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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

**KAISER FOUNDATION HOSPITALS AND
HEALTH PLAN, INC.; KAISER PERMANENTE;
KAISER PERMANENTE MEDICAL CARE
PROGRAM; THE SOUTHEAST PERMANENTE
MEDICAL GROUP; KAISER FOUNDATION
HEALTH PLAN, INC.; THE PERMANENTE
MEDICAL GROUP; MID-ATLANTIC
PERMANENTE MEDICAL GROUP; THE
PERMANENTE FEDERATION; NORTHWEST
PERMANENTE MEDICAL GROUP; COLORADO
PERMANENTE MEDICAL GROUP**

and

Case 32-CA-220268

**COALITION OF KAISER PERMANENTE
UNIONS, AFL-CIO**

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by Coalition of Kaiser Permanente Unions, AFL-CIO (the Coalition). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Kaiser Foundation Hospitals and Health Plan, Inc.; Kaiser Permanente; Kaiser Permanente Medical Care Program; The Southeast Permanente Medical Group; Kaiser Foundation Health Plan, Inc.; The Permanente Medical Group; Mid-Atlantic Permanente Medical Group; The Permanente Federation; Northwest Permanente Medical Group; Colorado Permanente Medical Group,

individually and collectively herein referred to as Respondent, have violated the Act as described below.

1.

(a) The charge in this proceeding was filed by the Coalition on May 11, 2018, and a copy was served on Respondent by U.S. mail on May 16, 2018.

(b) The first-amended charge in this proceeding was filed by the Coalition on May 23, 2018, and a copy was served on Respondent by U.S. mail on May 31, 2018.

2.

(a) At all material times, Respondent, a corporation with offices and places of business in Oakland, California, has been engaged in the operation of medical offices and provision of health care services throughout the United States and within the State of California.

(b) During the 12-month period ending November 30, 2018, Respondent in conducting its operations described above in paragraph 2(a), derived gross revenue in excess of \$250,000.

(c) During the period of time described above in paragraph 2(b), Respondent, in conducting its operations described above in paragraph 2(a), received products, goods and materials valued in excess of \$5,000 directly from points outside the State of California.

3.

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.

4.

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

(b) At all material times, each union-member of the Coalition, has been a labor organization within the meaning of Section 2(5) of the Act.

5.

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:

Greg Adams	-	Chief Operating Officer
Chuck Columbus	-	Senior Vice President and Chief Human Resources Officer
Dennis Dabney	-	Senior Vice President
Jim Pruitt	-	Vice President of National Labor Relations

6.

(a) At all material times, the Coalition has been a multi-union bargaining association composed of various labor organizations, one purpose of which is to represent its union-members in negotiating and administering collective-bargaining agreements with Respondent.

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

All employees represented by a union-member of the Coalition and who have authorized the Coalition to bargain on their behalf as described in Section 3, Scope of Agreement, of the National Agreement which was effective from October 1, 2015 through September 30, 2018; excluding employees represented by a union-member that withdrew from the Coalition since on or about March 26, 2018, guards, managers and supervisors as defined in the Act.

(c) Since about 1997 and at all material times, Respondent has voluntarily recognized and bargained with the Coalition as the designated bargaining representative of the Unit for purposes of bargaining the parties' National Agreement. This recognition has been embodied in successive National Agreements, the most recent of which was effective from October 1, 2015 through September 30, 2018.

(d) At all material times since about 1997, based on Section 9(a) of the Act, the Coalition has been the exclusive collective-bargaining representative of the Unit for purposes of negotiating a National Agreement with Respondent.

7.

(a) On or about October 26, 2017, a joint bargaining team composed of members of the Coalition and Respondent, referred to as the National Bargaining Coordinating Committee, held its first meeting to set the stage for national bargaining for a successor National Agreement.

(b) From October 26, 2017, to about February 5, 2018, the Coalition and Respondent engaged in discussions setting forth bargaining topics, bargaining structure, overall bargaining process, and also designated March 27, 2018, as the "kickoff session" for national bargaining to form working groups to begin negotiating details of the National Agreement, among other things.

(c) From about March 5, 2018 to about March 19, 2018, the Coalition and Respondent discussed, and planned the March 27, 2018 "kickoff session" for national bargaining, exchanged proposals and agreed on topics for local and national bargaining, and discussed pay polices for employees participating in national bargaining.

(d) On March 26, 2018, Respondent, in writing, canceled the March 27. "kickoff session" for national bargaining after having received notice earlier that day that approximately

21 of the 34 union-members of the Coalition announced they were withdrawing from the Coalition, effective immediately, and that the withdrawing union-members formed their own multi-union bargaining association called the Alliance of Health Care Union.

(e) On or about March 28, 2018, Respondent withdrew from bargaining with the Coalition for a successor National Agreement.

(f) On several occasions in June 2018 and/or July 2018, Respondent and the Coalition met to bargain over Respondent's proposed revised Labor Management Partnership Agreement (Partnership Agreement), which, among other things, includes an "Expulsion" provision regarding how individual union members may expel another union member by majority vote of the senior union leadership, and a "Conduct" provision, which includes terms such as, the parties "will not call, participate in, or sanction any sympathy strike" and "will not engage in conduct that may harm or jeopardize the tax-exempt status of Kaiser Health Plan/Hospitals" or engage in "corporate campaigns" without first seeking to resolve the underlying issues.

(g) Since at least May 7, 2018, Respondent has conditioned bargaining with the Coalition for a successor National Agreement on its union-members' acceptance of Respondent's proposed revised Partnership Agreement, and has canceled scheduled bargaining sessions with the Coalition.

(h) By its conduct described above in paragraph 7(e) and 7(f), Respondent failed to timely and unequivocally withdraw its recognition from the Coalition as the exclusive collective-bargaining representative of the Unit.

(i) By its conduct described above in paragraph 7(g), Respondent has failed and refused to bargain in good faith with the Coalition.

8.

By the conduct described above in paragraph 7(h) and 7(i), 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)(1) and (5) of the Act.

9.

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 remedy for the unfair labor practices alleged above in paragraph 8, the General Counsel seeks an Order that requires Respondent to bargain, on request, with the Coalition for a National Agreement and to cease and desist from conditioning such bargaining on reaching agreement on a revised Partnership Agreement. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices 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 January 11, 2019, or postmarked on or before January 10, 2019.** 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 through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. 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 answer 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 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 by means allowed under 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 March 19, 2019, 9:00 a.m. at the Oakland Regional Office, 1301 Clay Street, Suite 300N, Oakland, California, 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 Oakland, California this 28th day of December 2018.



Christy J. Kwon
Acting Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224

Attachments

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Case 32-CA-220268

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, 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 thereafter 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 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.

Dennis Dabney, Chief Negotiator
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Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in

evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court 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 ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are 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. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting 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 provided to the parties with the order transferring the matter to the Board.