

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

NEW YORK-PRESBYTERIAN BROOKLYN
METHODIST HOSPITAL

and

Case 29-CA-332578

NEW YORK STATE NURSES ASSOCIATION

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for the General Counsel

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for the Respondent

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for the Charging Party

DECISION

STATEMENT OF THE CASE

MICHAEL P. SILVERSTEIN, Administrative Law Judge. The issue in this case is whether New York Presbyterian – Brooklyn Methodist Hospital violated Section 8(a)(5) of the Act when it mandated changes to registered nurses’ work attire. For the reasons outlined below, I find that the Employer has violated Section 8(a)(5) of the Act as alleged in the complaint.

On December 26, 2023, the New York State Nurses Association (NYSNA or the Union) filed an unfair labor practice charge against New York Presbyterian – Brooklyn Methodist Hospital (the Employer or Respondent) docketed by Region 29 of the Board as Case 29-CA-332578. A Complaint and Notice of Hearing issued on June 17, 2024, and Respondent filed its Answer to the Complaint on July 1, 2024.

A trial was conducted in this matter on March 2-3, 2026, and on March 25, 2026, in Brooklyn, New York. At trial, all parties were afforded the right to call, examine, and cross-examine witnesses, to present any relevant documentary evidence, and to argue their respective legal positions orally.¹ Counsel for the General Counsel and Respondent filed post-hearing

¹ The General Counsel called two witnesses – Brian Flynn and Irving Campbell. The Respondent called three witnesses – Michele Oppong, Alan Levin, and Aaron Kranich.

briefs. On July 7, 2026, I invited the parties to submit supplemental briefs concerning the appropriateness of deferral and the Respondent's willingness to waive timeliness defenses to allow for the filing and arbitration of a grievance on the merits. All parties submitted supplemental briefs regarding these issues.

On the entire record, including my observation of the demeanor of the witnesses, and after carefully considering the briefs, I make the following:

FINDINGS OF FACT

JURISDICTION

Respondent admits, and I find that at all material times, it has been a New York not-for-profit corporation operating a voluntary acute care teaching hospital located at 506 Sixth Street in Brooklyn, New York. In conducting its business operations for the 12-month period prior to the issuance of the Complaint, Respondent derived gross revenues in excess of \$250,000 and purchased and received at its Brooklyn facility goods valued in excess of \$50,000 directly from suppliers located outside the State of New York. Respondent also admits, and I find, that it has been an employer engaged in commerce within the meaning of Sections 2(2), (6), (7), and (14) of the Act. Additionally, Respondent admits, and I find, that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction over this case, pursuant to Section 10(a) of the Act.

ALLEGED UNFAIR LABOR PRACTICES

This case involves New York Presbyterian – Brooklyn Methodist Hospital, a Level 3 trauma center and teaching hospital located in the Park Slope neighborhood of Brooklyn. (Tr. 118, 152). 4,700 employees work at this hospital, including 1,400 registered nurses. (Tr. 41, 404). The Employer's registered nurses have been represented by NYSNA for over 20 years. (Tr. 35).

Dress Code as of November 2022

There is no specific dress code language found in the parties' collective bargaining agreement. Instead, the dress code is laid out in the Employer's "Human Resources Policy and Procedure Manual, Number 9237-017". This policy, which was reviewed and revised in November 2022², reads as follows:

Policy: This policy outlines the Hospital's dress guidelines for all employees. Employees may also be required to observe more stringent individual departmental rules when they

² Aaron Kranich, the Employer's vice-president of human resources, testified that the reference to "revised" in the policy index does not necessarily mean that changes were made to the policy. (Tr. 426). No witness could identify any specific changes made to the dress code policy between January 2020 and November 2022, the two most recent dates listed in the "revised" section of the policy memo.

exist, so as to meet this code and/or any applicable safety, sanitary or infection control standards.

Purpose: The employees and staff of the Hospital have a responsibility for maintaining a high degree of professionalism in all ways, including a professional and appropriate appearance. The Dress Code Policy provides a guideline to enhance the image conveyed to all with whom the employee interacts in the clinical and public areas of the Hospital.

Procedure:

- Attire while on Hospital premises must be professional and/or business casual.
- Where uniforms are required, they should be properly fitted, laundered, pressed and maintained in good condition.
- Employees are expected to be dressed in their uniforms, where applicable, at the start of their shift.
- Attire for employees may be determined within a department or unit in accordance with job responsibilities, as well as safety and infection control standards.
- Attire must be neat, clean, appropriate in length, and loose enough to allow performance of activities without restriction.
- Although not intended as a complete list, the following items are considered inappropriate for work and may not be worn by an employee while on duty:
 - Accessories and/or clothing with logos and/or offensive language
 - Denim and jeans
 - Sweatpants, sweatshirts, athletic shirts and any other sports wear
 - Shorts
 - Tank tops and non-collared t-shirts of any kind
 - Caps, bandanas or baseball hats...
- Employees who are inappropriately dressed may be sent home to change into appropriate attire. Employees will not be compensated for such time away from work. Failure to adhere to these guidelines may result in a corrective action up to, and including termination...
- Grooming: Make-up and cologne must be used in moderation. Hairstyles must be neat and well groomed. Beards should be neatly trimmed. Fingernails should be neatly manicured and of reasonable length. Employees having direct patient contact should refer to the current Infection Prevention Policy.
- To assure maximum safety and to prevent nosocomial infection, employees required to wear Hospital scrubs should refer to the current Hospital policy. (GC Ex. 6).

The above-referenced dress code applied to all hospital employees, including the registered nurses. (Tr. 53). It is undisputed that the Employer did not discuss or bargain with the Union prior to the original implementation of this dress code, or any subsequent revisions. (Tr. 52, 56).

While the Employer's dress code policy permitted individual units to set their own dress codes, the record contains specific evidence of only one unit setting its own dress code. In this regard, Michele Oppong, patient care director for Miner 7, a med-surg unit caring for adult patients with acute illnesses, testified that until 2017, the Miner 7 dress code for nurses was all white.³ When the hospital aligned with New York Presbyterian, the Miner 7 nursing dress code changed to either a white top and navy-blue pants or all navy blue.⁴ (Tr. 273-274, 277, 280). Chief Nursing Officer (CNO) Alan Levin also testified that registered nurses on Infill 6 wore pink scrubs, but it is unclear from the record how many nurses worked on this unit, what type of unit this is, or when the pink dress code requirement was implemented.

Perioperative Services Dress Code Featuring All Burgundy Scrubs

Starting in June 2018, a more restrictive dress code applied to employees working in the Employer's perioperative units (e.g. operating rooms, endoscopy suites, interventional radiology, labor and delivery, and central sterile processing).⁵ To this end, perioperative nurses were only permitted to wear hospital-issued burgundy scrub tops and bottoms and head coverings. (Resp. Ex. 2; Tr. 56, 319). Alan Levin and Aaron Kranich testified that the burgundy scrubs are provided and laundered by the Employer, and perioperative nurses are not allowed to wear these scrubs outside their sterile work area for infection control purposes. (Tr. 318, 392-393).⁶ The Employer did not bargain with the Union prior to the 2018 implementation of the perioperative dress code, and perioperative nurses receive 15 minutes of paid time to change in and out of their clothes. (Tr. 130, 161).

