting the Just Rights of Workers: Guidance and Options for Catholic Health Care and Unions, June 22, 2009, page 7).
Charges against Ascension Health and Its Affiliated Ministries

In the past few years, employees (and their union representatives) and government prosecutors have brought several charges against Ascension Health and several of its affiliated Ministries. These charges have resulted in settlements against Ascension and its subsidiaries. They include:

1. A settlement reached in a case before the National Labor Relations Board on January 25, 2009, between Teamsters Local 332 and Genesys Regional Medical Center and TriMedx in which Genesys agreed to provide remedies in excess of $1 million for having illegally laid off six employees of the Clinical Engineering Unit represented by the Teamsters on April 25, 2008;

2. A settlement reached with the U.S. Department of Justice on December 28, 2009, in which Genesys Health System agreed to pay $669,413 to the government for alleged violations of the False Claims Act in a case alleging Medicare fraud;

3. A settlement reached in the United District Court, Eastern District of Michigan (Southern Division) in which St. John Health agreed to pay up to $13,583,475 to a class of nurses who sued the Ascension subsidiary for violating the antitrust law in order to suppress the wages of nurses in the geographic area; and

4. A second Medicare fraud settlement in which Genesys Regional Medical Center agreed to pay the government more than $931,000 for allegations of filing false claims [according to the White House, it is estimated that Medicare and Medicaid fraud cost $54.2 billion in fiscal year 2009].

In addition, on March 16, 2010, the Michigan Nurses Association (MNA) filed an unfair labor practice charge with the National Labor Relations Board “against Borgess Medical Center in Kalamazoo, Michigan [Borgess is an affiliate of Ascension Health] due to actions by the hospital’s management in regard to the nurses’ contract negotiations. The charges range from bypassing the MNA as the exclusive bargaining representative to a removal of all patient and employee protections from the collective bargaining agreement to harassing nurses using interrogative tactics and videotaping them while engaged in protected union activities” (Michigan Nurses Association Web site, http://www.minurses.org).

A Call for Investigation

These settlements and associated allegations create an urgent call for systematic investigation. It is in Ascension Health’s and its subsidiaries’ best interests to have an expedited inquiry. The charges damage the health care providers’ reputations, which are essential to a continuing capacity to conduct business. They diminish employee morale, which is essential to delivering the best health care possible. They erode public confidence in our health care and moral institutions.
May 26, 2010

Kim Bobo
Executive Director
Interfaith Worker Justice
1020 West Bryn Mawr Avenue, 4th Floor
Chicago, IL 60660-4627

Dear Ms. Bobo,

Thank you for your letter and request for a meeting regarding your fact finding endeavor. Borgess respects your commitment to the principles of Catholic Social Teaching and likewise has relied on these principles and the document “Respecting the Just Rights of Workers” in our ongoing negotiations.

At this time, we respectfully decline your request to meet. Thank for your interest.

Sincerely,

J. Patrick Dyson
Executive Vice President, Corporate Services
May 24, 2010

Ms. Kim Bobo  
Executive Director  
Interfaith Worker Justice  
1020 W. Bryn Mawr Avenue  
4th Floor  
Chicago, IL  606660

Dear Ms. Bobo:

Thank you for your letter dated May 21, 2010 to Mr. Mark Taylor and interest in the bargaining efforts at Genesys. Mr. Taylor has referred your letter to me for response.

We are comfortable that we are engaging in good faith negotiations and confident in the working relationship we have with the Federal Mediator. At this time we respectfully decline your offer to meet.

Respectfully,

[Signature]

Tamara Saunaitis  
Vice President Human Resources  
Genesys Regional Medical Center
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 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, hour, 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 all other 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 other parties (listed below), and the 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.

