

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

**ASHLAND HOSPITAL CORPORATION
D/B/A KING'S DAUGHTERS MEDICAL
CENTER, A WHOLLY OWNED
CORPORATION OF ROYAL BLUE
HEALTH, LLC.**

**ASHLAND HOSPITAL CORPORATION
D/B/A UK KING'S DAUGHTERS
MEDICAL CENTER, A WHOLLY OWNED
CORPORATION OF ROYAL BLUE
HEALTH, LLC, AND ITS PARENT
COMPANY BEYOND BLUE CORPORATION
(GOLDEN STATE SUCCESSOR)**

**Cases 09-CA-308275
09-CA-308344**

and

**SERVICE EMPLOYEES INTERNATIONAL
UNION (SEIU) DISTRICT 1199**

*Naima R. Clarke and Shay Chandler, Esqs, for the General Counsel.
Matthew Roberts, C. David Morrison and Jeffrey M. Cropp (Steptoe & Johnson, Columbus,
Ohio and Bridgeport, West Virginia) for Respondents.*

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. This case was tried in Ashland, Kentucky on October 28-30, 2024. SEIU District 1199 filed the charges in this case on December 1 and 6, 2022. The General Counsel issued a consolidated complaint on August 5, 2024.¹

The issues in this case arise from the acquisition of the King's Daughters Medical Center (KDMC) in Ashland, Kentucky by Royal Blue Health, a subsidiary of Beyond Blue, which is a subsidiary of the University of Kentucky Medical Center, on December 1, 2022.²

¹ I read and considered the briefs filed by the General Counsel and Respondent. Then, on January 24, 2025, I solicited supplemental briefs, which I have also read and considered.

² KDMC is referred to in the transcript as being a brand name of Ashland Hospital Corporation.

Jurisdiction

5 It is undisputed that the Board had jurisdiction over Kings Daughter's Medical Center prior to December 1, 2022. KDMC derived annual gross revenues in excess of \$500,000. It also purchased and received goods valued in excess of \$50,000 directly from points outside of Kentucky. It is also not in dispute that the hospital met these jurisdictional standards after December 1, 2022, and that its operations continued virtually unchanged.

10 However, Respondent contends that on December 1, 2022, it became a political subdivision of the Commonwealth of Kentucky and thus is no longer an Employer, as defined in Section 2(2) of the Act and is thus no longer subject to the National Labor Relations Act.

15 From at least 1980 employees at KDMC were represented by the Charging Party Union.³ KDMC and the Union had a collective bargaining agreement which ran from December 1, 2016, to November 30, 2019. Per a Memorandum of Understanding (MOU) that agreement was extended 3 times, the last time from December 1, 2022, to November 30, 2023. The last MOU signed on September 28, 2022, contained a footnote statement that the extension was not binding on KDMC in the event the University of Kentucky or any of its affiliates or subsidiaries were to
20 hold a majority interest in Ashland Hospital Corporation.

³ The unit is described in paragraph 7 of the complaint as.

All service and maintenance employees employed by the Employer at its Ashland, Kentucky facility, including nursing attendants, couriers, unit secretaries, central supply room aides, scribes, nursing service secretaries, stock room clerks, dietary employees (including cooks, bakers and dishwashers), housekeeping and laundry employees, maintenance department employees, maintenance clerk, dietary clerk, janitors, medical records clerks, transcriptionists, laboratory grade I employees (laboratory aides), laboratory clerks, home health aide, home health clerks, respiratory assistants, respiratory aides, patient review coordinator, regular part-time clerk in O.B. and operating room hostess, patient nutrition representative, environmental compliance operator (previously called environmental safety and security officer), medical records clerk (previously called patient charge coordinator), cardiovascular services secretary (previously called cardiology clerical supervisor), but excluding registered nurses, licensed practical nurses, emergency medical technicians, operating room technicians, general accounting employees, business office employees, purchasing and data processing employees, laboratory grade 2 employees (certified laboratory assistants), laboratory grade 3 employees (medical laboratory technologists), laboratory grade 4 employees (medical laboratory technologists and assistant section supervisors), laboratory grade 5 employees (medical laboratory technologists and section supervisors), laboratory grade 6 employees (medical laboratory technologists and assistant technical directors), registered pharmacists, pharmacy technicians, add-mix technicians, radiological technologists, X-ray department student employees, social service workers, social service counselor, occupational therapist, registered dietitians, auxiliary personnel, administrative assistant to the pathologist, security department employees, nurse interns, nursing service administrative assistant, DRG coordinator, CRNAs, APRNs, physician assistants, physicians, and all guards and supervisors as defined in the Act.

