ARBITRATION PROCEEDING
BEFORE MARGARET M. KERN

YALE-NEW HAVEN HOSPITAL

and **Index Nos. 054**
061(a)
061(d)
068

NEW ENGLAND HEALTH CARE
EMPLOYEES, DISTRICT 1199, SEIU

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FINAL REPORT ON REMEDIES

I. History

For ten years, New England Healthcare Employees, District 1199, SEIU (the union) has been attempting to organize and represent nonprofessional employees employed by Yale-New Haven Hospital (the employer or hospital). In support of its campaign, the union enlisted the support of a number of political, community, and religious leaders in the New Haven area.

Overlapping the period of the union campaign, the employer developed a master plan to expand and improve the hospital's infrastructure. The plan included, among other projects, construction of a $465 million cancer center. In the spring of 2006, the hospital

received approvals to proceed with the construction of the cancer center from the State of Connecticut. Mayor John DeStefano and the City of New Haven, however, were unwilling to issue zoning approvals within their purview absent movement by the employer toward a resolution of the union's organizing campaign (Testimony of Marna Borgstrom, February 12, 2007, p. 5-7).

On or about April 12, 2006, employer and union representatives met in the offices of Mayor DeStefano. Among those present were Marna Borgstrom, president and chief executive officer for the hospital, and Larry Fox, assistant to the president of the Service Employees International Union. Following a marathon negotiation session, the parties agreed to the terms of an election principles agreement on April 13, 2006. Implementation of the agreement was contingent on the City of New Haven issuing the requisite construction approvals. Following issuance of those approvals in early June 2006, the agreement went into effect. The employer concedes that but for the pressure exerted by the union, the mayor, and community leaders, the employer would not have entered into the election principles agreement. (Testimony of Marna Borgstrom, February 12, 2007, p. 5-7).

The election principles agreement remained in effect from June 7, 2006 to March 7, 2007. The agreement conferred substantial benefits on both sides. For example, the union secured organizing privileges above and beyond that guaranteed it under the National Labor Relations Act (coined by some as "NLRA Plus"), including access to designated areas within employer's premises to solicit employees. On the other hand, the employer derived the benefit of being able to proceed with construction of the cancer

center. In exchange for these benefits, the parties undertook mutual obligations to each other.

II. Relevant provisions of the election principles agreement

In Sections 3 and 4 of the election principles agreement, the parties outlined standards of conduct to which they mutually agreed to adhere:

> 3A. The Union's conduct and communications (oral and written) to employees eligible to vote in the Nonprofessional Unit (the 'Eligible Voters') will be without disparaging the Hospital and conducted in a factual manner, free from any threat, coercion or intimidation. The Hospital's conduct and communications (oral and written) to Eligible Voters will be without disparaging the Union, or its organizers, and in a factual manner, free from threats, coercion, or intimidation.
>
> 3B. Hospital supervisors and managers, and agents shall not initiate one-on-one conversations with Eligible Voters regarding the subject of unionization. Hospital supervisors and managers and agents shall not initiate conversations with formal or informal groups regarding the subject of unionization of Eligible Voters at mandatory meetings. This shall not preclude a supervisor or a manager from responding to an Eligible Voter's

> questions regarding the subject of unionization, provided such a response is consistent with the terms of this Agreement. Notwithstanding the forgoing, nothing in Section 3 restricts communications between Hospital supervisors/managers and Eligible Voters regarding other subjects.
>
> 4. Neither the Union nor the Hospital shall use consultants or other representatives or surrogates to engage in activities inconsistent with this Agreement.

The agreement also provided for the submission of disputes to a neutral arbitrator, and that the National Labor Relations Act would generally be the governing standard to be applied in those disputes. The arbitrator was charged with "broad discretion to fashion broad remedies" to ensure both parties compliance with the terms, intent, and content of the agreement, and was not required to use the NLRA as a guide in fashioning those remedies. Both sides committed to abide by the arbitrator's decisions.

Between June 2006 and March 2007, the parties submitted 81 cases to arbitration and written decisions were issued in every case tried to conclusion. In every instance, the decision issued more than 48 hours after the conclusion of the parties' presentation, contrary to the provision of the election principles agreement imposing a 48-hour deadline. The parties did not object to the issuance of written decisions or to the amount of time it took to issue those decisions.

In four cases filed by the union against the employer, Case Nos. 054, 061(a), 061(d), 068, factual findings were made but a final remedy was not ordered pending further proceedings, including the exchange of discovery materials consisting of more than 17,000 pages of employer documents relating to the union campaign. This report constitutes the final ruling in those cases.

It is helpful to examine the facts and circumstances which were the basis for the findings in Case Nos. 054, 061(a), 061(d), and 068, and which serve as the rationale for the remedies ordered herein.

III. The employer's no solicitation/no distribution rule

Since April 2005, the employer has published a valid no solicitation/no distribution rule which states in relevant part:

> I. Application
>
> This policy applies to all departments and all employees.
>
> The following definitions are to be applied in interpreting this policy.
>
> Employee: The term 'employee', in addition to referring to all individuals employed by the Hospital, also refers to individuals employed by other employers who work exclusively and continuously on Hospital premises with Hospital permission…

II. Administrative Guidelines

> …2. Employees of the Hospital may not solicit individuals or distribute literature for any purpose during working time.
>
> 3. Employees of the Hospital may not solicit individuals in patient care areas at any time for any purpose.
>
> 4. Employees of the Hospital may not distribute literature in work areas or patient care areas at any time for any purpose.
>
> …6. These guidelines will be enforced uniformly with respect to all attempts to solicit individuals or distribute literature on Hospital premises.

The election principles agreement went into effect on June 7, 2006. The next day, the employer published a newsletter which contained an unlawful restriction on employees' rights to engage in union activities. In Case No. 004, I found the restriction in the newsletter not only violated the NLRA, but also violated the employer's no solicitation/no distribution rule as set forth above. On July 8, 2006, I ordered the employer to retract the improper restriction and the employer complied.

