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April 14, 2022

**VIA E-FILING & E-MAIL**

Daniel F. Fein, Esq.  
National Labor Relations Board  
Thomas P. O'Neill Jr. Federal Building  
10 Causeway Street, Room 601  
Boston, MA 02222-1001

Re: Massachusetts Nurses Association  
and St. Vincent Hospital  
NLRB Case No. 01-CA-293593

Dear Attorney Fein:

On behalf of Massachusetts Nurses Association ("MNA"), I am writing to request that the Region seek 10(j) injunctive relief in relation to the above-referenced matter with respect to the St. Vincent Hospital's ("Hospital" or "Employer") violation of Section 8(a)(5), and derivatively Section 8(a)(1), of the Act by implementing 12-hour shifts for bargaining unit RNs on its inpatient units in repudiation of the terms of the parties' Strike Settlement and without providing MNA with an opportunity to bargain in advance of the implementation of the new shifts. Injunctive relief is appropriate to prevent irreparable harm to MNA and its bargaining unit RNs where the Hospital's actions, in conjunction with its unremedied unfair labor practices in Case Nos. 01-CA-288992, 01-CA-290316, and 01-CA-290852, are very likely to cause a significant number of resignations among bargaining unit RNs and the continued undermining of and erosion of support for MNA.

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### **BACKGROUND**

MNA represents a bargaining unit of RNs employed by St. Vincent Hospital (“Hospital” or “Employer”) in Worcester, Massachusetts. MNA RNs went on strike, in support of negotiations for a successor agreement, on March 8, 2021. The strike lasted for over nine months until January 3, 2022 when the bargaining unit ratified a Strike Settlement and Return to Work Agreement (“Strike Agreement”).<sup>1</sup>

Generally, for many years, RNs on the Hospital’s inpatient units have been scheduled to work 8-hour shifts on a day shift, evening shift, and night shift. On March 25, 2022, less than three months after the return of the striking RNs to the Hospital, Christopher Borruso, Tenet Director of Labor Relations, emailed Wendy McGill, MNA Associate Director, writing, in part,

I am writing to advise you that, in accordance with Section 8.01 of the collective bargaining agreement, Saint Vincent Hospital is instituting 12 hour shifts in CWI, ED, ICU and Med-Surg. Pursuant to the new 12 hour shift schedules, the nurses will be required to work only every third weekend. The reasons for this change are that 12 hour shifts will (1) provide increased continuity of care, (2) help improve recruiting and retention by aligning our schedules more closely with industry standards, (3) eliminate the mixing of 12 and 8 hour shifts, which can unduly result in gaps in appropriate RN coverage and (4) improve the ability of SVH to staff in accordance with agreed upon grids and ratios. Please be advised that SVH will implement this change on May 1, 2022. Pursuant to Section 8.03 of the CBA, the affected nurses will be provided their new schedules at least fourteen days in advance of the schedule cycle beginning May 1.

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<sup>1</sup> As a result of the ratification, MNA and the Hospital are parties to a January 3, 2022 to December 31, 2025 collective bargaining agreement.



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On April 1, 2022, McGill responded by email writing, in part,

Regarding the 12-hour shifts, we believe there is an opportunity for us to find a mutually beneficial solution. A solution which improves the hospital's ability to retain the current nurses, its capacity and potential to recruit nurses, as well as providing nurses with schedules which would meet their personal and family needs.

Of course, we want to retain any rights under contract or law should we be unable to reach an agreement by May 1<sup>st</sup>.

We are available the following dates and times: Wednesday, April 6<sup>th</sup> 12-5, Thursday, April 7<sup>th</sup> 12-5, and Friday, April 8<sup>th</sup> 10-5.

(Email exchanged attached as Exhibit 1). Thereafter, the Hospital failed to schedule any meeting with MNA to bargain over its announced implementation of 12-hour shifts for in-patient unit RNs. Instead, Hospital CNO Jay Prosser emailed bargaining unit RNs directly inviting them to engage in direct dealing with their managers regarding the new schedule. Prosser's email (attached as Exhibit 2) stated, in part,

Saint Vincent Hospital will be moving to a 12-hour shift model for nursing care for all inpatient units (MedSurg, Critical Care, CWI, Behavioral Health) and the Emergency department effective May 1, 2022. Scheduled shifts will be 7:00 a.m. to 7:00 p.m. and 7:00 p.m. to 7:00 a.m. Nurses will be required to work only every third weekend under this new schedule.