It included such classifications as housekeeping and laundry employees and clerks, but excluded registered nurses, licensed practical nurses, certain technical employees and similar classifications.

After the acquisition by the University of Kentucky Medical Center,⁴ the hospital no longer recognized the Union as the collective bargaining representative of any of its employees. Ashland Hospital Corporation d/b/a KDMC informed the Union on November 30, 2022, that it would no longer be recognizing the Union as of December 1, 2022. The General Counsel alleges that UKKD violated the Act in so doing.

The General Counsel also alleges that KDMC violated Section 8(a)(5) of the Act by failing to pay a \$200 ratification bonus to its probationary employees in November 2022. The General Counsel further alleges that KDMC violated the Act in failing to give the Union an opportunity to engaged in effects bargaining over the acquisition of the hospital by the University of Kentucky.

Chronology
Acquisition of Ashland Hospital by the University of Kentucky
Notice to the Union of the Acquisition
Opportunity to Engage in Effects Bargaining

In 2013, the University of Kentucky created Beyond Blue Corporation in order to:

- (a) To coordinate and develop operational activities of the University of Kentucky for its health care programs that would be conducted outside of the Commonwealth of Kentucky, while supporting its missions of teaching, research and service.
- (b) In furtherance of the purposes stated in Paragraph 1(a) of the Article, to use and apply the whole or part of income and principal exclusively for charitable, scientific or educational purposes at or for the benefit of the University of Kentucky.

G.C. Exh. 10.

Kentucky statutes authorize the University to create affiliated corporations

In January 2021, the University of Kentucky, through its affiliated corporation, Beyond Blue Corporation and the King's Daughter's Health System created Royal Blue Health LLC to operate Kings Daughters Medical Center (KDMC) as a joint venture. At this point in time, the University owned 60% of Royal Blue Health and King's Daughter's Health System owned 40%. KD Health was the sole owner of Ashland Hospital Corporation and Portsmouth Hospital Corporation, an Ohio non-profit corporation, Jt. Exh. 4, pp. 1 and 11. Portsmouth Hospital is licensed by the Ohio Department of Health, Jt. Exh. 4 p. 19.

These parties agreed that if certain financial objectives were met by September 30, 2022, the University had the option to acquire 100% of Royal Blue Health and its subsidiary corporations, which included Ashland Hospital Corporation, the owner of KDMC and

⁴ For simplicity's sake, I will refer to the hospital as KDMC prior to December 1, and UKKD afterwards without repeatedly going through the layers of ownership for each entity.

Portsmouth Hospital Corporation., Jt. Exh. 4, p. 35, Section 13.6 of the Operating Agreement of Royal Blue Health.⁵

Officials at KDMC and the University of Kentucky were aware by mid-2022 that acquisition of the KDMC by the University was possible and even likely. On June 16, Attorney John Merinar, representing KDMC, sent the Union the following letter.

Ashland Hospital Corporation d/b/a KDMC looks forward to bargaining with District 1199 SEIU WV/OH/KY over the terms of the expired CBA. As you may be aware, on or after December 1, 2022, Royal Blue may become part of the UK system. If this happens, Ashland Hospital Corporation will become a public entity under Kentucky law. If the SEIU wants to do so, KDMC will bargain over the effects, if any, of the potential change to public entity status.

Jt. Exh. 21.

On July 5, Merinar sent the Union an email which stated:

I will share the specifics I am aware of:

As was publicly announced in January 2021, King's Daughters Health System, Inc. (at the time, the sole member of Ashland Hospital Corporation, d/b/a KDMC) and Beyond Blue Corporation (a Kentucky public non-profit corporation with the University of Kentucky) formed Royal Bue Health, LLC (a Kentucky public non-profit corporation) which became the sole member of Ashland Hospital Corporation, d/b/a KDMC. Pursuant to the terms of this relationship, Beyond Blue Corporation may have the option to obtain full interest in Royal Blue Health sometime in December 2022. As we announced to team members recently, the parties are evaluating whether this option will occur. Consequently, KDMC provided SEIU notice of this fact so SEIU could determine whether or not it wishes to conduct effects bargaining.