The 2019-2023 Collective Bargaining Agreement

The parties' May 1, 2019, to April 30, 2023, collective bargaining agreement contains the following management rights clause:

"Except as in this Agreement otherwise provided, the Hospital retains the sole and exclusive right to promulgate rules and regulations; direct, designate, schedule and assign duties to the work force; plan, direct and control the entire operation of the Hospital; discontinue, consolidate or reorganize any department or branch; transfer any or all operations to any other location or discontinue the same in whole or in part; merge with any other institution; make technological improvements; install or remove equipment regardless of whether or not any such action causes a reduction of any kind in the number of employees, or transfers in the work force, requires the assignment of additional or different duties or causes the elimination or addition of nursing titles or jobs; and carry out the ordinary and customary functions of management whether or not possessed or

³ There are 28-30 registered nurses working in Miner 7. (Tr. 297).

⁴ Oppong never issued a written dress code policy for Miner 7 registered nurses identifying the permitted colors for tops and bottoms. Instead, Oppong verbally informed new nursing hires of the unit's dress code during orientation. (Tr. 300-301).

⁵ About 100 bargaining unit nurses work in perioperative services. (Tr. 117).

⁶ Kranich testified that perioperative nurses obtain their burgundy scrubs from a vending machine at the start of their shifts and the used scrubs are returned to the vending machine for laundering at the conclusion of their shifts. (Tr. 423-424).

exercised by the Hospital prior to the execution of this agreement, except as limited herein. All the rights, powers, discretion, authority and prerogatives possessed by the Hospital prior to the execution of this Agreement, whether exercised or not, are retained by and are to remain exclusively with the Hospital.

The Association, on behalf of the employees, agrees to cooperate with the Hospital to attain and maintain full efficiency and maximum patient care and the Hospital agrees to receive and consider constructive suggestions submitted by the Association toward these objectives pursuant to Article 3.” (GC Ex. 2, page 49).

The 2019-2023 CBA also contains the following Grievance and Arbitration Procedure language:

“17.01 **Grievance Adjustment** – Any grievance of an employee that involves an alleged violation of a specific provision of this Agreement shall be handled strictly in accordance with the following procedure and no step shall be skipped unless upon mutual agreement. A grievance involving two (2) or more employees shall be presented at the Second Step unless the Employer can present reasonable cause not to waive Step One...

Second Step – If no satisfactory settlement is reached in the First Step, and the Association wishes to pursue the matter further, the Association will present the grievance to the employee’s Department Head within ten (10) days after the completion of the First Step. The Department Head or his/her designee will meet with the employee and the local representative to discuss the complaint within six (6) days. A written response will be given to the Association within five (5) days of the second step hearing.

Third Step – If no satisfactory settlement is reached in the Second Step, and the Association wishes to pursue the matter further, the Association shall notify the Hospital’s Vice President for Human Resources or his/her designee in writing within ten (10) days after completion of the Second Step. The Hospital’s Vice President for Human Resources or his/her designee will meet with the Association’s representative to discuss the complaint within six (6) days. A written response will be given to the Association within five (5) days of the third step hearing. The Hospital agrees that any written response shall be stapled to the grievance form submitted by the Association. However, whether or not a response is stapled to the grievance form shall not affect the merits of the Hospital’s action.

17.02 **Arbitration** – If the grievance is not adjusted in the Third Step, and the Association wishes to pursue the matter further, then within fifteen (15) days after the completion of the Third Step, the Association must request the American Arbitration Association to submit a panel of at least seven (7) arbitrators to the parties. Notwithstanding anything to the contrary in the American Arbitration Association’s rules, no arbitrator may serve hereunder unless he or she is acceptable to both parties. Grievances shall be arbitrated separately unless otherwise agreed in writing for particular cases. Unless the grievance is raised, served in writing, referred, appealed and submitted

to arbitration within the time limits at each step herein set forth, it shall be deemed a waiver of the right to further process the grievance.

The arbitrator's authority shall be strictly limited to applying and interpreting the explicit terms and conditions this Agreement expressly sets forth. He/she shall not have authority to establish wage rates, or to deal with any matter that is reserved to the Hospital in the Management Rights clause, or to add to, subtract from or otherwise amend or modify the terms of this Agreement, by implication or otherwise, nor may he/she make a monetary award that is retroactive to a time prior to the Hospital's receipt of the written grievance in the First Step..." (GC Ex. 2, pages 49-51).

There is no reference to uniforms or a dress code in the 2019-2023 collective bargaining agreement.

The Employer Tenders a Bargaining Proposal Mandating Uniforms During 2023 Contract Negotiations

The parties began negotiations for a successor collective bargaining agreement in early March 2023. Brian Flynn was the lead negotiator for the Union while Michael McGahan (counsel) and Aaron Kranich led negotiations on behalf of the Employer. (Tr. 41-43, 386).

At the April 12, 2023, bargaining session, Kranich emailed the Union a set of contract counterproposals regarding wages, retirement, and staffing. In that same email, Kranich attached a new Employer proposal concerning uniforms. (GC Ex. 5; Tr. 45-46). The latter proposal reads:

Section [NEW] Uniforms

Effective within a reasonable time after ratification, the Employer will provide a uniform, scrub suit or lab coat (hereinafter "Uniform") in standardized styles and colors (with institutional identifying embroidery) as determined by the Employer at no cost to each Registered Nurse required to wear a Uniform. Regular full-time employees required to wear a Uniform will be supplied with five (5) Uniforms per year. Regular part-time employees will receive three (3) Uniforms per year. Uniform bottoms can be pants or skirts.

To allow time for ordering and delivery of uniforms, employees will be permitted to wear existing uniforms for up to three (3) months after ratification. Thereafter employees will be required to wear the uniforms provided by the Hospital. (GC Ex. 5).

After emailing the proposal, Chief Nursing Officer (CNO) Alan Levin spoke on the subject. He said that the Employer would supply uniforms to the nurses although some nurses already had them because they came from other New York Presbyterian institutions. Levin also noted that nurses had approached him and expressed interest in uniforms, they are something that nurses take a lot of pride in, and nurses enjoy the uniforms. (Tr. 48, 322).

The Union did not verbally respond to Levin's comments and nothing else was said regarding the uniform proposal at that bargaining session, or at any other future bargaining session. The Union did not agree to the Employer's uniform proposal, the Union did not submit a counterproposal regarding uniforms, and the Employer never proposed uniforms again in writing during contract negotiations.⁷ The parties ultimately reached a new contract in early June 2023. The new CBA did not contain any language regarding uniforms.⁸ (GC Ex. 4; Tr. 48-49, 71, 148, 198, 335, 366).

The Union Reiterates to Members That There Was No Change to the Dress Code in the Recently Concluded Contract Negotiations

In July 2023, nurses asked Flynn if they were required to wear the New York Presbyterian uniforms. Flynn said no, explaining that this wasn't agreed to in contract negotiations, and therefore, it was not a requirement for bargaining unit employees. (Tr. 72). In response to these inquiries, the Union distributed the following flyer to its membership and posted the flyer in NYSNA bulletin boards throughout the hospital:

"KNOW YOUR CONTRACT!!!