We are aware that this will be a change for many of you and there will be a lot of questions. Your manager and/or nursing director will be reaching out to each of you to answer questions regarding schedule requirements, etc. and to try and address your concerns.

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Following its announcement, the Hospital has begun to assign RNs to new shifts, either 12-hour day shifts or a 12-hour night shifts,<sup>2</sup> on a unit-by-unit basis and without any consideration of seniority.<sup>3</sup>

The parties' Strike Settlement ensured that striking RNs would be returned to their existing positions following the conclusion of the strike. The Strike Settlement states, in relevant part,

7. The Employer and the MNA agree to the following return to work schedule for the strikers:
  - a. Beginning five (5) days after the Effective Date (as defined in paragraph 18 below) all striking nurses who were employed by the Hospital immediately prior to the strike will be recalled by the Hospital to the positions<sup>1</sup> held by each immediately prior to the strike, without any change in the terms and conditions of their employment, except to the extent that such terms and conditions have been changed by the provisions of the successor CBA. All striking nurses will be recalled no later than thirty (30) days following the Effective Date. The Hospital shall also recall all nurses, if any, who were hired during the strike but did not report to

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<sup>2</sup> Generally, RNs who worked 8-hour day shifts are being placed on 12-hour day shifts and who worked 8-hour night shifts are being placed on 12-hour night shifts. The Hospital is unilaterally choosing whether to place evening shift RNs (whose shifts spanned part of both a 12-hour day and 12-hour night) on the day or night shift.

<sup>3</sup> Managers on the CWI units initially agreed (without negotiating with MNA) that RNs would choose their new shifts by seniority on unit. That offer has now been retracted at the direction of Hospital management.



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work because of the strike; those nurses will be returned to work the position for which they were hired.

[<sup>1</sup> The term “position” is defined wherever it appears in the Return To Work Agreement as the same job title, unit, shift, and hours.]

c. The Hospital will offer:

- (1) Each nurse in an overstaffed position may elect to fill a vacancy in another bargaining unit position for which the nurse is qualified, and if more than one of the nurses in an overstaffed position wishes to accept the offer extended by the Hospital, preference will be given to the nurse with the greatest unit/departmental seniority<sup>2</sup>;
- (2) If returning the striker to their pre-strike job does not result in overstaffing, there is no further action or consideration needed.
- (3) To the extent that the return of any of the striking nurses to their positions results in an overstaffing of any such positions<sup>3</sup>, the following stipulations will apply for six months measured from the date that the last recall notice has been issued by the Employer to strikers:
  - (a) The Employer reserves the right to offer incentives to nurses in any unit or department with overstaffed positions to take alternative roles in the Hospital or severance. The Employer, in its sole discretion, will have the right to determine the terms and conditions of any incentive and any severance including, without limitation, the amount, as well as to whom

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the incentive or severance is offered provided that any incentive offered shall not be less than \$5,000 (hereinafter, "Incentive or Severance") Any offer by the Hospital of Severance under this Agreement will be the same to each nurse in any overstaffed position. With respect to the Incentive, the Incentive offered to each nurse in any overstaffed position will be the same, and in the event that within the first 7 days after the incentive is offered, more than one nurse in an overstaffed position elects to fill a vacancy, preference will be given to the nurse with the greatest unit/departmental seniority. After 7 days, the Hospital will have the discretion with respect to all terms and conditions of the Incentive, including the amount, to whom it is offered, and who is selected. If Severance is offered, it will be one week for each full year of service up to a maximum of 24 weeks. The Incentive or Severance will be voluntary, and Severance will be subject to the employee signing and not revoking a Separation Agreement that includes a General Release of Claims substantially in the form attached hereto as "Exhibit A".

- (b) The Employer may float nurses in any unit or department with overstaffed positions, to work on other units within their competency, in the Hospital's reasonable discretion, even if that unit is outside of the floating "cluster." The Employer will first solicit volunteers to float. If there are insufficient volunteers, the Employer will rotate floating in a fair and equitable manner.