One month later, on August 9, 2006, the union again challenged the employer's breach of the no solicitation/no distribution. In this case, the employer admitted to selectively enforcing the rule by allowing its managers and supervisors to distribute anti-union campaign literature to eligible employees in work areas and in patient care areas during work time, while at the same time prohibiting nonsupervisory employees and prounion nonemployees from engaging in the same activity. Following a hearing, I

sustained the union's objection and issued the following cease and desist order in Case No. 014 on October 15, 2006:

> The question then becomes whether the employer, now faced with a union organizing campaign, is free to abandon its own rule. I conclude that it is not. The reason it is not free to abandon its own rule is because the union necessarily relied on that rule when it negotiated the terms of the election principles agreement. The election principles agreement was, by all accounts, a hard-fought compromise. The union sought access to employees over and above that accorded by the NLRA and in formulating its negotiating position, the union had to have taken into account the no solicitation/no distribution rule extant at the time. Moreover, the employer had every reason to expect that a third party, such as the union, would rely on its published rule. Having engendered that reliance, the employer is now not free to alter its terms…The employer is hereby ordered to cease and desist from permitting supervisors, managers, or any other individuals employed by the hospital to violate the terms of its no solicitation/no distribution rule.

Two days after my ruling in Case No. 014, the employer distributed a letter to eligible employees signed by Ed Dowling, senior vice-president for human resources, discussing the union campaign. The letter was distributed in work areas during work

time, in contravention of my cease and desist order. I made the following observation in Case No. 042:

> The employer violated the terms of the award in Index No. 14 when it distributed the Dowling letter on October 17 to employees in work areas and during work time, a full business day after receipt of the award barring such conduct. The employer seeks to be excused from its actions by claiming that the award "caused considerable consternation at the Hospital," "called for extensive study," and required at least a day for senior managers to "interpret" the award's meaning. I am, to say the least, unimpressed by these arguments. The award's meaning was clear and the employer's obligations, however unwelcome, equally clear. More to the point, if the employer was uncertain as to how to proceed, it should have refrained from acting until such time as it sought clarification of the ruling rather than to proceed as it did.
>
> I am confident there will not be a repeat of this conduct and I conclude that no further remedial action is necessary at this time.

The confidence I placed in the employer was misplaced. From October 15, 2006, the date of the cease and desist order, until December 12, 2006, the employer conducted 83 meetings of employees during work time in the course of which the employer engaged in anti-union solicitation and the distribution of campaign literature (H5-17C, 25-59, 71-75, 81-90, 565-566, 570-571, 573, 674-676, 784-785, 1005, 1008, 1015, 1039A-1040B,

1047-1048A, 1055-1056, 1074, 1096, 1108, 1120, 1132, 1134, 1136, 1146, 1157, 1160-1161, 1168-1169, 1303, 1307). These meetings not only violated the no solicitation/no distribution rule, but were also in direct contravention of the arbitration rulings in Case Nos. 014 and 042 which placed the employer on unequivocal notice that this type of conduct was barred. Five of these meetings formed the basis of my findings in Case Nos. 054, 061(a), 061(d), and 068.

IV. The NLRB election petition filed by the union

On November 15, 2006, the union filed a petition with the regional office of the National Labor Relations Board (NLRB) for a secret ballot election to be conducted. On November 27, 2006, the employer and the union entered into a consent election agreement and an election was scheduled for December 20 and 21, 2006. By the terms of the consent election agreement and by operation of law, the employer provided the union with a list of eligible voters on December 4, 2006. That list initially contained 1,752 names but, by agreement of the parties, 16 names were later deleted. Therefore, 1,736 employees were eligible to vote in the election.

V. November 29, 2006 meeting between Larry Fox and Richard D'Aquila

On November 28, 2006, Larry Fox called the office of Marna Borgstrom and requested to meet with her to discuss certain actions taken by the hospital during the campaign to which Fox objected. He received a call back from Richard D'Aquila,

executive vice-president and chief operating officer. D'Aquila told Fox that he would meet with Fox but Borgstrom would not. Fox insisted on meeting with Borgstrom citing an earlier understanding the two had reached that they would remain available to each other during the union campaign to keep communication lines open. D'Aquila again stated that Borgstrom would not meet with Fox but that Fox should be assured that he and Borgstrom were a team, that they worked very closely together, and that "everything I know, she knows" (Testimony of Larry Fox, February 27, 2007, p. 49-50).

Fox and D'Aquila met at lunchtime the next day, November 29, 2006. Fox told D'Aquila that the hospital had circulated literature that misrepresented the union's dues structure. D'Aquila responded that the literature was accurate and there were no misrepresentations. Fox said he was also getting reports that some employees were being threatened with loss of benefits if the union were to win the election, and D'Aquila response was, "That's not going on." Fox then told D'Aquila that he had learned that the employer was summoning employees to mandatory staff meetings and talking to them about the union. Fox pointed out that such meetings were in violation of the terms of the election principles agreement which prohibited mandatory meetings to discuss the union. D'Aquila stated he was aware of the meetings but there was nothing improper about them. D'Aquila did not testify.

Borgstrom testified she spoke with D'Aquila following his lunch with Fox. D'Aquila told her Fox claimed that employees were being called to mandatory meetings to discuss the union, but D'Aquila assured Borgstrom that no such meetings were taking place. According to Borgstrom, it was not until on or about December 5, 2006, that she was told by Norman Roth, senior vice-president for administration, that these types of

meetings were in fact going on within his department. Upon hearing this from Roth, Borgstrom immediately went to Dowling's office: "I walked down to Ed Dowling's office and I said, 'Were you aware of it?' He looked at me and said, 'No.' I said, 'Well, find out about it." The next morning, on or about December 6, 2006, she confronted D'Aquila and asked him if he were aware of employees being summoned to mandatory union meetings and again D'Aquila told her he was not aware of any such meetings. Borgstrom then returned to Dowling's office and asked him what he had found out. He said "that in at least one case some IRI consultant named Ted had recommended to his manager that they do these meetings." Borgstrom told Dowling to "shut it down now" (Testimony of Marna Borgstrom, February 12, 2007, p. 48-49, 55).

VI. Case No. 054

On November 29, 2006, the same day that Fox and D'Aquila had lunch, Judy Grant, a patient services manager in the nursing resources department, conducted mandatory meetings during work time with 165 eligible voters who serve under her direction. The details of Grant's conduct were set forth in the decision in Case No. 054 and are summarized as follows:

- Employees were summoned to mandatory staff meetings to discuss the union in violation of paragraph 3B of the election principles agreement prohibiting mandatory meetings;
- These meetings were held on work time and violated the employer's no solicitation/no distribution rule;

- The meetings were held in contravention of previous arbitration awards ordering the employer to cease and desist from engaging in this conduct;
- Employees were unlawfully polled at these meetings about their sentiments about the union in violation of the National Labor Relations Act as well as paragraph 3A of the election principles agreement;
- Grant factually misrepresented to employees that union dues would be charged as a percentage of gross pay in violation of paragraph 3A of the election principles agreement;
- Grant threatened employees with loss of their $1.75 hourly wage differential if the union won the election in violation of the National Labor Relations Act as well as paragraph 3A of the election principles agreement;
- Grant threatened employees with loss of overtime if the union won the election in violation of the National Labor Relations Act as well as paragraph 3A of the election principles agreement;
- Grant threatened employees with more onerous working conditions if the union won the election, specifically that employees would no longer be able to request a day off for a doctor's appointment or personal business without a union representative present, thereby resulting in a loss of the employees' privacy. Her statements were in violation of the National Labor Relations Act as well as paragraph 3A of the election principles agreement;
- Grant threatened employees with loss of their jobs if the union won the election in violation of the National Labor Relations Act as well as paragraph 3A of the election principles agreement.