It has been brought to your NYSNA Executive Committee's attention that management has been pressuring NYSNA RNs to wear NYP uniforms.

History: Management made a proposal at contract negotiations that would mandate RNs to wear NYP uniforms or be disciplined. **THIS WAS NOT AGREED TO and IS NOT PART OF YOUR CONTRACT!**

If you have been approached by a Supervisor, PCD, DON, CNO or other managerial staff member regarding NYP Uniforms, please contact a NYSNA Executive Committee member..." (GC Ex. 10; Tr. 73).

The Union Files a Grievance Regarding Uniforms and Requests the Employer to Cease and Desist Mandating That Nurses Wear the Navy Blue/White Color Combination

On August 8, 2023, Union program representative Corey Finger emailed a letter to Alan Levin requesting that the Employer cease and desist ordering union-represented registered nurses to wear specific color scrub top/bottom combinations. The letter reads:

"It has come to NYSNA's attention that some managers at NYP-BMH are demanding that NYSNA members wear scrubs of specific colors (navy pants and white tops). Per NYP's policies, NYP-BMH is specifically excluded from this requirement. Further, at the bargaining table this year, NYP-BMH proposed modifying the contract to include the

⁷ The only semblance of a response from the Union on this subject was a PR campaign centered around stickers and flyers that read, "We Need RNs Not Uniforms!" (GC Exs. 8-9; Tr. 63-64, 66).

⁸ The tentative agreement summary the Union distributed to members on June 2, 2023, specifically noted that there were no mandatory uniforms included in the new agreement. (GC Ex. 24).

requirement for specific uniforms, a proposal that was not incorporated into the CBA and that NYP-BMH withdrew.

As such, NYSNA demands that NYP-BMH cease and desist ordering NYSNA members to wear the navy blue/white color combination and also cease and desist in any threats towards or harassment of members who wear scrubs of other colors.” (GC Ex. 11; Tr. 75).

The Employer did not respond to Finger’s August 8th letter. (Tr. 76-77).

On this same date, Finger also filed a class action grievance at Step 3. In the “Complete Details of Grievance” section, Finger wrote: “Violation of the Collective Bargaining Agreement, including but not limited to Section 16 Management Rights; Several Patient Care Directors have been harassing Registered Nurses to wear navy blue pants and white tops, which is not policy, and during negotiations, the hospital failed to incorporate it into the new contract.” In its requested remedy, the Union asked the Employer to cease and desist from directing registered nurses to wear blue and white uniforms.⁹ (Resp. Ex. 1; Tr. 134-135).

The Employer did not respond to the Union’s August 8th grievance. (Tr. 151).

On September 5, 2023, the Union amended its class action grievance to include additional contractual violations. Brian Flynn’s cover letter to the Employer reads as follows:

“The New York State Nurses Association is amending the above-reference grievance. It is our position that the Hospital has violated the Collective Bargaining Agreement, including but not limited to Sections: (16) Management Rights, (18.06) Harassment/Workplace Violence and Hospital Policy Number (9237-017) Dress Code; by harassing and requiring certain NYSNA members to wear navy blue pants and white tops while at work, by not providing a work environment free from discrimination and unlawful harassment, by not enforcing its policy on violence in the work setting in accordance with Joint Commission standards on workplace violence and by not promptly investigating and addressing complaints of harassment...Please contact me as soon as possible to schedule a Step Three hearing...” (Resp. Ex. 1; Tr. 134-136).

The Employer did not respond to the Union’s September 5th amended grievance. (Tr. 151, 170). Flynn testified that after he filed the amended grievance, the Union heard fewer reports of nurses being mandated to wear certain scrubs. Although the Union did not withdraw the grievance, it also did not advance the grievance to arbitration. (Tr. 77, 151-152).

The Employer Informs the Union It Intends to Implement a Uniform Requirement for Registered Nurses

On November 30, 2023, Alan Levin called Brian Flynn to give the Union a heads up that the Employer was going to implement a uniform requirement (including NYP embroidery) for

⁹ Brian Flynn testified that this grievance was filed at Step 3 because it is a class action grievance concerning a human resources issue as opposed to a clinical issue. (Tr. 150).

registered nurses effective March 1, 2024. Flynn said that this was going to be discussed at the nursing town halls later that day. Levin also told Flynn that the Employer would be providing nurses with 10 vouchers for full-time employees and 5 vouchers for part-time employees. The color scheme did not come up during this conversation and Levin did not reference the management rights clause during this phone call. Flynn told Levin that the Union objected, the Union never agreed to this and would never agree to this. (Tr. 76, 352-353).

Shortly after their conversation, Levin emailed Flynn a letter and flyer providing more details about the uniforms. The letter reads:

“As part of the Hospital’s ongoing efforts to enhance the professional appearance of our patient care areas, we will be implementing a new uniform for Registered Nurses in all areas where Registered Nurses work with the exception of perioperative areas where scrubs are currently provided such as the operating rooms.

The uniforms will be the same as those provided to Registered Nurses in other NYP facilities, including Morgan Stanley Children’s Hospital, The Allen Hospital, and the Columbia University Irving Medical Center. The uniforms will be provided at no charge to the Registered Nurses as set forth in the attached flyer, which will be distributed to the nurses who will be covered by the new policy.

We believe that this new uniform will help create a more professional appearance in patient care areas, and because the color and style of the uniform will be unique to nurses, it will be easier for patients and their families to determine the professional status of the nurses.

In order to allow time for measurement, selection and delivery of the new uniforms, the requirement to wear such uniforms will not go into effect until March 1, 2024. Although the uniforms may be delivered before that date, nurses may continue to wear their current uniforms until that date.

Please let me know if you have any questions or would like to discuss the new policy.” (GC Ex. 12).

The attached flyer announced the introduction of new uniforms. The flyer indicated that: “Uniforms will be coming to BMH for RN staff at no cost to you. Units that currently use the scrub machine will continue to utilize those scrubs. Orders can be placed...beginning 12.06.2023. Fulltime employees will receive 4 pants, 4 tops, and 1 jacket or vest.” (GC Ex. 12).

Later on, November 30th, Alan Levin held two town halls with the Employer’s registered nurses. The first town hall took place at 3:30pm and the second one was held at 11:30pm.¹⁰ (GC Ex. 25). Levin testified that at the town hall, he told employees that they were required to wear the new uniforms because it was a new policy and the Employer was giving employees ample time to order uniforms and figure out sizing. Levin could not recall whether he informed

¹⁰ Levin testified that he holds town halls on a quarterly basis to give nurses updates about recruitment, retention, and other matters. (Tr. 330).

employees at the town hall that they would be subject to discipline for non-compliance with the dress code policy, but he testified that the intent of a policy is to be able to enforce it. (Tr. 341-342).

Union chief delegate and bargaining committee member Irving Campbell attended the 11:30pm session, along with about 30-35 bargaining unit nurses. (Tr. 191, 208, 210). Before the meeting, Campbell and other Union committee members received word that the Employer was implementing a mandatory uniform policy and this would be a topic of discussion at the town hall. (Tr. 207). Campbell testified that at the town hall, Levin spoke about the AndGo system the Employer used for reporting illnesses and callouts, and staffing – specifically how many nurses had been hired and how many left the hospital. Levin then presented a PowerPoint titled “New York-Presbyterian Brooklyn Methodist Hospital Uniform Program.” (Tr. 210-211).