Jt. Exh. 22.

On July 15, 2022, Merinar informed the Union that no decision would be made on whether KDMC would become part of the University of Kentucky until the end of KDMC's fiscal year in September. Further, he stated that KDMC would not know if the change would happen until November.

So, if the Union wants to wait until KDMC knows whether there will be a change then effects bargaining in November would make sense. But KDMC is willing to get started now or any time in the future.

Jt. Exh. 23.

⁵ Technically, the hospital was Ashland Hospital Corporation d/b/a KDMC, Jt. Exh. 21.

Throughout 2021 and 2022, KDMC CEO Kristie Whitlatch, posted information regarding the relationship between KDMC and the University of Kentucky in a blog which was accessible to unit employees. This blog was similar in purpose to a company newsletter, Tr. 162.

5 The financial prerequisites for the University's acquisition of Royal Blue Health were met by the end of September 2022. On October 27, 2022, the Board of Directors of the University of Kentucky exercised its option to acquire 100% ownership of Royal Blue Health and consequently KDMC, as well as the Portsmouth, Ohio Corporation, Jt. Exh. 8 & 9.⁶ On that date, the University declared that all employees of Royal Blue Health LLC and its wholly owned subsidiaries, would, as of the date of the acquisition be public employees, employees of Royal Blue Health but not employees of the University of Kentucky, Jt. Exh. 9. The University Board appointed a 10-member Board of Trustees for Royal Blue Health. Board members of Royal Blue Health automatically became members of the Board of Directors of Ashland Hospital Corporation

15 The University informed the Federal Trade Commission (FTC) of its acquisition of Royal Blue Health. The FTC had 30 days in which to ask for more information about the transaction. After 30 days, the University had authority to consummate the transaction if it did not hear from the FTC. The University did not know whether there would be inquiries from the FTC, but it was reasonably confident that it would eventually get FTC approval. Tr. 393.

On November 2, 2022, KDMC CEO Whitlatch posted the following answers to questions solicited from employees in her blog.

25 **Q. What happens December 1, 2022?**

Assuming all regulatory requirements are met, KDMC will become part of the University of Kentucky.

30 **Q. Will this happen for sure on December 1, 2022?**

We hope so. However, several regulatory agencies are involved in reviewing this transaction. We don't, however, anticipate any issues at this time that would keep this transaction from occurring.

35 Carol Selvage, a member of the Union's Executive Board, was familiar with these blogs, Tr. 223. No later than November 4, 2022, Megan Brown-Clark,⁷ an HR/labor specialist for KDMC, when asked by union representatives at labor-management meetings about the acquisition, told them that if they read CEO Whitlatch's blogs, they would know what she knew, Tr. 286, also see exhibit R-4⁸

⁶ Upon acquisition Royal Blue Health by the University, KD Health was prohibited from competing with it not only in parts of Kentucky, but also in Lawrence and Scioto counties in Ohio, Jt. Exh. 10, p. 8.

⁷ The transcript at 271-72, spells her name Clarke, but it is Clark according to documents in the record.

⁸ Amy Hazlett, a union organizer, repeatedly asked Brown Clarke about the acquisition of KDMC by the University of Kentucky in labor-management meetings. Hazlett testified that at first Brown-Clarke told her she didn't know anything about it, but later that Brown-Clarke believed the acquisition would

Not hearing from the FTC within 30 days of notifying it of its intent to acquire Royal Blue Health, the University completed the acquisition of Royal Blue on November 30, 2022, the day before the acquisition became effective. KDMC CEO Whitlatch informed the Union that on November 30, Ashland Hospital would consider itself exempt from the Act and would no longer recognized the Union as the collective bargaining representative of its unit employees, G.C. Exh. 4, Tr. 74-76.

Prior to November 30, 2022, the University did not inform the Union that it intended to finalize the acquisition of Royal Blue Health and KDMC as soon as the 30 days for FTC review had expired. The Union made no inquiries to KDMC as to the significance of the December 1, 2022, date in CEO Whitlatch's blogs or Merinar's June 16, 2022, letter.