VII. Case No. 061(a)

On November 28, 2006, Kim Carter, patient services manager and off-shift administrator, conducted a meeting of employees on work time. The details of Carter's conduct were set forth in the decision in Case No. 061(a) and are summarized as follows:

- The meeting was convened for the sole purpose of discussing the union;
- The meeting was held on work time in violation of the employer's no solicitation/no distribution rule;
- The meeting was held in contravention of previous arbitration awards ordering the employer to cease and desist from engaging in this conduct;
- Carter factually misrepresented to employees that the union's dues structure might change to a percentage-based structure in violation of paragraph 3A of the election principles agreement;
- Carter threatened employees with loss of their jobs if they went on strike in violation of the National Labor Relations Act and paragraph 3A of the election principles agreement;
- Carter threatened employees with unspecified reprisals if they chose to work during a strike in violation of the National Labor Relations Act and paragraph 3A of the election principles agreement;
- Carter threatened employees with more onerous working conditions, including mandatory overtime, loss of scheduling flexibility, and loss of the ability to speak individually with their supervisors regarding any matter if the union won the

election in violation of the National Labor Relations Act and paragraph 3A of the election principles agreement.

VIII. Case No. 061(d)

On December 8, 2006, Elmer Gonzalez, building services manager in the environmental services department, convened a mandatory staff meeting on work time. The details of Gonzalez' conduct were set forth in the decision in Case No. 061(d) and are summarized as follows:

- Employees were summoned to a mandatory staff meeting to discuss the union in violation of paragraph 3B of the election principles agreement;
- The meeting was held on work time in violation of the employer's no solicitation/no distribution rule;
- The meeting was held in contravention of previous arbitration awards ordering the employer to cease and desist from engaging in this conduct;
- Gonzalez threatened employees with loss of their PIP benefits, prescription coverage, and overtime opportunities if the union won the election, in violation of the National Labor Relations Act and paragraph 3A of the election principles agreement;
- Gonzalez threatened employees that if the union won the election a strike would be inevitable, in violation of the National Labor Relations Act and Section 3A of the election principles agreement; and

- Gonzalez factually misrepresented to employees that union dues would go up as of January 1, 2007, in violation of Section 3A of the election principles agreement.

IX. Case No. 068

On December 4 and 11, 2006, Steve Merz, vice-president for administration, Ted Pilonero, a consultant with IRI Consultants to Management (IRI), and several other hospital managers, conducted two mandatory staff meetings to discuss the union during work time. The details of what transpired during these meetings were set forth in the decision in Case No. 068 and are summarized as follows:

- Employees were summoned to mandatory staff meetings to discuss the union in violation of paragraph 3B of the election principles agreement;
- These meetings were held on work time and violated the employer's no solicitation/no distribution rule
- The meetings were held in contravention of previous arbitration awards ordering the employer to cease and desist from engaging in this conduct;
- Employees were unlawfully polled about their sentiments about the union in violation of the National Labor Relations Act as well as paragraph 3A of the election principles agreement;
- Manager Charles Pearson threatened that employees would lose the ability to speak directly with their managers regarding any topic and that employees would lose the flexibility to perform tasks outside their job descriptions if the union won

the election, in violation of the National Labor Relations Act as well as paragraph 3A of the election principles agreement;

- Merz and Pilonero factually misrepresented to employees that union dues were going to increase and that in 2007 union dues would switch to a percentage-based structure, in violation of Section 3A of the election principles agreement.

X. Union's demand for document discovery

On December 20, 2006, and again on February 27, 2007, I granted two motions filed by the union for the employer to produce documents relating to Case Nos. 054, 061(a), 061(d), and 068. In order to fashion an appropriate remedy, these documents were relevant to determine whether the misconduct found in these cases represented isolated incidents of misconduct, as claimed by the employer, or whether other managers had engaged in similar behavior, as claimed by the union. Another critical area of inquiry was the role of the IRI consultants and the degree of supervision of the consultants' activities by hospital managers and administrators. When the decision in Case No. 054 issued on December 13, 2006, the employer's response was that there had been "inadequate supervision" of the consultants during the course of the campaign which was a "mistake" for which the employer was regretful. The exact nature of relationship between the employer and the consultants therefore appropriately became the focus of attention.

The employer provided 17,000 pages of documents for *in camera* inspection and I reviewed all of them. Approximately 1,500 pages were determined to be relevant, and those documents, some in redacted form, were turned over to the union at my direction.

The vast majority of those documents was admitted into evidence and is part of this public arbitration record. The balance of the 17,000 pages remains in the custody and control of the employer and are subject to a protective order against disclosure.

XI. Working relationship between the employer and IRI consultants

The documentary evidence shows that IRI was retained on or about May 1, 2006, to perform two essential tasks for the employer. The first task was to perform an employee opinion survey, an exercise which the employer has undertaken in past years with other consulting firms. The second task was to coordinate the employer's union campaign. My review of the documentary evidence confirmed that, with a few exceptions, the employee opinion survey work performed by IRI during 2006 was segregated from the union campaign consulting work. The monthly billing records from IRI also confirm that the employer was billed separately for these two services. Each month an invoice was sent to the employer for services rendered on the employee opinion survey, and a separate invoice for services rendered in connection with the union campaign. The invoices for the union campaign services were for the following amounts.

Period Ending	Invoice No.	Amount
5/31/06	4007	$112,947
5/31/06	4008	$100,000
6/30/06	4030	$236,950
7/31/06	4050	$255,363
8/30/06	4092	$204,768
9/30/06	4108	$216,924
10/31/06	4139	$222,435
11/30/06	4170	$356,513
12/31/06	4188	$374,576
1/31/07	4219	$144,655
TOTAL		$2,225,131

Between May 1, 2006 and January 31, 2007, the employer spent $2,225,131 for the services of IRI in connection with the union campaign. This figure does not include other resources the employer dedicated to its campaign, i.e., the work of the human resources staff, management planning sessions, management training sessions, special security arrangements, etc. Nor does it include the cost of other consultants, legal counsel, or outside vendors retained by the employer for the purpose of conducting its campaign.