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- (c) If a float is not needed, or if there are no nurses who are competent to float, the Employer may solicit volunteers to be flexed off and paid 50% of their regular daily compensation for each flex shift not worked. If there are insufficient volunteers, all nurses will be flexed on a rotating basis in a fair and equitable manner within the units or departments with overstaffed positions and each nurse so flexed shall be paid 50% of their regular daily compensation for each flex shift not worked. A nurse flexed under this section may elect to use accrued unused vacation or holiday time to make up the other 50% of pay for the shift.
  - (d) The terms of subsection (b) (Flexing) and subsection (c) (Floating) shall terminate and be replaced by the terms of the Collective Bargaining Agreement in six months measured from the date that the last recall notice has been issued by the Employer to strikers.
- (4) After six months measured from the Effective Date of this agreement, to the extent there are overstaffed departments, the following process will apply for three additional months should the Employer decide to conduct a layoff:
- (a) Nurses in any overstaffed department will have the opportunity to volunteer for available vacancies in other departments or shifts that the nurse is qualified to perform. The Employer may provide the Incentive as provided in this Agreement to any volunteers regardless of shift or whether training is required to take a vacant position within the Hospital.

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- (b) Nurses in any unit or department with overstaffed positions may be offered the option to separate from employment and receive Severance as provided in this Agreement, subject to the employee signing and not revoking a Separation Agreement that includes a General Release of Claims substantially in the form attached as Exhibit A:
- (c) If there are insufficient volunteers for vacancies in other departments or shifts or for Severance, the Employer will implement a layoff as outlined below:
  - (i) Nurses will be laid off by inverse unit/department seniority on the unit and shift that is overstaffed.
  - (ii) Impacted nurses will have the opportunity to bump nurses with less unit/department seniority on other shifts in the same unit.
  - (iii) Any nurse who is laid off may be provided with Severance as provided in this Agreement, subject to the employee signing and not revoking a Separation Agreement that includes a General Release of Claims substantially in the form attached as Exhibit A, and may be offered Incentive as provided in this Agreement to take a vacant position in the Hospital.

[<sup>3</sup> The terms “overstaffing” and “overstaffed position(s)” are defined wherever they appear as more than one nurse in a single position].



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17. In the event of any conflict between this Agreement and the parties' collective bargaining agreement, this Agreement shall control.

With respect to Work Schedules, Article 8.01 of the collective bargaining agreement provides, in part,

- 8.01 The normal workweek shall consist of seven consecutive days commencing with the day shift on Sunday and ending with the night shift on Saturday. The regular workday shall begin with the day shift.

The regularly workday for the day and evening shifts shall consist of eight and one-half (8 ½) consecutive hours, including an unpaid half-hour meal period. As part of the eight hours for which day and evening shift nurses are paid, they are permitted paid break periods totaling 30 minutes, which shall normally be taken in 15-minute increments, each occurring roughly during the first half and during the second half of the shift.

The regular work day for the night shift shall consist of eight consecutive hours, including paid break/meal period(s) totaling 30 minutes. The regular workday for 12 hours shifts shall consist of twelve and one-quarter (12 ¼) consecutive hours, including a half-hour meal period, half of which will be paid, and paid breaks totaling 30 minutes . . . .

The regular day shift shall be 6:45 a.m. to 3:15 p.m.; the regular evening shift shall be 2:45 p.m. to 11:15 p.m.; and the regular night shift shall be 11:00 p.m. to 7:00 a.m. In the department/units with shifts presently beginning at different times, those shifts will continue to begin at such times. Where the normal workday presently consists of shifts other than eight and one-half (8 ½) or 12 hours including breaks and meal periods, such shifts will continue.

If the Hospital wishes, for legitimate operational needs, to institute work schedules which provide different work weeks, work days, hours of work, shifts, and/or starting and quitting times from those defined heretofore, the Hospital shall provide the Association notice of its proposed changes and the reasons therefore, and may



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implement such proposed changes upon passage of the 30 calendar days' notice to the Association and the affected nurses. Nothing herein shall constitute a guarantee of work for any particular number of hours or particular days of the week, provided that any reduction in a nurse's work schedule outside of the Hospital's Release Time Policy shall be made pursuant to Section 16.04 ("Reduction in Force").