Campbell further testified that Levin spoke about how and when uniforms would be made available and why the Employer was initiating this mandatory uniform policy. Levin said that the uniform would consist of a top, which would be white for a large majority of nurses except for particular areas like the operating room. Levin added that the uniform bottom would be navy blue and would either be pants or a skirt. (Tr. 213). Levin said that this was a good change because patients would be able to recognize their nurse. He also said that uniform ordering would begin the following week with a soft start in March 2024, and that full-time employees would receive vouchers for 4 uniforms, including a top, bottom, and jacket, and part-time employees would receive a pro-rated amount. (Tr. 211).

Campbell spoke up at the meeting and told Levin that the implementation of this mandatory uniform program was done in bad faith. He said that nurses were unhappy and disappointed that the Employer was taking a unilateral approach to put this new policy in effect after this was raised and rejected at the bargaining table. (Tr. 213). Campbell then asked Levin if nurses would be disciplined if they were not in uniform after the soft start. Levin responded that nurses out of compliance would be subject to disciplinary action and once they went live in March 2024, the Employer expected nurses to be in uniform. (Tr. 214-215).

The Parties Exchange Correspondence Regarding the Employer’s Uniform Policy Changes

Campbell emailed Flynn a summary of what transpired at the town hall he attended and on December 1, Flynn emailed Levin the following letter:

“I am in receipt of your letter dated November 30, 2023, regarding uniform changes for our members. Please be advised that the Association is not in agreement with the changes to the terms and conditions of our members’ employment and the violation of Hospital Policy #9237-017 (Dress Code)...that are described in your letter. We are requesting the Hospital cease and desist its plan to implement these changes, including but not limited to mandating our members to wear specific uniforms.” (GC Exs. 13-14; Tr. 81, 83-85, 216).

Ten days later, Levin emailed the below response to Flynn:

“As you know, under Section 16, Mgmt Rights Clause, requiring uniforms is something we have the right to do.

Our nurses are vital to how we provide care to our patients. Ensuring a consistent professional appearance for our nurses through a standard uniform will be an integral part of improving the care we provide to our patients as they will be able to more easily identify our registered nurses. And we are providing this at no cost to our nurses.

We will be happy to meet to discuss any concerns you may have related to this change.” (GC Ex. 15; Tr. 85, 327).

On December 20, Flynn emailed Levin the following response to Levin’s December 11th email:

“...We do not agree that management has the right to unilaterally change the terms and conditions of employment by requiring our members to be mandated to wear the uniforms described in your correspondence with us and our members. We continue to demand that the Hospital cease and desist its plan to change our members’ terms and conditions of employment and mandate them to wear the uniforms you have described. If you have any questions or comments, please contact me.” (GC Ex. 16, Tr. 88).

The Hospital then ratcheted up the rhetoric in its email response to the Union. This letter, dated December 21, 2023, accused the Union of attempting to disrupt hospital operations by instructing RNs, via postings on the Union’s bulletin boards, to refuse to follow management directions regarding wearing hospital-provided uniforms. Kranich wrote that such instructions violate Section 9 of the parties’ CBA (Business or Employment Interruption) because the Union is directing nurses to disobey rules and engage in insubordination. Kranich requested that the Union cease and desist its conduct and retract any instructions to employees regarding refusing to follow management’s directions. At the tail end of his letter, Kranich wrote, “...on November 30, 2023, we offered to meet and discuss the uniform policy with you. Though you have not taken us up on that offer to date, we remain ready to discuss and look forward to hearing from you.” (GC Ex. 17).

Flynn testified that Kranich’s letter was referring to GC Exhibit 10 – the “Know Your Contract” flyer – that had been posted on the Union bulletin boards in July 2023 and had not been taken down. (Tr. 90-91). After receiving Flynn’s letter, the Union removed GC Exhibit 10 from its bulletin boards and offered a series of dates for the parties to discuss the uniform policy. (Tr. 91). Flynn then emailed Kranich the following on December 27th:

“It remains our position that the hospital is committing an unfair labor practice by changing the terms and conditions of our members’ employment by introducing the uniform policy described in the hospital’s correspondences. We have filed an ULP charge with the NLRB, and you should get a copy of that soon. Also, disciplining any of our members who do not comply with the policy would only exacerbate the legal problem the hospital has created. We are taking down the flyer the hospital objected to

only to avoid such problems. We are willing to meet and discuss the issue with you, but I have to reiterate that NYSNA has no obligation to bargain over this mandatory term and condition. We just finished bargaining on June 1, 2023, and as you know, the hospital in bargaining tried and failed to introduce this same uniform requirement, after many of the nurses spoke out against it. Because of that, this is all especially frustrating to us. We will continue to hold 1/3 and 1/4. Let us know your availability upon your return.” (GC Ex. 18).

On January 3, 2024, Kranich emailed Flynn indicating that the Employer disagreed with the Union’s position but was interested in speaking with the Union to better address the Union’s concerns. They agreed to meet the next day. (GC Ex. 19).

The Parties Discuss the Uniform Issue on January 4, 2024

The parties met via Zoom on January 4, 2024. Flynn and the 16-member executive committee attended on behalf of the Union and Kranich, Levin, and Stacie Williams (vice-president of labor relations and strategy for New York Presbyterian) attended on behalf of the Employer. (GC Ex. 21; Tr. 94-95). Levin testified that the goal of the meeting was to try and understand the issues the Union had with the mandatory uniform policy and see if the Employer could address these issues even though the Employer believed that the management rights clause permitted this change in policy. (Tr. 328). Flynn testified that he told the Employer that the Union had two issues with the policy – 1) it was mandatory; and 2) employees could be disciplined for not wearing the uniforms. Flynn said that the parties could resolve the matter if the Employer agreed to make the uniforms voluntary. (Tr. 96). The parties caucused and the Employer representatives said that they would not agree to make the program voluntary. Flynn said in response that the Employer put this issue on the table and tried to bargain it. The Union did not agree to it at bargaining and then you come back and implement it on your own. Flynn said that this was bad faith and the Employer should not be doing this. (Tr. 97). Stacie Williams said that the Employer withdrew its uniform proposal at bargaining to get the contract done and Flynn said that the Union withdrew a lot of things to finalize the contract. (Tr. 97). The meeting ended with no agreement and no discussion regarding the number of vouchers to be provided to nurses or the type/brand of uniforms. (Tr. 105, 329, 398).

On January 24, 2024, Williams emailed Flynn the following letter:

“This memo is a follow-up to the meeting we had on January 4, 2024, to discuss the impact of our new uniform program as it relates to the RNs at NYP/Brooklyn Methodist Hospital. At that meeting, you did not share any concerns regarding the actual program, the implementation timeline or the actual uniforms. Your only issues were that we are making participation in the program mandatory, and that failure to comply would make an RN subject to corrective action. Furthermore, you did not share any reasons as to why you believed our RNs would not be able to or would not want to comply, only that you did not want the program to be mandatory and that you objected to the fact that RNs who failed to comply would be subject to corrective action. To reiterate what we have already expressed to you, ensuring a consistent professional appearance for our nurses through a standard uniform is an integral part of improving the care we provide to our patients as

they will be able to more easily identify our registered nurses. Therefore, we will continue with our plans to implement our program, effective March 1, 2024. We remain willing to meet to discuss any concerns you may have, other than our expectations that all RNs participate, or that RNs who fail to comply with the uniform program will be subject to corrective action.” (GC Ex. 21).