In June 2006, the IRI consultants prepared an organizational chart setting forth the roles of every hospital manager and IRI consultant for the upcoming campaign. Entitled "Decisions Making and Communication Matrix" the consultants emphasized that "one of

the primary issues of effective decision making involves clearly defining roles and relationships and lines of authority." Six teams were created: a core strategy team, an executive management team, a management advisory team, an implementation team, a management team, and a communications team. The mandate for the core strategy team was to provide "overall thought leadership, strategy and tactics for the campaign," and the members of that team included IRI consultants Lou Bardi and Jim Trivisonno and hospital administrators D'Aquila, Dowling, Alvin Johnson, vice-president for employee relations, and Vincent Petrini, senior vice-president for public affairs. The core strategy team was scheduled to meet biweekly, weekly as the campaign escalated, and then on an as-needed basis. The executive management team was charged with reviewing overall strategy and its members included all hospital vice-presidents. That team was scheduled to meet biweekly and then more frequently as needed. The management advisory team's job was to "review virtually all elements of the campaign strategy," and its members included Bardi, Trivisonno, Johnson, Grant, and Kent Zergiebel, Director of Building Services. That team was to meet biweekly and then more frequently as needed. The implementation team was made up of the employee relations staff and the consultants. Their job was to ensure that strategy was successfully implemented and to "identify issues and concerns that inhibit strategy/tactical implementation and surface them to the core strategy team for resolution." The implementation team met on an as-needed basis. The management team comprised all members of management. That team was charged with the following responsibilities: "Attend all management training, briefings and individual meetings as requested by [the] implementation team. Communication with their staff (within the terms of the agreement) information about the union campaign.

Provide candid feedback about campaign effectiveness to their direct reports and implementation team." The management team met on an as-needed basis. The communications team, charged with the "responsibility for developing corporate campaign communication initiatives on a proactive and reactive basis," included Bardi, Trivisonno and Petrini and was scheduled to meet on a weekly basis and as needed. (H1482-1487).

On August 4, 2006, Bardi circulated a communication process/flow chart for handouts and written campaign materials. Drafting was done by Petrini, Bardi, and Trivisonno, review and editing by Dowling, Johnson, Bardi and Trivisonno, final drafting and printing by Petrini, planning dates for distribution by Dowling, Johnson, Bardi, and Trivisonno, and management preview by Dowling and Johnson (H1442-1443).

On September 29, 2006, manager and consultant assignments were further refined by Trivisonno. The preparation of statements for members of management to use in employee meetings and during one-on-one discussions with employees was the responsibility of IRI consultant Jeanne Squitieri. The creation of short abstracts of arbitration decisions to be distributed to members of management was the responsibility of Squitieri and Dowling. The publication of "Q&A" campaign literature, which was used extensively by the employer during the campaign and which was discussed in several arbitration decisions, was the work of Trivisonno, Johnson, and Dowling. Consultants briefed management on a biweekly basis and were available "to conduct unit specific meetings…for divisions or department management where Divisional VP's or Directors believe it is necessary" (H1457-1459).

In November 2006, schedules for twice-weekly meetings were circulated to the "labor steering committee" which included D'Aquila, Dowling, Johnson, Bardi and Trivisonno (H 1492-1493, 1508-1509).

There was extensive evidence of the daily working relationship between the IRI consultants and hospital administrators and managers in the discovery documents. From the lowest level supervisor to the chief operating officer, every member of management was assigned to a consultant (H1434-1441). These assignments were made by Bardi in consultation with the human resources department (H1473). Managers and supervisors were required to meet and email the consultants on a regular basis to discuss the status of the union campaign. They were also required to assess the extent of union support amongst their respective employees, a process the consultants called "voter profiling" (H591A-592A, 605, 768A-770A, 795-796, 811, 1455, 1456 1463, 1469, 1472, 1474, 1476, 1477, 1478). Failing to cooperate with the consultants was not an option. The following email exchanges on November 29, 2006, are a powerful example of the pressure lower level managers and supervisors were under to cooperate with the consultants (H1432, H1471).

> *IRI consultant Brian Stricker to Denise Fiore, Executive Director of Radiology and Laboratory Services*
>
> Hi Denise,
>
> Can you forward this to your managers? I would like them to go on groupwise and schedule weekly appointments with me from now on. It is crucial that we are meeting weekly one on one. Everyone knows the drill

by now so they know how long to expect the meeting to last…Let's band together and get rid of this union once and for all.

Fiore to her managers

Folks, I was a bit surprised by this email from Brian since the last time we met with Brian it was made very clear that each of you were to contact Brian for meetings. I now feel like my management staff is taking this campaign too lightly. Please arrange individual weekly meetings with Brian and yourself asap.

XII. Mandatory employee meetings

Two key elements of the election principles agreement was the employer's agreement not to initiate one-on-one conversations with employees about the union and not to conduct mandatory meetings. The employer and the consultants quickly came to realize, however, that these restrictions not only hampered its ability to get out its message, but also hampered its ability to track employee sentiment about the union. The documentary evidence shows that beginning on June 13, 2006, the employer began summoning employees to mandatory meetings to discuss the union (H1307). From that date to December 12, 2006, the employer conducted at least 98 similar meetings. It should be noted that of these 98 meetings, 83 of them also violated the employer's no solicitation-no distribution and previous arbitration decisions as discussed above.

The following emails from IRI consultant Ted Pilonero demonstrate why the employer felt compelled to conduct these meetings which were in direct contravention of the election principles agreement:

> *September 18, 2006 email from Pilonero to Trauma Services Manager Carla Carusone:*
>
> As we discussed earlier today, it is indeed difficult to have discussions with employees regarding potential unionization with the restrictions imposed by the Agreement between Y-NHH and 1199/SEIU. But many employees are naïve about what it means to have a union…Because of the restrictions on management about initiating discussions about unionization, and because the topic needs more exposure and understanding, we need to find creative ways to boost communication and factual information exchange. Two ways to do this are: 1. Wait for employees to initiate the topic…the only problem here is that employees do not often initiate the discussion. 2. Hold voluntary meetings to discuss union issues and answer questions. There are two ways to do this: (1) Hold special voluntary meetings about union issues that employees can come to or (2) hold voluntary segment meetings at the end of regular staff meetings. While the first way works, so far attendance has proven to be rather small. In most cases with the second method, most employees stay.