Mr. Shahin Motakef
Executive Vice President
Borgess Medical Center
1521 Gull Road
Kalamazoo, MI 49048

Mr. Peter J. Kok, Attorney
Mr. Keith Eastland, Attorney
Miller Johnson
250 Monroe Avenue, N.W., Suite 800
P.O. Box 306
Grand Rapids, MI 49503-0306

Mr. John Karebian
Executive Director
Michigan Nurses Association, AFL-CIO
2310 Jolly Oak Rd.
Okemos, MI 48864

Mr. James J. Chiodini, Attorney
White, Schneider, Young & Chiodini, P.C.
COMPLAINT AND NOTICE OF HEARING

The Charging Union has charged that Respondent has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 et seq. Based thereon, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, issues this Complaint and Notice of Hearing and alleges as follows:

1(a). The original charge in this proceeding was filed by the Charging Union on March 16, 2010, and a copy was served by regular mail on Respondent on March 17, 2010.

(b). The first amended charge in this proceeding was filed by the Charging Union on April 29, 2010, and a copy was served by regular mail on Respondent on the same date.

(c). The second amended charge in this proceeding was filed by the Charging Union on May 17, 2010 a copy was served by regular mail on Respondent on May 19, 2010.

2. At all material times, Respondent, a domestic nonprofit corporation, has been engaged in the operation of an acute-care hospital at its 1521 Gull Road, Kalamazoo, Michigan facility, herein called the hospital.

3. (a). During calendar year 2009, a representative period, Respondent, in the course and conduct of its operations described in paragraph 2, derived gross revenues in excess of $250,000.

(b). During the same period, Respondent purchased and received at the hospital pharmaceuticals, and other goods and supplies valued in excess of $50,000 directly from points located outside the State of Michigan.
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 a health care institution within the meaning of Section 2(14) of the Act.

5. At all material times, the Charging 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 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:

   Shahin Motakef  Chief Operating Officer  
   Paul Spaude  President and CEO  
   Pete Krueger  Director, Human Resources Operation  
   Doris Schoening  Director of Labor Relations  
   Carole Adam  Director of Clinical Care  
   Lois Van Donselaar  Vice President/Chief Nursing Officer  
   Teresa Miller  Assistant Director of Nursing, 2 North  
   Cindi Kindig  Assistant Director of Nursing  
   Kathy Hornbeck  Director, 7 NW Surgical and 2 North  
   Tom Stranz  RN Manager  
   Pat Webb  Assistant Department Director  
   Dennis Lancaster  Department Director  
   (until his death on February 21, 2010)  
   Dorothy Malcolm  Supervisor  
   Sharon Bedecs  Supervisor  
   Dee Hoffman  Supervisor  

7. On or about February 22, 2010, Respondent, by posting on its intranet accessible to its employees, made the following solicitation:

    "If you feel anyone is pressuring you in an inappropriate way, you are strongly urged to talk with your supervisor -- as quickly as possible, in order to address problems as they arise and not let them get worse."

8. On or about February 22, 2010, Respondent, by its agent Paul Spaude, at the hospital, threatened employees that a lockout by Respondent could result in their discharge or permanent loss of employment.

9. On or about March 5, 2010, Respondent, by its agent Teresa Miller, at the hospital, coercively interrogated employees about their union membership, activities, and sympathies.
10. On or about the following dates, Respondent, by its agent Dee Hoffman, at the hospital, in statements to employees, equated support for the Charging Union with disloyalty to Respondent as an employer:
   a) April 29, 2010.

11. During the period of about March 28 through May 22, 2010, Respondent failed or refused to schedule its employee Jenni Livingston for charge nurse assignments.


13. Respondent engaged in the conduct described in paragraphs 11 and 12 because the employees of Respondent assisted the Charging Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

14. 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 registered professional nurses employed by the Medical Center and classified as full-time, regular part-time, and part-time, employees (part-time employees are regularly scheduled to work sixteen (16) hours or more per week), excluding directors, assistant directors, supervisors, clinical nurse specialists, nurse educators, clinical managers, nurse practitioners, and infection control specialists, stomal therapists, employee health outcomes specialists, members of the Order of the Sisters of St. Joseph, PRN Nurses, and other employees. The Extern III position is included in the bargaining unit.