The New Dress Code Takes Effect in March 2024

Alan Levin testified that the new dress code took effect in mid-March 2024 to ensure that nurses had time to place orders and work through sizing issues. (Tr. 360). The Union did not file a grievance over the new uniform policy when it was implemented in March 2024.

The parties stipulated that the current required uniform for nurses is a white scrub top with a red NYP embroidered logo on one side and a red RN logo on the other side, along with navy blue pants and if a nurse chooses, either a navy blue vest or zip up long-sleeve jacket with a similar NYP red embroidered logo on one side of the vest/jacket and RN logo on the other side.¹¹ (Tr. 13). The parties also stipulated that the Employer has not issued discipline to employees based on non-compliance with the uniform policy since its effective date of March 1, 2024. (Tr. 15). Furthermore, the parties stipulated that the hospital enforces this uniform policy by written and verbal instructions to nurses that their failure to comply with the uniform policy may result in discipline and these communications are not maintained in the employee’s personnel file.¹² (Tr. 17).

I asked Brian Flynn what the bargaining unit’s issues were with the new dress code (other than the fact that it was mandatory). Flynn testified that there was no flexibility in the new dress code. For example, nurses are no longer permitted to wear a sweater when they are cold and if you want to wear a jacket, you may only wear a NYP labeled jacket. (Tr. 142). Additionally, Flynn stated that many nurses ride the subway to work and they don’t want subway riders to know where they work. Flynn also testified that nurses prefer to work in clothes they are comfortable wearing and they don’t want to face disciplinary measures if they can’t do their laundry fast enough. (Tr. 143).

I also asked Alan Levin why the Employer made a bargaining proposal concerning uniforms if it believed that it was privileged under the parties’ management rights clause to make this change on its own. Levin said that the Employer hoped to negotiate the quantity of uniforms it would provide to unit employees and whether to throw in jackets as an extra perk.¹³ (Tr. 355).

¹¹ In May 2024, the Employer updated its campus-wide Nursing Administrative Policy Manual to reflect that New York Presbyterian’s Dress Code Policy now applies at all campuses, including New York Presbyterian – Brooklyn Methodist Hospital. (GC Exs. 22-23; Tr. 284-285).

¹² One example in the record of this happening is Michele Oppong’s testimony about her conversation and subsequent email to Miner 7 registered nurse Stacey Greenidge concerning the one occasion in August 2023 when Greenidge wore aqua-colored scrubs to work. (GC Ex. 29; Tr. 284-285).

¹³ Aaron Kranich also emphasized that the Employer viewed its uniform proposal as an economic one, in the same vein as the wage, staffing, and retirement proposals that were tendered at the same time. (Tr. 390-391).

Analysis

Deferral is a threshold issue which must be decided prior to addressing the merits of the allegations I am tasked to decide here. *VHS of Michigan, Inc. d/b/a Detroit Medical Center*, 369 NLRB No. 41, slip op. at 1 (2020); *United Hoisting & Scaffolding, Inc.*, 360 NLRB 1258, 1260 (2014). In this case, the Respondent timely raised deferral as a defense in its answer to the complaint, on the record at the hearing, and in its post-hearing brief. But in its August 4th submission, Respondent reversed course, refused to waive timeliness defenses to allow for the processing of a grievance concerning the uniform dispute, and for the first time, asserted that it was no longer requesting deferral. Based on the Respondent's abrupt about-face, deferral is not appropriate in this case.

The use of grievance-arbitration procedures to resolve disputes is favored as a matter of national labor policy, and the Board has considerable discretion to defer to those processes when doing so will serve the fundamental aims of the Act. *VHS of Michigan, Inc. d/b/a Detroit Medical Center*, 369 NLRB at slip op. 1; *Wonder Bread*, 343 NLRB 55, 55 (2004). The test for determining whether prearbitral deferral is appropriate considers the following six factors: (1) whether the dispute arose within the confines of a long and productive collective-bargaining relationship; (2) whether there is a claim of employer animosity to the employees' exercise of protected rights; (3) whether the agreement provides for arbitration in a very broad range of disputes; (4) whether the arbitration clause clearly encompasses the dispute at issue; (5) whether the employer asserts its willingness to resort to arbitration for the dispute; and (6) whether the dispute is eminently well suited to resolution by arbitration. *Wonder Bread*, 343 NLRB at 55.

Factor 1 – The Parties Have a Long and Productive Collective-Bargaining Relationship

The Union and the Employer have had a collective-bargaining relationship for at least 22 years, and the record contains no evidence of the Employer failing to bargain in good faith during the parties' last contract negotiation. The record also shows that during the life of the 2023-2026 collective bargaining agreement, the parties arbitrated a grievance implicating the parties' management rights clause. (Resp. Ex. 4). Thus, the parties' long and productive collective-bargaining relationship supports deferral of the instant matter.

Factor 2 – There is No Claim of Animosity Towards the Employees' Exercise of Protected Rights

The alleged unfair labor practice in this case is a unilateral change in violation of Section 8(a)(5) of the Act. There were no 8(a)(1) or 8(a)(3) allegations associated with this complaint. Thus, there is no claim of animosity towards employees' exercise of protected rights. Anecdotal testimony in this case revealed the Employer respecting employees' *Weingarten* rights, the Union exercising its right to engage in informational picketing, and executive committee member Irving Campbell questioning Alan Levin at the nursing town hall concerning the legality of the Employer's implementation of the mandatory uniform policy – with no hint of the Employer retaliating against the exercise of these protected rights. Therefore, the second factor clearly supports deferral of this matter.

Factors 3 and 4 – The Agreement Provides for Arbitration in a Broad Range of Disputes and the Arbitration Clause Clearly Encompasses the Dispute

The parties' grievance and arbitration procedure contains expansive language regarding the scope of grievances filed. To this end, Section 17.01 of the CBA permits the filing of a grievance involving "an alleged violation of a specific provision of this Agreement."

The parties' management rights clause grants the Employer "the sole and exclusive right to promulgate rules and regulations; direct, designate, schedule and assign duties to the work force; plan, direct and control the entire operation of the Hospital...and carry out the ordinary and customary functions of management whether or not possessed or exercised by the Hospital prior to the execution of this Agreement, except as limited herein..."

The Board in *Wonder Bread* deferred a charge with similar management rights clause language coupled with expansive grievance arbitration language. In that case, the complaint alleged that the employer violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain with the union before unilaterally requiring its sales representatives to submit to physical examinations, including possible drug testing, pursuant to DOT regulations. The *Wonder Bread* CBA provided that "the Union recognizes that the management of the plant, the methods of operation, and the direction of the workforce is vested in the company except as specifically modified by this Agreement." The parties' grievance and arbitration procedure also provided for final and binding arbitration of "any difference...between the Company and the Union as to the interpretation or application of any provision of this Agreement." The General Counsel in *Wonder Bread* opposed deferral on the basis that neither the management-rights clause nor any other contract provision could reasonably be interpreted as authorizing the alleged unilateral action. The Board rejected this argument, asserting that so long as an interpretation of the agreement is implicated, and there is no restriction on the subject matter of grievances filed, then the Board defers. The Board also stated that *Collyer* prearbitral deferral of unfair labor practice charges challenging unilateral changes is appropriate even if no specific contractual provision's meaning is in dispute. Thus, the respondent's reliance on the management-rights clause created a dispute as to the interpretation of the agreement and deferral is appropriate regardless of whether the Board would interpret the management-rights clause as justifying the unilateral change at issue. *Id.* at 56-57.