On December 1, 2022, Royal Blue Health became the 100 percent owner of Ashland Hospital/Kings Daughters' Medical Center. All KDMC employees retained their jobs without reapplying. AHC did not announce any changes to the terms and conditions of employment of bargaining unit employees due to the change in ownership. No immediate changes occurred.

On December 1, the Union then requested that KDMC engage in effects bargaining with it over the acquisition of the hospital. Jt. Exh. 27, p. 4. KDMC has not agreed to engage in effects bargaining. Jt. Exh. 27.

On December 5, Union President Sherri McKinney wrote to Respondent's counsel stating that the Union was not asking to bargain with the new employer (UKKD), but demanding effects bargaining with KDMC, Jt. Exh. 27, p. 6.

I want to be clear we are not asking to bargain with the new employer, we are demanding effects bargaining with the previous employer Kings Daughters Medical Center... Via the letter we received from Kristie Whitlatch on November 30th, we were only given 24-hour notice of the merger/acquisition, it was impossible to demand or bargain until such notification was given to the Union. As you are aware under the NLRB, KDMC was a private sector employer on November 30, 2022, and required to effects bargain. Consider this the 2nd request to bargain the effects and the Union has filed a charge with the NLRB for KDMC's refusal to bargain. Therefore, please provide dates you are available to conduct effects bargaining.

The Union never demanded that UKKD bargain with it. The charges giving rise to this case mentions only KDMC and its failure to pay all union members the ratification bonus on or about November 16, 2022.

Facts pertaining to the issue of whether Respondent is a political subdivision of the Commonwealth of Kentucky and therefore not subject to the Act

5 The University of Kentucky is governed by a 20-member Board of Trustees, 16 members who are appointed by the Governor with the advice and consent of the Kentucky State Senate. 4 members are not appointed by the Governor, rather they are elected by their constituencies. Of these 4, 1 is the student body president. 1 a representative of the non-teaching staff and 2 faculty representatives. 3 members of the Board must be alumni of the University and there are other requirements as to who can serve as a trustee., Tr. 350. Once having appointed members of the Board, the Governor has no authority over it. He or she cannot prevent the Board from spending funds appropriated for the University by the Kentucky legislature, Tr. 342, 347-52. The Board of Directors of the University are not answerable to the Governor of Kentucky or to the state legislature apart from the University's budget.

15 The Governor can remove Board members of the University for misconduct and potentially in other circumstances. 351-52. The State legislature appears to have no control over the University of Kentucky Board of Trustees other than passing the University budget and in some circumstances reviewing new course offerings. There is no evidence that the Governor can remove members of the Board of Royal Blue Health or interfere with their management of its subsidiaries in any way.

25 The University of Kentucky Medical Center is part of the University. The University's Trustees have the authority to organize affiliated corporations.⁹ In 2013 it created Beyond Blue Corporation to coordinate the University's health care operations outside of the Lexington campus. In early 2021, Beyond Blue entered a joint venture with Kings Daughters Health System, the parent company of Ashland Hospital Corporation. In April 2021 Beyond Blue and KD Health Systems created Royal Blue Health, LLC.

30 Royal Blue Health operates health care facilities in Ohio, as well as in Kentucky, such as the Portsmouth, Ohio Hospital Corporation, Jt. Exh. 4, p. 2-3, Tr. 358. In 2023, the UK Board of Trustees authorized UKKD to purchase property in Jackson, Ohio, Jt. Exh. 17.¹⁰

35 The Board of Trustees of the University of Kentucky appoints the 10 members of the Board of Governors of Royal Blue Health who are also the Board members of Ashland Hospital Corporation, Tr. 374, 383. Only the University Board of Trustees can remove Royal Blue Health Board members, Tr. 381. The Royal Blue Board is under the control of the University's Board of Trustees, Tr. 385. The University's Board of Trustees ultimately approves the UKKD budget, Tr. 500.

⁹ Kentucky statutes authorize the University to create affiliated corporations.

¹⁰The extent of King's Daughters' operations in Ohio as well as in Kentucky can be found at <https://www.kingsdaughtershealth.com/locations>. They include the following locations in Ohio: Portsmouth, Wheelersburg, Ironton, Jackson, Burlington and South Point. The University Board of Trustees authorized UKKD to purchase property in Jackson, Ohio in September 2023, Jt. Exh. 17.