15. Since January 4, 1974, when it was certified by the Michigan Employment Relations Commission following an election conducted by that agency, and at all material times, the Charging Union has been the designated exclusive collective bargaining representative of the Unit, and has been recognized as such representative by Respondent. This recognition has been embodied in a series of collective bargaining agreements, the most recent of which was effective by its terms from March 19, 2007 through March 19, 2010.

16. At all material times since about 1974, based on Section 9(a) of the Act, the Charging Union has been the exclusive collective bargaining representative of the Unit.

17. Since on or about the dates and by the means set forth below, the Charging Union has requested that Respondent furnish it with the following information:

<table>
<thead>
<tr>
<th>Dates and methods of request:</th>
<th>The information requested:</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) December 18, 2009 letter from the Charging Union to Respondent’s</td>
<td>i) A list of RNs in positions identified as Float, Flex, and Flex Float,</td>
</tr>
<tr>
<td><strong>attorney</strong></td>
<td><strong>ii) the liability policy provided by BMC for the RNs;</strong></td>
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</tr>
<tr>
<td><strong>b) February 15, 2010 letter from the Charging Union to Respondent</strong></td>
<td><strong>i) copies of tape recorded investigatory meetings conducted by Respondent with Unit employees over the term of the current agreement;</strong>&lt;br&gt;<strong>ii) Any and all policies of Respondent relating to employees’ right to external communications, policies governing the professional practice of registered nurses, and any internal policy of Respondent regarding taping of meetings;</strong>&lt;br&gt;<strong>iii) any specific allegations against Shawn Shuler and the comments Mr. Shuler made as the President of the local union that Respondent believes are patently untrue.</strong></td>
</tr>
<tr>
<td><strong>c) February 25, 2010 letter from the Charging Union to Respondent’s attorney</strong></td>
<td><strong>The source documents for the Gallup survey results summarized in slide No. 31 of Shahin Motakef’s January 14, 2010 presentation to the bargaining committees;</strong></td>
</tr>
<tr>
<td><strong>d) March 2, 2010 letter from the Charging Union to Respondent’s attorney</strong></td>
<td><strong>The MHA survey dated 8/4/09 in its entirety.</strong></td>
</tr>
</tbody>
</table>

18. The information requested by the Charging Union, as described in paragraph 17, is necessary for, and relevant to, the Charging Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

19(a). Since the above-specified request dates, Respondent unreasonably delayed until June 11, 2010, responding to the Charging Union’s requests for information described in paragraph 17(a) and (b).

(b). Since the above-specified request dates, Respondent has failed and refused to furnish the Charging Union with the information described in paragraph 17(c) and (d).

20. At various times during January through April 2010, Respondent and the Charging Union met for the purposes of negotiating a successor collective-bargaining agreement to the agreement described in paragraph 15.

21. About January 22, 2010, Respondent, by its agent Shaheen Motakef, in a letter mailed to Unit employees, wrote:

“…we have asked our directors and managers to meet with you to discuss our working relationship. Please feel free to provide your supervisor with any suggestion you feel
would be helpful. Any suggestions that may impact current wages, hours, or working conditions will be dealt with at the bargaining table with the MNA.”

22. During the period described in paragraph 20, Respondent engaged in the following conduct:

(a). Respondent insisted, as a condition of reaching any collective-bargaining agreement, that the Charging Union agree to:

i) proposals by which Respondent would retain control over, and could unilaterally alter, wages, rates of pay, hours, and terms and conditions of employment of the Unit; and

ii) proposals by which Respondent could engage in direct dealing with Unit employees concerning wages, rates of pay, hours, and terms and conditions of employment.