In the instant case, when the Union learned in August 2023, that the Employer was attempting to enforce a dress code (navy blue pants and white tops) that had not been agreed to in bargaining, the Union filed a class action grievance. In its grievance, the Union asserted that the Employer had violated the CBA's management rights clause. The Union then amended this grievance about a month later, adding a violation of Section 18.06 of the CBA (harassment/workplace violence) to the management rights clause violation. Although this grievance predated the November 30th announcement of the new mandatory uniform policy by a few months, by filing this grievance, the Union made clear that it believed the Employer violated the parties' CBA and the parties' grievance procedure was the appropriate avenue for resolving this dispute. Therefore, these factors support deferral of this matter.

Factors 5 and 6 – The Employer’s Willingness to Arbitrate and Whether This Dispute is Well Suited to Arbitration

In its supplemental brief, Respondent stated that it is not willing to waive timeliness defenses to allow for the filing and processing of a grievance on the merits. Considering that we are almost three years removed from the alleged unlawful introduction of mandatory uniforms at Respondent’s Brooklyn facility, no grievance has been filed concerning this change, and Respondent is no longer willing to arbitrate this matter, the final two *Wonder Bread* factors overwhelmingly tilt the board against deferral. Under these circumstances, deferral here will not serve the fundamental purposes of the Act. Therefore, I will analyze this case on its merits.

The New Uniform Policy Constitutes a Material, Substantial, and Significant Change to Employees’ Terms and Conditions of Employment

Employers have a duty to bargain in good faith with union representatives about mandatory subjects of bargaining, which generally include uniform requirements and workplace attire. *Salem Hospital Corp.*, 360 NLRB 768, 769 (2014); *Crittenton Hospital*, 342 NLRB 686, 690 (2004). To be unlawful, however, there must be evidence that the unilateral change was a material, substantial, and significant change to employees’ terms and conditions of employment. *Salem Hospital Corp.*, 360 NLRB at 769; *Peerless Food Products*, 236 NLRB 161, 161 (1978). Whether a change rises to that level is determined “by the extent to which it departs from the existing terms and conditions affecting employees.” *Southern California Edison Co.*, 284 NLRB 1205, 1205 fn. 1 (1987), enfd. 852 F.2d 572 (9th Circ. 1988).

Respondent asserts that its introduction of mandatory uniforms does not constitute a material, substantial, or significant change to its employees’ terms and conditions of employment. Board law, however, holds otherwise, and *Salem Hospital* is directly on point. In *Salem*, the employer revised its dress code to assign color-coded uniforms to each hospital department and planned to provide three free uniforms to each employee to help ease the transition to the new dress code policy. The employer’s principals testified that the purpose of the new policy was to improve the professional image of the employer’s employees and the color-coded uniform system was also designed to help staff, patients, and visitors more easily identify and distinguish employees. *Salem Hospital Corp.*, 360 NLRB at 768.

The Board in *Salem* held that the new dress code policy differed materially, substantially, and significantly from existing handbook provisions on personal appearance and discipline. Under the handbook provisions, employees had wide latitude to determine the color and type of their scrubs and employees were permitted to wear sweatshirts and fleece jackets. Under the new policy employees were required to wear color-coded uniforms and only coordinating solid or print warm-up jackets were permitted. *Id.* at 769. The *Salem* Board reasoned that these changes had a significant financial impact on unit employees. Specifically, the Board highlighted the fact that the employer’s changes had rendered useless most of the employees’ personal scrub inventories containing colors and styles incompatible with the new dress code. Additionally, the Board noted that since sweatshirts and fleeces were no longer permitted, employees who wished to stay warm while on the job would have to purchase, at their own

expense, coordinating solid or print warm-up jackets. *Id.* Thus, the Board found the employer's changes to the dress code to be material, substantial, and significant.

The Board's reasoning in *Salem Hospital* aligns with the facts in the case before me. To this end, the Respondent's limitations on uniform colors rendered unusable the scrubs and other attire nurses wore on the job prior to the March 2024 change in policy. And while the Respondent is providing bargaining unit employees with a set number of tops and bottoms each year, implicit in that offer, is that nurses who need additional uniform-compliant tops and bottoms (whether their originals were damaged, lost, or dirty) must purchase them on their own dime. Additionally, before the change, Respondent's nurses were permitted to wear fleeces or jackets to stay warm during the winter. Under the new policy, nurses are given one specific type of vest or jacket. If a nurse works several days each week, they either have to wash their one NYP-approved outer garment, purchase additional vests or jackets at their own expense, or be cold. According to the Board, the above changes are material, substantial, and significant as they relate to employees' terms and conditions of employment.

Respondent's New Uniform Requirement Was Different in Scope from Previous Dress Code Changes

On page 20 of its post-hearing brief, Respondent argues that it has a long-established past practice of modifying its RN dress code such that the Respondent's most-recent RN uniform modification was part of a long-running status quo, obviating the need for bargaining. I do not agree. While the record evidence indicates that the Respondent modified its perioperative dress code in about 2018 without first bargaining with the Union, that change impacted only about 100 out of 1,400 bargaining unit nurses, and this change was consistent with longstanding hospital policies permitting individual units to set their own dress codes. The record revealed that Miner 7 periodically changed its dress code from white to blue/white or blue/blue, but this change only impacted about 30 bargaining unit nurses and was consistent with the hospital's discretion in this area.¹⁴ Although Alan Levin observed a rainbow of colors when he started working at the hospital, the record is bereft of details regarding when the individual units set their own unique dress codes, and how often they changed.

The March 2024 dress code change, however, was dramatically different in scope from earlier dress code changes. To this end, the March 2024 changes impacted the entire bargaining unit, save for the 100 or so registered nurses in perioperative areas that continued to wear their burgundy scrubs. This was a hospital-wide edict to create uniformity in dress for the hospital's registered nurses, which is a giant leap from the previously sanctioned unit-by unit dress codes. And even the nurses working on Miner 7 had to swap out their white top and navy-blue pants for those embroidered with the NYP logo. Thus, although employees could reasonably expect their own individual units to change their dress codes based on the clear language in the Employer's HR policy manual, there was no past practice countenancing the standardization of uniforms for

¹⁴ Although the Respondent's dress code policies indicated that they had been revised numerous times over the years, Aaron Kranich testified that the term "revised" used on the document did not necessarily indicate that changes were made. Thus, despite the numerous "revisions," there is little record evidence of actual changes, and certainly not enough to establish a regular past practice.

all registered nurses at the hospital. Therefore, Respondent's defense that this change was merely a continuation of the status quo is not supported by the record evidence.