To date, numerous Hospital units remain overstaffed including, but not limited to, labor and delivery, the post-partum units, the nursery, and Units 34, 23, 24, and 35.

#### **ARGUMENT**

The parties explicitly agreed under the terms of the Strike Settlement that striking RNs would be given their same pre-strike job title, unit, shift, and hours upon their return to work. The Employer is now repudiating that promise, by eliminating all such inpatient positions, less than three months after striking RNs returned to work following recall.<sup>4</sup> Further, as a part of the Strike Settlement, the parties agreed upon a specific procedure for the Hospital to use to alter staffing levels in overstaffed units, including through incentives or floating, effective for six months and through a modified layoff procedure for an additional three months. The Hospital continues to have numerous overstaffed inpatient units and has repudiated the terms of the Strike Settlement pertaining to those overstaffed units by seeking to eliminate entirely the overstaffed positions through means other than those permitted by the Strike Settlement. The Strike Settlement specifically provides that its terms will govern in the event of a conflict with the collective bargaining agreement.

While MNA believes that the Hospital's actions are barred in their entirety by the Strike Settlement, even if, *arguendo*, the collective bargaining agreement permitted implementation of 12-hour shifts for all inpatient positions, the Hospital failed to provide MNA with notice and an opportunity to bargain as required by the Act over both the means of implementing the shift change and impacts of the shift change prior to implementing the shift change. Although MNA responded to the Hospital's notice of the shift change with a request to meet, the Hospital proceeded to notify RNs of the change, and has

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<sup>4</sup> Further, as presented in relation to MNA's other pending unfair labor practice charges, the Hospital exhibited no flexibility whatsoever in modifying hours of work or work schedules for returning strikers.



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begun the process of altering RNs' shifts, without bargaining with MNA as requested.

Bargaining over how RNs will be placed on the 12-hour shifts is of critical importance to bargaining unit RNs who are now being placed on new shifts without consultation with MNA and at the unilateral discretion of the Hospital. Other important impacts, central to key terms and conditions of employment for bargaining unit RNs, include RNs placement on weekend and holiday rotations and the scheduling of time off. The Hospital is acting unilaterally with respect to those issues and without bargaining with MNA.

MNA believes that the transition to 12-hour shifts for all inpatient positions, without any input or bargaining with MNA, is very likely to cause a significant number of resignations among bargaining unit RNs and the continued undermining of and erosion of support for MNA. Numerous RNs on the evening shift have notified MNA that they are unable to work the shift unilaterally selected for them by the Hospital. The Hospital's actions in this regard are a part of a continuous pattern of unfair labor practices designed to undermine support of MNA at the Hospital and minimize its involvement in setting terms and conditions of employment for bargaining unit RNs.

Please let me know if I can provide any further information that would be of assistance in this matter.

Thank you.

Very truly yours,



Kristen A. Barnes

KAB/sh

Enclosures

cc: Wendy McGill, MNA Associate Director  
Ole Hermanson, MNA Director of Strategic Campaigns

## **Exhibit 1**



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**From:** Wendy McGill  
**Sent:** Friday, April 1, 2022 3:54 PM  
**To:** Borruso, Christopher <Christopher.Borruso@tenethealth.com>  
**Cc:** La bella, Marcelino <Marcelino.Labela@tenethealth.com>; anita.holbrook1 <anita.holbrook@stvincenthospital.com>; pellegrino, Marlena <mjpellegrino@charter.net>; DOMINIQUE A Muldoon <dominique1muldoon@gmail.com>; Marie Ritacco <mritacco@mnarn.org>  
**Subject:** RE: Saint Vincent Hospital

Chris,

We have received your notice of proposed changes to schedules for nurses in the identified areas and the addition of voluntary on call shifts for nurses in the Emergency department. We welcome the addition of voluntary on call in the ED, an option ED nurses have been requesting for years.

Regarding the 12-hour shifts, we believe there is an opportunity for us to find a mutually beneficial solution. A solution which improves the hospital's ability to retain the current nurses, its capacity and potential to recruit nurses, as well as providing nurses with schedules which would meet their personal and family needs.