(b). Between about January 21 and April 16, 2010, at various times and places within the hospital and by verbal and written statements and electronic communications with employees, supervisors and agents of Respondent engaged in a pattern of direct dealing with Unit employees concerning wages, rates of pay, hours, and terms and conditions of employment, that:

i) characterized its pending proposal as its “best offer,” and otherwise its firm position;

ii) implicitly assured that Respondent would not have, or would not exercise to the employees’ detriment, the right to change terms and conditions of employment described in paragraph 22 (a)(i);

iii) implicitly promised that Respondent would improve Unit employees’ terms and conditions of employment;

iv) emphasized that Respondent’s proposals would allow it to deal directly with Unit employees regarding wages, rates of pay, hours and terms and conditions of employment;

v) stated to employees that rejection of its pending proposal would result in economic penalties.

23. The proposals described in paragraph 22 (a)(ii) are not mandatory subjects for the purpose of collective bargaining.

24. By its overall conduct, including the conduct described in paragraphs 19, 21, and 22, Respondent has failed and refused to bargain collectively and in good faith with the Charging Union as the exclusive collective-bargaining representative of the Unit.
25. By the conduct described in paragraphs 7 through 10, Respondent has been interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

26. By the conduct described in paragraphs 11 through 13, Respondent has been discriminating in regard to the hire or 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.

27. By the conduct described in paragraphs 19, 21, 22 and 24, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective bargaining representative of the Unit, in violation of Section 8(a)(1) and (5) of the Act.

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

WHEREFORE, it is prayed that Respondent be ordered to:

1. Cease and desist from:

   (a). engaging in the conduct described in paragraphs 7 through 13, 19, 21, 22 and 24, or in any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed in Section 7 of the Act.

   (b). engaging in the conduct described in paragraphs 11 through 13, or in any like or related manner discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in the Charging Union, or any other labor organization.

   (c). engaging in the conduct described in paragraphs 19, 21, 22 and 24, or in any like or related manner refusing to bargain collectively and in good faith with the Charging Union as the exclusive collective bargaining representative of the Unit.

2. Take the following affirmative action:

   (a). Make whole Jenni Livingston for any wages and benefits lost as a result of the discrimination against her by paying her backpay, together with interest compounded quarterly,

   (b). Furnish the Charging Union with the information described in paragraphs 17(c) and (d).

   (c). Upon request, bargain collectively and in good faith with the Charging Union as the exclusive collective bargaining representative of the Unit concerning wages, rates of pay, hours, and other terms and conditions of employment, including the terms of any
confidentiality agreement prerequisite to disclosure of other requested information that is
relevant to, and necessary for, the Charging Union’s performance of its duties as the exclusive
collective bargaining representative of the Unit, and reduce to writing and sign any agreement
reached.

(d). Post appropriate notices, and contemporaneously post and maintain a signed
and legible copy of the notice on Respondent’s intranet site, on a page made accessible to Unit
employees.

The Acting General Counsel further prays for such other relief as may be just and proper to
remedy the unfair labor practices herein alleged.

**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 complaint. The answer must be **received by
this office on or before July 26, 2010, [or postmarked on or before July 25, 2010]**. Unless
filed electronically in a pdf format, Respondent should file an original and four copies of the
answer with this office.

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 the **E-Gov tab**, select **E-Filing** and then follow the detailed
instructions. The responsibility for the receipt and usability of the answer rests exclusively upon
the sender. Unless notification for 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 Sections
102.21. If the answer being filed electronically is a pdf document containing the required
signature, no paper copies of the answer needs 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
continue to 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 still 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 a Motion for Default Judgment, that the allegations in
the complaint are true.
NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on October 4, 2010 at 1:00 p.m. at a place to be designated at a later date 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 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 Detroit, Michigan, this 12th day of July 2010.