As of December 1, 2022, all debts and liabilities of Ashland Hospital Corporation and KDMC became debts and liabilities of the University of Kentucky. Revenue generated by KDMC belongs to the Commonwealth of Kentucky. Not all funds spent by UKKD emanate from taxes paid by residents of Kentucky, Tr. 510.

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The ratification bonus

The last collective bargaining agreement between KDMC and the Union ran from 2016-19. KDMC had a 90-day probationary period for new employees. New employees became members of the bargaining unit during their first week of employment.

10

The 2019-2021 labor agreement extension, G.C. Exh. 3, provided that KDMC would provide a ratification bonus to non-probationary union team members in the amount of \$200. Probationary employees did not receive this bonus. The Union did not file a grievance over the omission of probationary employees.

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The January 2021 MOU/labor agreement extension provided that a \$200 bonus would be paid to all union team members in January 2022. The language of the agreement did not explicitly exclude probationary employees who were unit members. Probationary employees did not receive this bonus. The Union did not file a grievance over the omission of probationary employees.

20

The September 2022 MOU/labor agreement stated that a \$200 bonus would be paid to all bargaining unit employees. The language of the agreement did not explicitly exclude probationary employees who were unit members. Non-probationary employees received this bonus, probationary employees did not. I find that the Union did not file a grievance over the exclusion of probationary employees, as it contends. I discredit the testimony of Amy Hazlett to the extent she testified that the Union did so. Under the collective bargaining agreement, the Union had 10 days to file a grievance from the time it became aware of a violation of its contract.¹¹

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There is no evidence that KDMC ever paid a ratification bonus to probationary employees.

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Analysis

UKKD did not and does not have a bargaining obligation with the Union.

The issue in this case is not whether the Union waived its bargaining rights with UKKD. The salient fact is that the Union never made a bargain demand to UKKD.

40

Successorship does not automatically carry with it the obligation to bargain with the union that represented the predecessor's employees. Nor does the fact that the union represents a majority of the successor's employees in an appropriate unit operate alone to

¹¹ If the Union filed a grievance, it would be documented. It is not.

invoke the bargaining obligation...The bargaining obligation ...must be triggered by a demand for recognition or bargaining...

Royal Midtown Chrysler Plymouth, 296 NLRB 1039, 1040 (1989); ¹²*Bengal Paving Co.*, 245 NLRB 1271 (1979).

Political Subdivision issue

In the event that I am reversed on other issues in this case, I feel compelled to weigh in on the political subdivision issue.

In order to be a political subdivision of any state and thus outside the definition of an Employer subject to the Act, as defined in Section 2(2) of the Act, an entity must be either created directly by the state or run by officials who are responsible to public officials or to the general electorate, *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971); *Pennsylvania Virtual Charter School*, 364 NLRB 1118, 124-26 (2016). *Enrichment Services Program*, 325 NLRB 818 (1998), The general electorate must be the same as that for those running for office in general political elections,

In the *Utility District of Hawkins County* case, the Supreme Court observed:

We turn then to identification of the governing federal law. The term ‘political subdivision’ is not defined in the Act and the Act’s legislative history does not disclose that Congress explicitly considered its meaning. The legislative history does reveal, however, that Congress enacted the [section] 2(2) exemption to except from Board cognizance the labor relations of federal, state, and municipal governments, since governmental employees did not usually enjoy the right to strike.³ In the light of that purpose, the Board, according to its Brief, p. 11, ‘has limited the exemption for political subdivisions to entities that are either (1) created directly by the state, so as to constitute departments or administrative arms of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate.

402 U.S. 600 at 605.

The NLRB’s jurisdiction is to be interpreted broadly, and the exemptions in Section 2(2) of the Act are to be construed narrowly, *San Manuel Indian Bingo & Casino*, 341 NLRB 1055, 1058 (2004) *enfd.* 475 F. 3d 1306 (D.C. Cir. 2007). As a policy matter, the NLRA was enacted to give employees the right to collectively bargain, if they choose to do so. This right should be denied them only if it is unambiguously denied to them by statute or judicial precedent.