Of course, we want to retain any rights under contract or law should we be unable to reach an agreement by May 1<sup>st</sup>.

We are available the following dates and times: Wednesday, April 6<sup>th</sup> 12-5, Thursday, April 7<sup>th</sup> 12-5, and Friday, April 8<sup>th</sup> 10-5.

Regards,

Wendy

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: Borruso, Christopher <Christopher.Borruso@tenethealth.com>  
**Sent:** Friday, March 25, 2022 4:16 PM  
**To:** Wendy McGill <WMcGill@mnarn.org>  
**Cc:** La bella, Marcelino <Marcelino.Labela@tenethealth.com>; anita.holbrook1 <anita.holbrook@stvincenthospital.com>  
**Subject:** Saint Vincent Hospital

Ms. McGill,

I am writing to advise you that, in accordance with Section 8.01 of the collective bargaining agreement, Saint Vincent Hospital is instituting 12 hour shifts in CWI, ED, ICU and Med-Surg. Pursuant to the new 12 hour shift schedules, the nurses will be required to work only every third weekend. The reasons for this change are that 12 hour shifts will (1) provide increased continuity of care, (2) help improve recruiting and retention by aligning our schedules more closely with industry standards, (3) eliminate the mixing of 12 and 8 hour shifts, which can unduly result in gaps in appropriate RN coverage and (4) improve the ability of SVH to staff in accordance with agreed upon grids and ratios. Please be advised that SVH will implement this change on May 1, 2022. Pursuant to Section 8.03 of the CBA, the affected nurses will be provided their new schedules at least fourteen days in advance of the schedule cycle beginning May 1.

In addition, please be advised that, pursuant to Section 7.04 of the CBA, SVH is establishing voluntary on-call assignments in the Emergency Department. The ED will schedule four hour on-call shifts the nurses can voluntarily choose to fill. Nurses who volunteer to do so will be paid at the rate of \$5.00 per hour for each non-worked hour and will be paid at the rate of time and one-half for each hour worked. Regularly scheduled nurses will be eligible to volunteer for the on-call shifts provided the on-call shift will not interfere with their regularly scheduled shifts. Per diems will be eligible to work the on-call shifts after they have worked their monthly commitment of shifts/hours.

Please feel free to contact me with any questions.

Best regards,

Chris

**Christopher T. Borruso**

**Director & Sr. Counsel, Labor Relations**

**Tenet Healthcare**

**14201 North Dallas Parkway**

**Dallas, Texas 75254**

**C: 631-332-1959**

**F: 469-893-7028**



**[christopher.borruso@tenethealth.com](mailto:christopher.borruso@tenethealth.com)**



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## **Exhibit 2**

Reply    Reply All    Forward  
 Altobelli, Margherita      
**Announcement**

Sent on behalf of Jay Prosser, Chief Nursing Officer

All RNs:

Saint Vincent Hospital will be moving to a 12-hour shift model for nursing care for all inpatient nursing units (MedSurg, Critical Care, CWI, Behavioral Health) and the Emergency department effective May 1, 2022. Scheduled shifts will be 7:00 a.m. to 7:00 p.m. and 7:00 p.m. to 7:00 a.m. Nurses will be required to work only every third weekend under this new structure.

We are aware that this will be a change for many of you and there will be a lot of questions. Your manager and/or nursing director will be reaching out to each of you to answer questions regarding schedule requirements, etc. and to try and address any of your concerns.

The twelve hour shift model has become a standard in many hospitals. We believe that moving our organization to the 12-hour model will offer a number of benefits, including:

- Reduction in interruptions in the continuum of care for our patients
- Reduction in weekend requirement for staff
- Reduction in the number of flex positions that nurses are hired into
- More widespread appeal in recruiting new nurses

Your nurse managers and directors will be communicating with each of you in greater detail over the coming days.

You each are an essential part of our team here at Saint Vincent. We appreciate all that you do.

Thanks,  
Jay

Jay Prosser DNP, RN, CCRN-K, NE-BC  
Chief Nursing Officer  
Saint Vincent Hospital  
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