(SEAL)    /s/ Dennis R. Boren
Dennis R. Boren, Acting Regional Director
National Labor Relations Board
Seventh Region, Room 300
Patrick V. McNamara Federal Building
477 Michigan Avenue
Detroit, Michigan 48226

Attachments
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.
Union busting refers to the action of any person who seeks to prevent employees from forming a labor union, or who attempts to undermine or destroy an existing union. This person is in grave material violation of Catholic Social Doctrine on labor unions. This violation of Catholic Doctrine constitutes material grounds for mortal sin, because it stands in grave violation of: 1) both the letter and spirit of Catholic Social Doctrine; 2) the roots of this Doctrine in the First Commandment (idolatry), the Fifth Commandment (scandal), and the Seventh Commandment (theft). We will discuss each point in turn.

Catholic Social Doctrine on Unions

Catholic Social Doctrine is forthright and unambiguous on labor unions: it states boldly that they are essential to the universal common good. A complete discussion of official Catholic Doctrine on workers’ rights and labor unions can be found in the COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH, (See Chapter 6: “Of Human Work,” pars. 323-376). The COMPENDIUM summarizes 2000 years of Catholic teaching on social justice and peace, and the roots of that teaching in the Hebrew Scriptures, including the Ten Commandments.

The COMPENDIUM states clearly that labor unions “are a positive influence for social order and solidarity, and are therefore an indispensable element of social life.” (Par. 305) The Catholic Church teaches that “unions have the duty of acting as representatives working for “the proper arrangement of economic life” and must play an active role “in the whole task of economic and social development and in the attainment of the universal common good.” (Par. 307)

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The Church’s support for labor unions is rooted in the philosophical principle of freedom of association and the moral principle of a just or living wage. In Vatican Council II’s Pastoral Constitution on the Church in the Modern World (1965), also known by its Latin name Gaudium et Spes, the world’s Catholic bishops teach: “Among the basic rights of the human person must be counted the right of freely founding labor unions.” (Par. 68)

Economic Justice for All, the 1986 “Pastoral letter of United States Catholic Bishops on Catholic Social Teaching and the U.S. Economy, states: “The Church fully supports the right of workers to form unions or other associations to secure their rights to fair wages and working condition ... No one may deny the right to organize without attacking human dignity itself.” (Par. 104) In this document, the U.S. bishops further state: “We vehemently oppose violations of the freedom to associate, wherever they occur, for they are an intolerable attack on social solidarity”. (Par. 105)

The Catholic Church’s doctrinal support for labor unions is based on the natural right of free assembly, and on the well documented reality that workers are far more likely to achieve “fair wages and working conditions” through labor unions which strengthen the individual worker through collective bargaining with the employer for just wages and benefits. The Church believes that the result of this process will be an increase in “social solidarity” that will benefit the “universal common good.”

Catholic doctrinal support for a just wage (sometimes called a “fair,” “living,” or “family” wage) is rooted in both the Hebrew and the Christian Scriptures. Support for the just wage is also found in the Patristic and Medieval periods where the payment of an unjust wage was often linked to the avarice of the rich who engaged in wage theft by stealing workers’ wages for themselves. The Compendium teaches: “Remuneration is the most important means for achieving justice in work relationships.” The ‘just wage’ is the legitimate fruit of work. Whoever refuses to pay a just wage, or does not give it in due time and due proportion to the work done, commits a grave injustice which is a serious violation of Catholic Social Doctrine. (cf. Leviticus 19:13; Deuteronomy 24:14-15; James 5:4.” (Par. 302)