The burden of proving who is a supervisor and thus not an employee protected by the Act pursuant to Section 2 (3) and (11) of the Act lies with the party asserting such status, *Oakwood Health Care, Inc.* 348 NLRB 686, 687 (2001). By analogy, the burden of proving that an

¹² The Second Circuit ruled otherwise in *Banknote Corp. of America*, 84 F. 3d 637 (2d Cir. 1996), However, *Royal Midtown Chrysler Plymouth* is the controlling Board precedent which I must apply to this case.

employer is a political subdivision exempt from the Act's jurisdiction lies with that party, in this case Respondent. I find that Respondent has not met its burden of proving that Royal Blue Health and Ashland Hospital are political subdivisions of the Commonwealth of Kentucky.

Neither Royal Blue Health, LLC nor Beyond blue, nor UKKD nor Ashland Hospital Corporation were created directly by the Commonwealth of Kentucky. While the Commonwealth created the University of Kentucky, the Board of Directors of the University, not the Governor, the State Legislature or any other state agency created Royal Blue Health, UKKD, etc. Thus, Respondent has not met the first prong of the *Hawkins County* test.

Respondent has not met the second prong of the *Hawkins County* test either. Neither the Governor of Kentucky nor any other state official appoints the directors of Royal Blue Health, LLC, Beyond Blue, UKKD or Ashland Hospital Corporation, *Cape Girardeau Care Center*, 278 NLRB 1018 (1986). Respondent has not established the directors of any of these entities are directly accountable to public officials or to the general public in their capacity as trustees of Royal Blue Health.

Members of the Board of Directors of the University of Kentucky are not public officials, Kentucky Revised Statutes, Section 164.150. Board members of Royal Blue Health may be removed and replaced at any time, for any reason or no reason, only by actions of the University of Kentucky Board of Trustees. There is no oversight by any public official of the manner in which the University staffs the Royal Blue Board, Jt. Exh. 12, pg. 5.

Respondent's contention that UKKD's employees are public employees is irrelevant. So long as UKKD stays within its budget, as determined by the University Medical Center, UKKG is not subject to any oversight by a public official.

Respondent contends that it is exempt indirectly because it is accountable to individuals who are accountable to State officials. The Board has not, to my knowledge, ever extended the political subdivision exemption in such a manner, i.e., that UKKD and Royal Blue Health acquired political subdivision status from the status of the University of Kentucky. I know of no case in which the Board has held that an entity which constitutes a political subdivision of a state can deprive employees protected by the Act, as were Ashland Hospital employees prior to December 1, 2022, of that protection by acquiring their employer.

The operations of the University are subject to oversight by the State, e.g., in offering new courses. Oversight of UKKD by the University's Board of Trustees appears to be limited to approving leases in excess of \$200,000, Tr. 401. A facility lease over \$100,000 must be approved by the capital project and bond oversight committee, which, according to Respondent, is part of the Kentucky General Assembly, Tr. 401.

Neither party in their briefs comprehensively addresses the significance of Respondent's operations in Ohio as they impact the issue of whether Respondent is a political subdivision of the Commonwealth of Kentucky.¹³ However, the fact that Royal Blue Health, the parent of
 5 Ashland Hospital, operates in Ohio, as well as in Kentucky, establishes, at least, that Royal Blue Health is not a political subdivision of the Commonwealth of Kentucky. There is no evidence that Respondent Royal Blue Health is not obligated to comply with Ohio law, when operating in the State of Ohio.

10 I find Respondent's reliance on UK's athletic competition in other states and its on-line courses available to students outside Kentucky to be unpersuasive. First, these endeavors are not permanent fixed operations in another state. The Commonwealth of Kentucky has control over its "student athletes" when they play in another state. It also has control over the content and
 15 operation of on-line courses. Respondent has not shown that Kentucky public officials have any control over Royal Blue's operations in Ohio. As I find that Royal Blue is not a political subdivision of the Commonwealth of Kentucky, neither is UKKD, which it created and controls.

Perfectly clear successor

20 If UKKD is subject to the Act, it is a "perfectly clear" successor to KDMC. This is so because UKKD hired all the employees of KDMC without giving notice to the Union that employees' working conditions would change, *Canteen Corp.*, 317 NLRB 1052 1052-54 (1995). UKKD was thus required, if subject to the Act, to bargain with the Union before making any material changes to the terms and conditions of employment of bargaining unit employees.
 25 However, since Respondent did not make any changes to the terms and conditions of unit employees upon acquisition by Royal Blue Health, the fact that UKKD was a perfectly clear successor is of no consequence.