December 2, 2006, email from Pilonero to Leslie O'Connor, administrative director, psychiatry services. The email was entitled "Ideas for Kicking off Voluntary Employee Meetings."

There are several ways to kick off these voluntary meetings. Most importantly, as we discussed, is to share personal opinions about why you feel having a union here would not be good for either the employees or for the hospital-or even for the community. We spent a lot of time in team activities on this subject in the recent advance management labor training sessions…[Pilonero then outlined 27 reasons why a union would not be good for the hospital, for employees, or for the community.] …Certainly to open up a voluntary meeting it is not necessary to say all of the above, but say enough (whatever strikes you as most important) to make it clear your feelings and fears, and then open up the meeting for others to express their feelings, whether they are for the union or against it. *It is important to get the conversation going, to hear the reasons people may want the union or not, and to get them feeling comfortable with expressing themselves and exploring the facts that they will base their vote on* (H575-H578) (emphasis supplied).

Managers were given instructions on how to make the transition from the staff portion of the meeting to the union portion of the meeting as seen in the following email from Yollanda London-Osborne, operations manager for the ambulatory services division, to her subordinates.

> As you know, management is not allowed to initiate conversation about the Union with eligible voters. That being the case you should leave time at the end of the meeting (15-20 minutes) to discuss the talking points. To introduce this topic you can say 'this concludes our formal staff meeting, I am now going to discuss the union, it is voluntary so those who do not want to stay may leave and those who want to stay are staying voluntarily' (H586).

After the union filed the election petition on November 15, the employer became even more forceful that lower level managers conduct mandatory meetings with employees and then submit to being debriefed by the consultants. On November 17, 2006, Zergiebel wrote to his supervisory staff.

> Now that the organizing campaign will be heading to an election, we need to step up our efforts to communicate information to employees…We're going to schedule weekly mandatory employee meetings for each supervisor. The mandatory part of

> the meetings will be short only 5 to 10 minutes, and the remaining time (about 20 minutes) will be a voluntary meeting. I will provide you an outline of topics to cover for the mandatory part of the meeting and Ted [Pilonero] will pull together the topics we want to discuss for the voluntary part of the meeting. These meetings also need to be scheduled in advance as either Ted, your managers or myself will be attending these meetings… (H800).

That same day Zergiebel sent two documents to Pilonero. The first document was entitled "Weekly Mandatory Meetings" which incorporated a schedule of weekly staff meetings to be conducted by each the 14 supervisors in the building services department for their respective employees. The second document was entitled "Weekly Debriefing Meetings with Ted" and each manager was scheduled, in fifteen-minute blocks, to meet with Pilonero on a weekly basis, presumably to report on the results of the weekly mandatory meetings (H655-659).

On November 29, 2006, Judy Grant sent the following emails to her subordinate managers.

> I need a schedule of times you will be meeting with staff to have voluntary meetings. We will need to meet with the staff at least 2 times a shift to answer questions and discuss the union flyers we receive. I need a schedule of times and who is planning to meet

> with the staff up to election time 12/20. I also want document (sic) indicating who was at the meeting, date, and time.

Eventually, the employer dropped all pretext of these meetings being "voluntary" and employees unreceptive to the employer's message were targeted for mandatory participation. On December 4, 2006, Francine LoRusso, patient services manager in the CCU, wrote to her directors, with a copy to Richard Lisitano, vice-president for patient services/patient support, and Diane Vorio, vice-president for patient services, women/children/oncology:

> Met with [IRI consultant] Jeanne Schmid today and voluntary meetings with targeted voters will start tomorrow (Tuesday 12/5). I offered to email Directors so that we could start to notify our managers. The focus will be to ensure that the employees that are "question marks" attend meetings…There will be a sign up list with room locations posted in the command center. Managers must sign their staff up on the list or they can call command center at #88652 to register (H1011).

Grant testified in Case No. 054 on the afternoon of December 6, 2006, and it was during that testimony that the employer's strategy of conducting mandatory meetings with employees was first fully explored. At the conclusion of the hearing my concerns about the practice were immediately expressed to counsel for the employer and the union. Recall that it was also on December 6 that Borgstrom supposedly learned from Dowling

that "a consultant named Ted" may have had a mandatory meeting and she told Dowling to "shut it down." On the evening of December 6, at 7:31 p.m., Kent Zergiebel sent the following email to his managers, with a copy to Pilonero: "I just met with Norman Roth and discussed my spreadsheet regarding the mandatory/voluntary meetings. At the top of the spreadsheet I have it titled as 'Weekly Mandatory Meetings.' Norman requested that all of those copies be destroyed. I have replaced it with the words 'Weekly Staff Meetings.'"

On December 13, 2006, I issued my findings in Case No. 054. I concluded that by summoning employees to mandatory staff meetings, and then placing them in the position of having either to accept or reject the employer's proffer of listening to an anti-union presentation, the employer pressured employees to make an observable choice regarding their sentiments about the union. I found this constituted illegal polling in violation of the National Labor Relations Act. I further found that by compelling employees to attend the work-related portion of the meeting, and then unlawfully coercing them to remain for the anti-union portion of the meeting, employee attendance at the entire meeting was mandatory and in violation of the election principles agreement.

XIII. Tracking employee support for the union

On January 19, 2007, during testimony at an arbitration hearing, Alvin Johnson was asked about the purpose of the mandatory meetings. I asked Johnson if one purpose of the mandatory meetings was to track eligible voter sentiment for or against the union. The following exchange took place.

> ARBITRATOR KERN: [T]here's several of these agendas where there's a notation "no one left." Were—was there ever a suggestion, to your knowledge, by anyone—from the management, from Pilonero, anybody in a position of authority with the hospital—where managers were encouraged to keep track of how many people left, how many people stayed?
>
> WITNESS: No; there was never any instruction of any sort that I knew of from anyone in the organization on that…

I went on to ask Mr. Johnson if the employer or its consultants were *in any way* tracking employee support for the union:

> ARBITRATOR KERN: Was the employer keeping track, by any means, was Pilonero keeping track by any means of how—what the level of support was for the union?
>
> WITNESS: Certainly not to my knowledge.
>
> …ARBITRATOR KERN: [T]here was no attempt to assess the level of support for the union?
>
> WITNESS: No.
>
> (Testimony of Alvin Johnson, January 19, 2007, p. 144-145).