Respondent's Unilateral Change is Not Privileged Under the Clear and Unmistakable Waiver Standard or the Contract Coverage Standard

On December 10, 2024, the Board issued its decision in *Endurance Environmental Solutions, LLC*, 373 NLRB No. 141 (2024). In *Endurance Environmental*, the Board returned to the clear and unmistakable waiver standard when evaluating employers' asserted contractual defenses to a charge of unlawful unilateral action. 373 NLRB at slip op. 19. Under the clear and unmistakable waiver standard, the Board looks to the precise wording of the relevant contract provisions. Management-rights clauses that are couched in general terms and make no reference to any particular subject area will not be construed as waivers of the statutory right to bargain over a specific subject. *Id.* at slip op. 22. A waiver of bargaining rights may also be evidenced by bargaining history, but the evidence must show that the specific issue was "fully discussed and consciously explored" during negotiations and that "the union consciously yielded or clearly and unmistakably waived its interest in the matter." *Id.* at slip op. 23, citing *E.I. du Pont de Nemours & Co.*, 368 NLRB No. 48, slip op. at 8 (2019); *American Diamond Tool*, 306 NLRB 570, 570 (1992).

The *Endurance Environmental* Board, however, punted on the question of applying this new standard retroactively in all pending cases, leaving resolution of that question to a case-by-case determination using the Board's "manifest injustice" standard. 373 NLRB at slip op. 21. Under this standard, the Board applies policy changes retroactively unless retroactive application would work a "manifest injustice." *Id.* In making this determination, the Board considers "the reliance of the parties on preexisting law, the effect of retroactivity on accomplishment of the purposes of the Act, and any particular injustice arising from retroactive application." *Id.*, citing *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947).

In this case, the bargaining session where the Employer first proposed a new uniform policy took place on April 12, 2023, the uniform policy change was announced by the Employer on November 30, 2023, and the Union filed the initial ULP charge on December 26, 2023. At the time of all three events, *MV Transportation, Inc.*, 368 NLRB No. 66 (2019) and the contract coverage test were binding Board law.¹⁵ But the operative language in the management rights clause had not changed throughout several contracts, the most recent of which was effective from May 2019, which predated the Board's *MV Transportation* decision by about four months. I, however, need not decide whether to retroactively apply the clear and unmistakable waiver standard because, as will be explained below, I find a violation under both the clear and unmistakable waiver standard and the contract coverage test.

¹⁵ Although Respondent's post-hearing brief noted these facts and stated its preference for the contract coverage test vis-à-vis the clear and unmistakable waiver standard, Respondent did not address in its brief how the application of *Endurance Environmental's* clear and unmistakable waiver test would constitute a manifest injustice here.

Respondent Violated Section 8(a)(5) of the Act Under the Clear and Unmistakable Waiver Standard

As noted above, under the clear and unmistakable waiver standard, management-rights clauses that are couched in general terms and make no reference to any particular subject area will not be construed as waivers of the statutory right to bargain over a specific subject, and a waiver of bargaining rights may also be evidenced by bargaining history. In this case, the parties' management rights clause notes that the Employer retains the sole and exclusive right to promulgate rules and regulations, but there is no specific reference to uniforms anywhere in the management rights clause, or the entire collective bargaining agreement for that matter. And the parties' actions at the bargaining table make clear that the Union never waived its right to bargain over uniforms. To this end, on April 12, 2023, the Employer proposed a new article governing mandatory uniforms. CNO Alan Levin presented this proposal at the bargaining session and the Union never supplied a counterproposal. Instead, the Union flooded the hospital with "We Need RNs Not Uniforms" stickers, distributed flyers to members touting this phrase, and displayed placards with the same "We Need RNs Not Uniforms" language during the May 4th informational picketing outside the hospital. (Tr. 61-67). The Employer withdrew its uniform proposal, never offered a replacement or refinement of the proposal, and no such uniform proposal made it into the final contract. Additionally, the Union trumpeted the fact that it had rebuffed the Employer's mandatory uniform proposal when it distributed summaries of the temporary agreement to unit employees in preparation for the contract ratification vote (GC Ex. 24). Based on the management rights clause language, the parties' exchanges at the table, and the Union's consistent messaging celebrating its ability to negotiate a new contract that did not include mandatory uniforms, the Union did not clearly and unmistakably waive its right to negotiate over mandatory uniforms. Consequently, the Employer's unilateral introduction of a mandatory uniform for all registered nurses violated Section 8(a)(5) of the Act.

Respondent Violated Section 8(a)(5) of the Act Under the Contract Coverage Test

Under the contract coverage test, the Board will examine the plain language of the collective-bargaining agreement to determine whether action taken by an employer was within the compass or scope of contractual language granting the employer the right to act unilaterally. The Board will conduct this review applying ordinary principles of contract interpretation. If it is determined that the disputed act does not come within the compass or scope of a contract provision that grants the employer the right to act unilaterally, the analysis is one of waiver. *MV Transportation*, 368 NLRB at slip op. 2.

At first glance, the management rights clause here, which granted the hospital the sole and exclusive right to promulgate rules and regulations, appears to have privileged the Employer's unilateral actions. But the *MV Transportation* Board made clear that the collective-bargaining process envisioned by Congress is one in which the parties exchange proposals to try to reach an agreement that will compromise their differences. *Id.* at 8. The Board went on to say that contract coverage supports the practice and procedure of collective bargaining, in alignment with Section 1 of the Act, by encouraging employers and unions to "engage in the effort...to foresee potential labor-management relations issues, and resolve those issues" through collective bargaining "in as comprehensive a manner as practicable." *Id.* at 13, citing *Department of Justice*

v. FLRA, 875 F.3d 667, 674 (D.C. Cir. 2017). As such, the terms of the agreement represent the parties' bargained-for deal, arrived at through the give-and-take of negotiations, and the parties are entitled to the benefit of their bargain based on the language they agreed to include in their contract. *MV Transportation*, 368 NLRB at slip op. 1.

5 Giving the parties the benefit of their bargain here means reconciling the language of the management rights clause with the Union successfully rebuffing the Employer's efforts to add mandatory uniform language to the 2023-2026 CBA. In this regard, the Employer presented its "new" uniform proposal on April 12, 2023. At no time during its presentation of this contract
10 proposal did the Employer convey its belief that the parties' management rights clause privileged unilateral action on a facility-wide mandatory uniform policy.¹⁶ And proposing contract language on this subject certainly sends a message to the Union that the Employer did not have the authority to unilaterally implement its mandatory uniform policy.

15 When I asked CNO Alan Levin why the Employer made this proposal if it believed it had a right to implement this policy change on its own, Levin said that the Employer hoped to negotiate over the quantity of uniforms and to throw in jackets as an extra perk. But Levin conceded that he never mentioned this at the bargaining table, and the parties never actually discussed uniform costs or haggled over the number of jackets at any time during negotiations.¹⁷
20 Instead, Levin just told the Union that uniforms bring people together, nurses take pride in uniforms, and uniforms are a positive thing. (Tr. 322, 357). If the Employer had represented at the table that the existing management rights clause permitted unilateral action on this subject, the Union could have proposed amended management rights language to narrow the scope of this clause. But armed only with the Employer's written uniform proposal and Levin's bare bones
25 explanation for why the Employer sought to include this new language in the contract, the Union pushed back in the most logical way – it fought to keep this new proposed language out of the contract – and it was successful. The Union heralded this achievement in preparation for the contract ratification vote and reminded unit employees of this fact when reports of the Employer mandating uniform requirements surfaced in the summer of 2023. To apply the contract
30 coverage test without factoring in this directly on point bargaining history nullifies the Union's bargaining posture and results as well as the compromises both sides made to reach agreement on a new contract.