**First, Fifth, and Seventh Commandments**

**The First Commandment**

“You shall have no other gods before me.” (Exodus 20:3) In his counsel to reject “all the kingdoms of the world and the glory of them,” Jesus invoked the First Commandment with these words, “Away with you, Satan! For it is written, ‘Worship the Lord your God, and serve only him.’” (Matthew. 4:10) The temptation to worship idols – false gods – can take the form of placing loyalty to the nation state or to humanly created civil law before faithfulness to eternal or divine law. There is nothing wrong with loyalty if the laws created by a state are rooted in the divine natural law. But there are times when civil law can contradict divine law, or perversely a good civil law may be used to thwart divine law.
Since the right to form labor unions is rooted in the Divine Law, no created law may be invoked to deny, or frustrate, or impede that right. Sadly, this is the case with some employers and managers – and even more sadly, with some Catholic employers or managers – use the pretext of a long delayed “secret ballot” election, eventually to be conducted by the National Labor Relations Board, to discredit the union itself and to intimidate the workers organizing the union and the workers who will be voting. Hence, when employers or managers use the civil law to delay elections for a union in order to undermine workers’ organizing, and thus to deny workers’ rights found in Divine Law, such employers or managers stand in grave material violation of the First Commandment.

Concerning the use of civil law to contradict Divine Law, we do well to remember the words of the CATECHISM OF THE CATHOLIC CHURCH: “The worship of the one God sets man free from turning in on himself, from the slavery of sin and the idolatry of the world.” (Par. 2097) Consequently, any agent who prevents workers from forming a union, or who undermines or destroys existing unions, engages in “idolatry of the world” and may be in a state of mortal sin.

The Fifth Commandment

“You shall not murder.” (Exodus 20:13) The Sermon on the Mount, extends the prohibition against murder in the Hebrew Scriptures to a prohibition against even anger and insults to others (Matthew 5:22). The Catholic Church teaches that the Fifth Commandment requires respect for human life throughout a person’s natural lifetime. This respect extends to the spiritual life or death of others. Hence, the Church holds that scandal is a violation of the Fifth Commandment, since it can cause the “spiritual death” of another.

The CATECHISM OF THE CATHOLIC CHURCH defines scandal as “an attitude or behavior which leads another to do evil.” (Par. 2284) The Church states that “Scandal can be provoked by laws or institutions, by fashion or opinion.” (Par. 2286) Consequently, THE CATECHISM concludes: “Anyone who uses the power at his [sic] disposal in such a way that it leads others to do wrong becomes guilty of scandal and responsible for the evil that he has directly or indirectly encouraged. ‘Temptations to sin are sure to come, but woe to him by whom they come.’” (Luke 17:1, cited in Par. 2287)

Consequently, any agent who attempts to prevent the formation of unions or to undermine or destroy existing unions is giving scandal to others by violating the workers’ right to free association and presumably also their quest for a just wage. Further, “union busting” gives scandal because it injures social solidarity and diminishes the universal common good.

This is even more the case with sponsors and managers of Catholic institutions who ignore or deny Catholic Social Teaching on unions by hiring “union avoidance firms” to prevent or “bust” unions. When an employer or manager, and all the more with a Catholic employer or manager, engages in such scandal by publically and systematically denying the official magisterial teaching of Catholic Social Doctrine on labor unions, that person has committed the grave matter of mortal sin.
The Seventh Commandment

“You shall not steal.” (Exodus 20:15) In 1 Corinthians 6:10, St. Paul reminds us that theft is a grave sin: “neither thieves, nor the greedy...nor robbers will inherit the Kingdom of God.” The CATECHISM OF THE CATHOLIC CHURCH defines theft as “the usurpation of another’s goods against the reasonable wishes of the owner.” (Par. 2453) “Goods” or “property” in Catholic teaching include physical ownership of goods as well as economic, political, and spiritual rights. Hence, the act of stealing a person’s wages robs that person of her or his human dignity as well. The Catechism teaches that a just wage must be directed to the whole person, physical and spiritual:

“Remuneration for work should guarantee man [sic] the opportunity to provide a dignified livelihood for himself and his family on the material, social, cultural, and spiritual level, taking into account the role and productivity of each, the state of the business, and the common good.” (Par. 2434)