The documentary evidence belies Johnson's understanding. Numerous emails were exchanged between managers and consultants, including Johnson, in which they

tracked employee sentiment about the union. It is plainly evident from these emails that the mandatory meetings were an important vehicle for collecting this data. The following emails are representative of the daily communication that took place.

> *July 19, 2006, email from Michael Parisi, Operations Director for Rehabilitation Services and Respiratory Care to Johnson, Lina Perrotti, manager for employee relations, and Pilonero*
>
> Attached is a summary of a meeting with eligible voters from Rehab Services. It became clear that some who were vocally against the union at previous meetings were now in favor. Going into the meeting the key issues were [redaction]. In the end, I believe we softened their stance. The information provided at the briefing was extremely helpful in raising doubts about what was being told to them (or at least what they thought they were hearing) (H727).

> *July 28, 2006, email from Pilonero to Sally Howell, manager for business services in the diagnostic and radiology department*
>
> I'd like to set up a meeting with you to review your potential voter employees one by one with you. With as many as you have, it may take 45 minutes of so…Also, bring an employee roster with you, just to make sure we don't miss anyone (H1329).

September 28, 2006, email exchange between Howell and IRI consultant Brian Stricker regarding a newspaper article about the SEIU

Howell to Stricker: The employee stated they were a bit on the fence but now after reading [the article] they would never want a union to represent them.

Stricker to Howell: Sally, for my records, who was this ee? (1328).

October 19, 2006, email from Lisa Stump, director of pharmacy services to Stricker

Kathy Ferencz [supervisor of pharmacy operations] had a voluntary meeting for the techs today…they were very positive, against the union, and grateful for the meeting…we plan to do 1-2 per week with them. All reported being call/visited at home but have not signed cards (H1345).

Email from Joanne Pinto, supervisor in the medical information unit to Pilonero discussing an employee meeting on November 21, 2006

This was a mandatory meeting for the first 30 minutes (+/-) and then it was turned into a voluntary meeting. I announced that it was voluntary and if anyone wanted to leave they absolutely could. I gave them a minute to decide and no one left. It was a very positive meeting for the hospital as all of my staff are pro hospital (and are wearing pins) (H1134).

December 1, 2006, email from Jody Platner, director of the daycare center, to Alvin Johnson

I just completed a 45 minute meeting with Teacher Assistants which began as a brief mandatory meeting and became a voluntary meeting that 6 teacher assistants stayed for…I managed to cover a lot of issues from dues, to bargaining, to shop stewards, etc. I know that at least 2 people left convinced (they volunteered this) and probably all 6 did (H673).

December 1, 2006, email from Twila Balint, manager for the nursing resource pool, to Grant

I have 44 constant companions in the bargaining unit. With the information and conversations that I have had with staff, the

breakdown of support for the union based on my predictions would be: employees who have verbalized "NO" to the union: 21; employees who have made comments or have outwardly supported the union activities and would vote "YES": 7. [Seven employee names redacted]. Undecided eligible voters: 16. I had a staff meeting on Thursday 11/30 @ 7am and 3pm…[redacted employee name] said that she paid the dues but had never had any issues with anything, good or bad. [Redacted employee name] discussed her concerns of the union coming to her home. She slammed the door on them. [Redacted employee name] doesn't want the union taking her OT money in the form of additional dues….[Redacted employee name] brought up her concerns of if the union came in, would she be able to speak with me privately or would she lose that ability. I explained that any issues related to her job, performance, wages, scheduling, etc. would include her union rep (H1039A-1040A).

December 1, 2006, email from Lisa Stump to pharmacy managers, copy to Stricker, re: staff tally

Attached is the most current info we have and our stats. Note the number of undecideds in yellow…need to focus on them! (H1343).

December 3, 2006, email from Frantzi Osirus, supervisor in the environmental services department, to Pilonero and Zergiebel re: weekend meeting

I did conduct some one on one meetings and I spoke to them one by one, one of them told me about his anger with the union organizers. That was [redacted name] who is a pto relief in south pavilion…I spent some time to explain to him the benefit package…He was so happy when I told him what he needs to do to have tuition reimbursement. The other guy was [redacted name], he told me he is very satisfied with what he's making right now, he has nothing to complain (H724).

December 5, 2006, email from [redacted manager name] to Stricker

I have [redaction] anti-union voters in my dept. All are scheduled to come in on the voting days (H1323).

December 8, 2006, email from Balint to Grant

I held two voluntary meetings 12/7 for the (constant companion) group, 7am with Rich Lisitano and 3pm with Jan attended …[Redacted employee name] came in from home for the meeting. She began stating that she didn't think that we were able

> to discuss this with her union info, myself and Rich reiterated with her that this was a voluntary meeting and as long as staff knew that they were not required to stay, that we could discuss union activities and answer any questions the staff may have. (H1026).
>
> *December 11, 2006, email from Therese Fritzell, manager for in-patient operations and patient transport in the diagnostic and radiology department, to Perrotti*
>
> It was announced after we finished our agenda, that the last 30 minutes was voluntary and those who wanted to stay could and those who wanted to leave could. On Wednesday, Lacy Hendrix left. On Thursday, Olga Ortiz left. On Friday, Victoria Standberry left (H1047).

XIV. Continued work of IRI in 2007

Borgstrom testified that the IRI consultants were terminated in December 2006 with the exception of "one or two people who were working on [the] employee opinion survey" and who continued to work until the end of January (Testimony of Marna Borgstrom, February 12, 2007, p. 31-32). Borgstrom's recollection is inconsistent with the documentary evidence. The records show that the work of the IRI consultants in January 2007 was not restricted to the employee opinion survey, and that the consultants continued to develop campaign strategies, track employee sentiment toward the union,

and assist the employer in fashioning its public relations and legal responses to the charges then being leveled by the union and others. The following excerpts from the discovery materials reflect the work of the consultants from mid-December 2006 through January 30, 2007.

> *December 17, 2006, email from Bardi to Dowling and Johnson*
>
> Attached is a defensive (or offensive) position for the [unfair labor practice] investigation and it may even be helpful in our PR campaign (H1069-1070).

> *December 19, 2006, email from Trivisonno to Dowling*
>
> This is a letter from SEIU where they reference 2 percent [dues]. It is a little dated but it may help to serve as a basis for positioning a portion of our defense (H1063).

> *December 19, 2006, email from Dowling to Bardi*
>
> I'd like to schedule time for later in the week of Jan. 1 to follow up on our discussions re: monitoring. We'll also have a better sense of how to coordinate our internal management communication processes with the external union public relations campaign environment. We may also need to talk by phone next week depending on things here and union actions (H1366).