Effects Bargaining

30 The Union was on notice that the acquisition of KDMC by the University of Kentucky would likely occur on December 1, 2022, and probably had actual knowledge that this was so. The Union did not request effects bargaining from KDMC until December 1, after the acquisition by the University had taken place. On that basis Respondent refused to engage in
 35 effects bargaining.

Prior to November 30, Respondent did not inform the Union that the acquisition would occur immediately upon acquiescence by the Federal Trade Commission. Respondent, by its agent Jack Merinar, led the Union to believe that it would be able to engage in effects bargaining
 40 after all impediments to its acquisition of Ashland Hospital were resolved.

Nevertheless, the Union could have engaged in effects bargaining anytime from July to November. Given that the record does not indicate what the Union desired to negotiate, I decline

¹³ The General Counsel raises this issue only in footnote 15 at page 15 of its brief, questioning whether employees working in Ohio can be deemed public employees of the Commonwealth of Kentucky.

to order KDMC/UKKD to engage in effects bargaining now, 2 years after the transition. I am also influenced by the fact that the transition appears not to have resulted in any adverse consequences for unit employees and that I conclude, as set forth below, that KDMC did not violate the Act in failing to pay probationary employees a ratification bonus in 2022.

Failure/Refusal to pay probationary employees a ratification bonus

It is arguable as to whether the terms of the last labor agreement extension required Respondent to pay a ratification bonus to probationary employees in 2022. Moreover, there is no evidence that Respondent intended that probationary employees should receive such a bonus after specifically excluding probationary employees from the bonus in the 2 prior extensions. There is no evidence that the exclusion of the term “non-probationary” was discussed between the Union and Respondent in 2021 or 2022, or that Respondent made an intentional decision to exclude the term from the 2021 and 2022 contract extensions, Tr. 280-81. The Union’s failure to grieve this issue in 2022 indicates that it did not view this as an intentional change.

Moreover, Respondent’s past practice was to pay a ratification bonus only to non-probationary employees. I find this was a term and condition of the employment of non-probationary employees. *Sunoco*, 349 NLRB 240, 244 (2007). Probationary employees would have had no expectation of receiving the ratification bonus in 2022. Exclusion from the ratification bonus was a term and condition of the employment of probationary employees. If the Union wanted to change this past practice it should have negotiated this change in 2022. Despite the change in the language of the MOU, there is no evidence that the parties discussed paying a ratification bonus to probationary employees in 2022. Moreover, even if non-payment of a ratification bonus to probationary employees was not an established past practice, I find that the Union waived its rights to contest non-payment by its inaction in 2021 and 2022.

Unit employees are not entitled to two weeks backpay pursuant to Transmarine Navigation Corp, 170 NLRB 389 (1968).

A *Transmarine* remedy is not automatic in every effects bargaining case, *Professional Medical Transport*, 362 NLRB 144, 158 (2015). In this case there is not only no evidence of any loss in wages or benefits upon the transition to UKKD, there is affirmative uncontradicted evidence there was no such loss. A *Transmarine* remedy in this case would be a windfall to employees and thus unwarranted, *AG Communications System*, 350 NLRB 168 (2007).

Conclusions of Law

Respondent, Ashland Hospital Corporation, d/b/a UK Kings Daughters Medical Center, is an Employer within the meaning of Section 2(2), (6) and (7) of the Act.

Respondent, Ashland Hospital Corporation, d/b/a UK Kings Daughters Medical Center, did not violate Section 8(a)(5) and (1) of the Act by withdrawing recognition of the Charging Party Union, Service Employees International Union (SEIU), District 1199 on December 1, 2022.

Respondent, KDMC did not violate the Act in failing or refusing to engage in effects bargaining with the Union or failing or refusing to pay a ratification bonus to probationary employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁴

ORDER¹⁵

The complaint is dismissed.

Dated: Washington, D.C., February 18, 2025



Arthur J. Amchan
Administrative Law Judge

¹⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹⁵ 15 If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.