35 If the Employer had never brought up uniforms during the most recent contract negotiations, and then unilaterally implemented its mandatory uniform policy under the authority

¹⁶ Levin also did not mention the management rights clause in his November 30th conversation with Flynn and correspondence on the same day announcing the Employer's implementation of the uniform requirement.

¹⁷ The Employer describes its uniform proposal as economic. While there is certainly a cost outlay to the Employer for each uniform provided (estimated at \$250/each), there are non-economic elements in this proposal as well. To this end, the April 12th proposal states that the Employer will determine the style and color of the standardized uniform that nurses will be required to wear. The style, color, and mandatory nature of the uniform proposal to which the Union was entitled to respond, and bargain, are non-economic issues. Plus, Levin explained that the Employer was motivated to implement this policy to create a more professional appearance for hospital nurses and for patients to more easily recognize their nurses. These are decidedly non-economic factors.

granted by the management rights clause, I believe that the contract coverage test would have privileged this unilateral action. But the Employer did propose new language regarding mandatory uniforms during the parties' most recent contract negotiations. The give-and-take on this issue, and the Union's ultimate success in pushing back against this language, must be considered to provide both parties with the benefit of their bargain. In this context, I find that the contract coverage test did not privilege the Employer's unilateral action here and the Employer violated Section 8(a)(5) of the Act.

CONCLUSIONS OF LAW

1. New York Presbyterian – Brooklyn Methodist Hospital (the Employer or Respondent) is an employer engaged in commerce within the meaning of Sections 2(2), (6), (7), and (14) of the Act.
2. New York State Nurses Association (NYSNA or the Union) is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has violated Section 8(a)(5) and (1) by changing its unit employees' terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain over the Respondent's decision to implement a mandatory dress code for unit employees.
4. The foregoing unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by changing its unit employees' terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain over the decision to implement a mandatory uniform requirement for bargaining unit registered nurses, I order Respondent to rescind this unilateral change and notify and bargain with the Union before any changes to unit employees' terms and conditions of employment are made.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁸

¹⁸If 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 due under the terms of this Order.

ORDER

The Respondent, New York Presbyterian – Brooklyn Methodist Hospital, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Changing the terms and conditions of employment of its unit employees without first notifying the Union and giving it an opportunity to bargain.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit:

All full-time, regular part-time, per diem and temporary registered professional nurses and all full-time, regular part-time, per diem and temporary persons lawfully authorized by permit to practice as registered professional nurses, classified in both cases as staff nurses, senior staff nurses, nurse reviewer, discharge planner, and antepartum testing nurses per diem and temporary employed by the Hospital, but excluding Senior Vice President for Nursing, Associate Vice President for Nursing, Associate Directors of Nursing, Assistant Directors of Nursing, Nurse Epidemiologists, Director of Nursing Education, Director of Discharge Planning, Nursing Supervisors, Supervisor Nurse Reviewer, Nurse Practitioner, Discharge Planning Supervisor, Director of Patient Services, Continuity Care Coordinator, Quality Assurance Coordinator, Nursing Computer Coordinator, Radiation Unit Coordinator, Staff Development Instructors, Clinical Nurse Specialists, Health Service Nurse, Nurse Recruiter, Peri Operative Head Nurse, Director of Operating Room, Community Health Nurse Supervisor, Nurse Manager, Assistant Nurse Manager, supervisors as defined in the National Labor Relations Act, as amended, and all other employees employed by the Hospital at its facilities at 506 6th Street, Brooklyn, New York.

(b) Rescind the changes in the terms and conditions of employment for its unit employees that were unilaterally announced on November 30, 2023, and unilaterally implemented in March 2024.

(c) Make unit employees whole for any losses incurred by them due to Respondent's unilateral changes to the dress code that were announced on November 30, 2023, and implemented in March 2024.

- (d) Rescind any disciplinary action taken against unit employees for violating the dress code that was unilaterally implemented in March 2024.
- 5 (e) Within 14 days from the date of this Order, remove from its files any reference to any disciplinary action that may have been imposed under the March 2024 dress code, and within 3 days thereafter, notify the employees in writing that this has been done and that the disciplinary action will not be used against them in any way.
- 10 (f) Within 14 days after service by the Region, post at its Brooklyn, New York facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper
- 15 notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed
- 20 the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 30, 2023.
- 25 (g) Within 21 days after service by the Region, file with the Regional Director for Region 29 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 13, 2026

30 

Michael P. Silverstein
Administrative Law Judge

**APPENDIX
NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT change your terms and conditions of employment without first notifying New York State Nurses Association (NYSNA or the Union) and giving it an opportunity to bargain.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following bargaining unit:

All full-time, regular part-time, per diem and temporary registered professional nurses and all full-time, regular part-time, per diem and temporary persons lawfully authorized by permit to practice as registered professional nurses, classified in both cases as staff nurses, senior staff nurses, nurse reviewer, discharge planner, and antepartum testing nurses per diem and temporary employed by the Hospital, but excluding Senior Vice President for Nursing, Associate Vice President for Nursing, Associate Directors of Nursing, Assistant Directors of Nursing, Nurse Epidemiologists, Director of Nursing Education, Director of Discharge Planning, Nursing Supervisors, Supervisor Nurse Reviewer, Nurse Practitioner, Discharge Planning Supervisor, Director of Patient Services, Continuity Care Coordinator, Quality Assurance Coordinator, Nursing Computer Coordinator, Radiation Unit Coordinator, Staff Development Instructors, Clinical Nurse Specialists, Health Service Nurse, Nurse Recruiter, Peri Operative Head Nurse, Director of Operating Room, Community Health Nurse Supervisor, Nurse Manager, Assistant Nurse Manager, supervisors as defined in the National Labor Relations Act, as amended, and all other employees employed by the Hospital at its facilities at 506 6th Street, Brooklyn, New York.

WE WILL rescind the changes in the dress code for our unit employees that were unilaterally announced on November 30, 2023, and unilaterally implemented in March 2024.

WE WILL make unit employees whole for any losses they may have incurred due to our unilateral changes to the dress code that we implemented in March 2024.

WE WILL rescind any disciplinary action taken against unit employees for violating the March 2024 dress code.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to any disciplinary action that may have been imposed under the March 2024 dress code, and we will, within 3 days thereafter, notify the employees in writing that this has been done and that the disciplinary action will not be used against them in any way.

New York Presbyterian – Brooklyn Methodist Hospital

(Employer)

Dated: _____ By: _____

(Representative)

(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

National Labor Relations Board Region 29
Two Metro Tech Center, Suite 5100
Brooklyn, NY 11201-3838
Hours of Operation: 9:00 a.m. to 5:30 p.m.
718-330-7713

The Administrative Law Judge's decision can be found at <https://www.nlr.gov/case/29-CA-332578> or by using the QR code below. Alternatively, you can obtain a copy of the

decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-7713.