IRI plan for the week of January 8, 2007

Meet with as many managers as possible to obtain a sense of the following:…Knowledge of any union activity i.e. house visits, phone calls, visibility at hospital, discussions, etc…Any significant change in pro hospital sentiment with voters (H1428-1429).

January 17, 24, and 25, 2007, emails from Pilonero to managers Therese Fritzell, Patricia Gelineau, Voula Golfis, Sally Howell, Phil Malone, Anna Cierpisz, Lisa Stump, Ed Poglitsch, Kathleen Ferencz, and Jody Platner, requesting to meet with each of them to discuss "labor stuff" (H 1410-1411, 1413-1416, 1419-1425).

January 23, 2007, email from Squitieri to Sue Mastriano, business manager in the radiology department, and Mastriano's January 24, 2007 response re: union update

Sue- Hope all is well. We are back and would like to get a brief update if you are available to meet… (H1383).

I am available on Thursday morning. I did notice the union rep. outside in the parking garage around 3:00PM on Monday just

waiting for staff. One of my employees were (sic) observed talking with her (H1389).

January 23, 24, and 30, 2007, emails from Squitieri to managers Claudia Diaz, Yolanda Sydnor, Elaine Holman, Lori Hubbard, Laura Tichy, Judy Grant, Twila Balint, Alice Lewis, Denine Baxter-Donovan, Cheryl Hoey, and Yollanda London-Osborne requesting to meet with each of them for a "union update" (H1384, 1386-1388, 1390-1392, 1395, 1397, 1398, 1399).

January 30, 2007, email from Squitieri to manager Phyllis Hardwick

I am the labor consultant that has been working with Yollanda and other Managers at Temple to provide support regarding the union organizing campaign (H1400).

XV. The employer's misrepresentations about union dues

In Case No. 068, I set forth my findings with respect to the employer's intentional misrepresentations regarding the union's dues structure. I concluded the employer was well aware that the union's dues structure was not going to change to a percentage-formula in 2007, and that hourly-wage based union dues in 2007 would increase for only 2 of the 1,736 eligible employees. The employer's widely-disseminated verbal and

written assertions that union dues would be calculated on a percentage basis and would increase substantially for all eligible voters in 2007 were plainly false and violated the election principles agreement prohibition against the dissemination of factually inaccurate information (H50, 130-134, 653, 1057-1058, 1065).

XVI. Proceedings before the National Labor Relations Board

As previously mentioned, the union filed a petition for a secret-ballot election with the regional office of the NLRB on November 15, 2006. On December 13, 2006, the union filed unfair labor practice charges with the regional office which served to block the election scheduled for December 20 and 21, 2006. On February 26, 2007, the union withdrew both the petition and the unfair labor practice charges.

On March 7, 2007, the employer filed its own petition for a secret-ballot election with the regional office. On April 27, 2007, the union refiled the unfair labor practice charges which served to block the employer's petition. After conducting an investigation, the regional director issued a complaint and notice of hearing against the employer which alleged that the employer (1) interrogated employees about their union activities; (2) polled employees about their sentiments toward the union; (3) informed employees they would be required to sign dues check-off authorization cards if they selected the union as their collective bargaining representative; and (4) threatened employees which loss of overtime benefits, loss of overtime pay differential benefits, loss of bonuses, loss of job flexibility, loss of direct access to supervisors, and loss of employment if they selected the union as their collective bargaining representative. On August 1, 2007, the employer

and the regional director entered into a formal settlement stipulation providing for the entry of a consent order by the National Labor Relations Board and a consent judgment by any appropriate United States Court of Appeals. The union declined to enter into the settlement stipulation because it objected to the inclusion of a nonadmissions clause.

On September 24, 2007, a three-member panel of the National Labor Relations Board approved the formal settlement stipulation over the union's objection and ordered the employer to cease and desist from its unlawful conduct and to post a notice advising employees of that fact. That notice has been posted by the employer and will remain posted for a required 60-day period. After the posting period is complete, the regional office will reactivate the processing of the employer-filed petition for an election.

XVII. Conclusion

a. Union's request for a bargaining order

The union seeks a bargaining order as an extraordinary remedy for the employer's extraordinary violations of the election principles agreement and of the National Labor Relations Act. The union asserts that it attained majority status by obtaining signed authorization cards from a majority of eligible voters, and that the employer's unfair labor practices render a fair election impossible.

With respect to the union's claim of majority status, the union provided me with original signed authorization cards that it collected during the course of the campaign, and the employer provided me with signature exemplars. I examined the signatures on the

authorization cards against the known exemplars. One card was eliminated from consideration because it was revoked by the employee prior to the date of the scheduled election. An additional 28 cards were eliminated because I was unable to conclude that the signatures on the cards compared favorably with the corresponding exemplars. For the balance of authorization cards for which there were available exemplars, I was able to conclude that the signatures on the cards compared favorably to the exemplars. Those cards totaled 894, a majority of the 1,736 eligible employees.

This number of 894 favorably-compared cards is subject to revision. By way of example, two authorization cards were signed in 2004 and two were signed in 2005, and these cards are arguably stale and perhaps should not be counted toward a finding of numerical majority. On the other hand, 18 eligible employees signed authorization cards for whom the employer failed to provide signature exemplars and their cards arguably should be counted toward a finding of numerical majority. It should also be noted that the employer has not yet been given the opportunity to challenge the authenticity of any of the cards or the circumstances surrounding their execution.

But even if I were to assume the union achieved majority status amongst the eligible voters, I decline to grant a bargaining order. The union has failed to provide me with persuasive authority for an arbitrator to grant a bargaining order under the circumstances presented by this case. Nor does my review of Board precedent indicate that the Board would grant a bargaining order under these circumstances.

b. Alternative remedy for the union

The relationship between the employer and the union is ongoing. The employer's petition for an election is pending before the regional office of the NLRB and at the conclusion of the 60-day posting period, the processing of that petition will resume. The union continues to express an interest in representing the eligible employees and its organizing efforts, which have spanned many years, continue. What does not continue, and what is now forever lost, is the benefit the union derived from the election principles agreement.