Catholic teaching holds that wages play an essential role in securing a “dignified livelihood” for workers and their families. The Church has long made a direct connection between a worker’s “vital interests” (just wages and benefits) and the essential role that labor unions play in defending those interests. The COMPENDIUM teaches: “The Magisterium recognizes the fundamental role played by labor unions, whose existence is connected with the right to form associations or unions to defend the vital interests of workers employed in the various professions.” (Par. 305)

This aspect of Catholic Social Doctrine was heightened in 1891 when Pope Leo XIII in his landmark social encyclical RERUM NOVARUM endorsed “workmen’s associations” as “the most important” of all “institutions and organizations which afford opportune assistance to those in need.” Indeed, Pope Leo stated that it was “greatly desired” that unions “should multiply and be more effective.” Pope Benedict XVI in 2009 reaffirmed this teaching in CARITAS IN VERITATE (2009), when he stated that labor unions “have always been encouraged and supported by the Church.” (Par. 64)

Employers or managers who deny just wages to their employees, or who prevent them from forming labor unions to secure wages and benefits that defend the vital interests of workers, engage not only in wage theft but in the theft of the human right of free association. Such employers or managers commit the grave material grounds for mortal sin.

In particular, we note below seven ways that “union-busting,” that is, the blocking, undermining, or destroying of a labor union, constitutes a serious violation of the Seventh Commandment and hence constitutes material for mortal sin.

1. The employer or manager steals the natural right of workers to free association.

2. The employer or manager steals just wages and benefits from workers and their families.

3. The employer or manager steals institutional funds to employ union avoidance firms to harass, intimidate, and divide workers.
4. The employer or manager steals public tax funds to employ the civil law and its agencies unjustly to delay, prevent, or to “bust” unions.

5. The employer or manager steals the moral integrity of those managers or supervisors who believe that workers should be represented by unions in the workplace.

6. The employer or manager steals the time of its workers and managers who are forced to take time away from their work (through mandatory meetings) and their families by spending evenings, weekends, months, and years struggling for something that employers should welcome from day one: an employee union in the workplace.

7. In the case of Catholic institutions, the employer or manager steals the spirit and the letter of Catholic Social Teaching by depriving it of its authentic place in a Catholic institution and of weakening its teaching authority through scandalous behavior.

Further, the Social Doctrine of the Catholic Church teaches that “Communative justice requires the restitution of stolen goods.” (CATECHISM, Par. 2454). Hence, employers and managers guilty of the above violations are morally obligated to restore lost wages, benefits, rights, time, and dignity to their workers and managers.

Finally, we state throughout this document that all the above violations constitute objective material grounds for mortal sin. Whether one is subjectively culpable is a matter that a confessor can help one determine as part of an examination of conscience. Catholic teaching holds that there are three components for subjective culpability of mortal sin: 1) grave matter; 2) full knowledge, and 3) complete consent. (CATECHISM, Pars. 1858, 1859) Certainly the anti-union actions described here all meet the objective material criterion of “grave matter.” But the question of whether the penitent had “full knowledge” and “complete consent” should be left to the judgment of the confessor. After reading this statement, however, the reader can no longer claim ignorance of the magisterial teaching of Catholic Social Doctrine. After reading this statement, the reader certainly has “full knowledge.”

Are you guilty of mortal sin because of your actions against labor unions? Have you failed to live up to the high demands of Catholic Social Doctrine on workers’ rights, including the right to form labor unions and to bargain collectively? If so, we suggest that you bring the matter before your confessor.

Feast of St. Joseph the Worker

May 1, 2010
As scholars committed to Catholic Social Teaching on Workers’ Rights we affirm our support for this statement

(Institutional affiliations for identification only)

TO SUPPORT THIS STATEMENT: Send your name, terminal degree, academic title, and institution to: Professor Fahey: josephfahey@gmail.com. One does not have to be a member of CSWJ to sign this statement. Scholars from all disciplines are invited to support this statement. Please indicate also if you wish to join CSWJ.

This is an open statement

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