The election principles agreement gave the union a nine-month window to organize employees during which it enjoyed all of the protection provided by law *plus* the *additional* rights and privileges provided by the agreement: the employer's commitment not to disparage the union, the employer's commitment to conduct its campaign in a factual manner; the employer's commitment to not initiate one-on-one conversations with eligible voters regarding the subject of unionization; the employer's commitment not to conduct mandatory meetings; the employer's commitment not to use consultants to engage in activities inconsistent with the agreement; and the employer's commitment to abide by the rulings of the neutral arbitrator. It bears emphasis that under federal law, an employer would not be bound by any of these commitments. But under the terms of the election principles agreement, Yale New Haven Hospital made these commitments -- to the union, to its employees, and to the community.

The record before me in Case Nos. 054, 061(a), 061(d), and 068, provides substantial evidence of the employer's repudiation of these commitments. This was not a

situation, so familiar in heated union campaigns, where a few rogue managers lose their composure and say things they later regret. The employer's conduct here was a methodical dismantling of the terms and commitments of the election principles agreement.

On October 15, 2006, I issued a ruling in Case No. 014 ordering the employer to cease and desist from violating the terms of its own no solicitation/no distribution rule. Within 48 hours, the employer violated that order. In Case No. 042, I reminded the employer of its obligation to abide by the terms of its no solicitation/no distribution rule and also of its obligation to abide by the binding arbitration process. My rulings made no impact on the employer. On November 29, Judy Grant summoned 165 employees to mandatory staff meetings on work time to discuss the union, in violation of my previous orders (Case No. 054). On November 28, Kim Carter convened a meeting on work time for the sole purpose of discussing the union, in violation of my previous orders (Case No. 061(a)). On December 8, Elmer Gonzalez summoned employees to a mandatory staff meeting to discuss the union in violation of my previous orders (Case No. 061(d)). On December 4 and 11, vice-president for administration Steve Merz and consultant Ted Pilonero presided over two mandatory staff meetings during work time to discuss the union, again in violation of my previous orders (Case No. 068). These five meetings were part of larger, coordinated effort by managers at the highest levels of the organization to engage every eligible voter in a mandatory meeting on work time.

The consultants were an instrumental part of the plan. It was their job to brief lower-level managers ahead of time as to what to say about the union during the meetings, to be present at the meetings to answer questions, and then to debrief the

managers after the meetings and record what employees said about the union. The available evidence (which does not include the records of IRI), strongly suggests there was a central repository for this information, and that the consultants were keeping a running count of every employee and whether they were for the union, against the union, or undecided (See, H1278-1240, 1336-1343).

From June to December 2006, the employer and its consultants conducted 98 mandatory meetings on work time. The vast majority of these meetings were conducted after October 15, 2006, the date the employer was on unequivocal notice that these meetings were to cease. Thus, the employer not only repudiated the substantive terms of the election principles agreement, it also undermined the enforcement mechanism of the agreement by selectively disregarding my rulings. The sorry conclusion is that the employer was more than willing to participate in the arbitration process, but, in the end, arrogated to itself which rulings it would abide by and which it would not.

The union can never recapture the nine-month period of benefits it enjoyed under the election principles agreement. From here forward, the union may continue to organize the employees of the employer, but it will never again enjoy the privilege of access to the employer's premises, or the commitments by the employer to engage or not to engage in certain conduct beyond what is provided by law. Thus the union requests, as an alternative remedy, reimbursement for its organizing expenses for the 2006-2007 portion of its campaign. I agree that this make-whole remedy is fitting and appropriate.

The union has submitted a combined expense summary totaling $2,297,676. The employer is ordered to pay this amount to the union within 30 days of this decision. Alternatively, the employer may, within 7 days of this decision, request a hearing to

challenge the union's expense summary. If such a challenge is made, the union shall make available to the employer, within 7 days of the request, those documents it relied upon to prepare the expense summary. A hearing date will then be set if the parties cannot come to an agreement on the amount of the union's 2006-2007 organizing expenses.

c. Remedy for the employees

Until now, the focus of this report has been on the union and the employer; the obligations they incurred and the benefits they derived, or were supposed to have derived, under the terms of the election principles agreement. What has not been addressed by either party are the benefits which the *employees* were supposed to have derived from the election principles agreement. Because the election principles agreement grants me broad discretion to fashion broad remedies, I turn to the issue of what the employees lost as a result of the employer's abrogation of its commitments under the election principles agreement.

Employees were victimized by the employer's unfair labor practices in Case Nos. 054, 061(a), 061(d), and 068. They were threatened with loss of overtime, wage differentials, PIP benefits, prescription drug coverage, scheduling flexibility, and the ability to speak directly to their supervisors. They were threatened with more onerous working conditions and even loss of their jobs if the union were selected as their collective bargaining representative. These matters were addressed in my arbitration findings, and were the subject of the complaint issued by the NLRB. These matters were also settled by the employer when it entered into the formal settlement stipulation with

the Board. The employer has agreed to cease and desist from engaging in this conduct in the future and has posted a notice to employees for 60 days advising them of this fact. Assuming the employer fully complies with the terms of this agreement, the unfair labor practices which I found in Case Nos. 054, 061(a), 061(d), and 068 are in the process of being fully remedied.

In addition to being victimized by the employer's unfair labor practices, employees were also deprived of the benefits which should have flowed to them from the employer's additional commitments under the election principles agreement. The employer committed to impart factual information to employees during the nine-month period of the agreement. The employer failed in that commitment by extrapolating information from extraneous documents and misrepresenting to employees that union dues would increase substantially for all of them. The employer knew this was not true and disseminated false information because union dues was "a hot issue." The employer promised not to subject employees to mandatory meetings about the union. The employer violated that promise by conducting no less than 98 such meetings. Employees were compelled to listen to managers and consultants expound on their "feelings and fears" about the union, and then have their own views about the union recorded and entered into a central repository so that the paid consultants could earn their fee and best position the employer to win the election.

Employees were deprived of the right to truthful information, the right to do their job uninterrupted by solicitation, and the right not to participate in captive audience meetings. The question is how to recompense employees for these losses and how to convert the value of intangible benefits into a tangible, meaningful remedy. It is

appropriate in my view to use the amount of money the employer spent on IRI Consultants to Management to measure that loss. Thus, the measure of what was lost to employees equals $2,225,131, the fee paid to the consultants for the union campaign. The employer is ordered to pay this amount, to be divided equally among the 1,736 eligible voters, within 30 days of the date of this decision.

The employer is further ordered to mail a copy of this decision to the 1,736 eligible voters within 7 days of the date of this decision. The employer is not to include a cover letter or any additional materials with the decision.

SO ORDERED.

White Plains, New York
October 23, 2007

_____
Margaret M. Kern
Arbitrator