

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

OHIO NURSES ASSOCIATION

3760 Ridge Mill Drive
Hilliard, Ohio 43026,

Civil Action No.

and

STEPHANIE HALL

5535 Washington Avenue
Ashtabula, Ohio 44004,

COMPLAINT

(Jury Trial Demanded)

REBEKAH SPENCER

3714 Wade Avenue
Ashtabula, Ohio 44004, and

Plaintiffs,

v.

**ASHTABULA COUNTY MEDICAL
CENTER**

2420 Lake Avenue
Ashtabula, OH 44004;

SATHISH ADIGOPULA, MD

ACMC Chief of Staff
5249 Century Bay Avenue
Ashtabula, OH 44004;

PEG CARLO

5118 Chestnut Hill Drive # 4
Ashtabula, OH 44004;

ROGER CORLETT

Secretary/Treasurer
2676 Lee Road East
Ashtabula, OH 44004;

BILL DINGLEDINE

4031 Briarwood Court
Ashtabula, OH 44004;

JOE GIANGOLA

1925 Pleasantview Avenue
Ashtabula, OH 44004;

MICHAEL HABOWSKI

President & CEO ACMC
7405 Mountain Quail Place
Painesville, OH 44077;

KATHERINE K. HANCOCK

Cleveland Clinic Representative
10142 Forestwood Lane
North Royalton, OH 44133;

JASON HERGENROEDER

Cleveland Clinic Representative
38481 Berkshire Avenue
Avon, OH 44011;

NANCY KISTER

Chairperson
1444 Morton Drive
Ashtabula, OH 44004;

REV. VERNON PALO

260 Valley Road
Salem, OH 44460;

RICHARD PARKER, MD.

Cleveland Clinic Representative
225 Falls Walk Way
Chagrin Falls, OH 44022

DAVID PONTIUS

4569 Overlook Drive
Ashtabula, OH 44004;

MARLENE SARTINI

2019 Walnut Boulevard
Ashtabula, OH 44004;

CRAIG SERNIK

Chairperson-Elect
2617 Renko Road
Ashtabula, OH 44004;

ALEXANDER TAICH, MD

ACMC Vice-Chief of Staff
8679 Cardinal Drive
Willoughby, OH 44094;

JIM TIMONERE

Ashtabula City Manager
7 Ninevah Road #BC
Ashtabula, OH 44004

Defendants.

PLAINTIFFS' VERIFIED COMPLAINT
FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF,
DECLARATORY RELIEF AND DAMAGES

Plaintiff, the Ohio Nurses Association, affiliated with the American Federation of Teachers, American Federation of Labor and Congress of Industrial Organizations and individual Plaintiff Rebekah Spencer and individual Plaintiff Stephanie Hall for their Complaint against Ashtabula County Medical Center (“ACMC” or “Defendant”) and Sathish Adigopula, MD., Peg Carlo, Roger Corlett, Bill Dingledine, Joe Giangola, Michael Habowski, Katherine K. Hancock, Jason Hergenroeder, Nancy Kister, Rev. Vernon Palo, Richard Parker, MD., David Pontius, Marlene Sartini, Craig Sernik, Alexander Taich, MD., Jim Timonere hereby state:

JURISDICTION AND VENUE

1. This is an action brought pursuant to Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185 (“LMRA”), Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C § 18116, also known as the Affordable Care Act (“ACA”) and Ohio’s Nonprofit Corporate Law, Ohio Revised Code, Chapter 1702 *et seq.* and common law. This action seeks immediate injunctive relief in aid of arbitration under the LMRA for grievances filed by Plaintiff Ohio Nurses Association (“ONA”) challenging the impending unlawful closure of APMC’s Maternity Unit where ONA’s registered nurses work under a collective bargaining agreement with APMC. This action also seeks immediate injunctive and declarative relief to remedy APMC’s unlawful discrimination based on sex in the provision of health care services by Defendant APMC, as the closure discriminatorily jeopardizes and impacts women’s health in violation of the ACA. This action also seeks immediate injunctive relief pending litigation over whether individual APMC Trustee Defendants breached their fiduciary duties to Plaintiff Hall and Plaintiff Spencer, both of whom are intended beneficiaries of the nonprofit corporation’s mission and purpose, are pregnant and face unnecessary and avoidable risks caused by Defendants’ actions. There is no other hospital in the county with a maternity unit. Plaintiff Hall and Plaintiff Spencer, and other expectant mothers, will have to travel great distances to deliver their babies and thus, face higher risks of personal and infant health problems and death because of the pending closure of the Maternity Unit at APMC.

2. This Court has subject matter jurisdiction as follows: (a) under 28 U.S.C. § 1331 because the case arises under the laws of the United States, namely, the LMRA and ACA; (b) under 28 U.S.C. § 1337 because the matter in controversy arises under an Act of Congress regulating commerce, namely, the LMRA and ACA; (c) under 28 U.S.C. § 1367(a) because the supplemental Ohio state law claims are so related to claims in this action within the original jurisdiction of this Court that they form part of the same case or controversy under Article III of the United States Constitution; and (d) under 28 U.S.C. §§ 2201 and 2202 because this is an actual controversy in which the Plaintiffs seek declaratory judgment.

3. Venue under 28 U.S.C. § 1391(b)(2) and (3) is proper, and personal jurisdiction over Defendant exists in this District wherein Defendant is located, where a substantial part of the events or omissions giving rise to the claims occurred, where the unlawful closure is slated to take place on August 1, 2020, where labor relations policy is promulgated, where ACMC and the majority of witnesses are found, and where the ACMC regularly conducts business operations and has substantial contacts.

THE PARTIES

4. Plaintiff Ohio Nurses Association (hereinafter “ONA”) is the statewide professional association for registered nurses. Since 1904, its mission has been to protect, promote and advance the nursing profession, beginning with Ohio’s Nurse Practice Act. Today, ONA serves as the voice for Ohio’s 180,000 registered nurses, shaping the nursing and healthcare landscape in Ohio for the benefit of all Ohioans.

ONA is a state constituent of the American Nurses Association and the American Federation of Teachers, AFL-CIO.

5. ONA is a labor organization representing registered nurses for purposes of collective bargaining in an industry affecting commerce within the meaning of Section 301 of the LMRA, 29 U.S.C. §185(b). ONA is lawfully and contractually recognized as exclusive representative and bargaining agent of an appropriate bargaining unit of approximately one-hundred-seventy-eight registered nurses employed by Defendant APMC.

6. ONA's headquarters are located at 3760 Ridge Mill Drive Hilliard, Ohio 43026.

7. ONA undertakes this action to vindicate its own contract rights, the contract rights of the employees and beneficiaries of the collective bargaining unit whom it represents, and to preserve and protect the health of its members and our patients in our Ashtabula community.

8. Plaintiff Rebekah Spencer is a registered nurse employed by APMC, a member of ONA, an expectant mother and a resident of Ashtabula County. She resides at 3714 Wade Avenue, Ashtabula, Ohio 44004.

9. Plaintiff Stephanie Hall is an expectant mother with a high-risk pregnancy and a resident of Ashtabula County. She resides at 5535 Washington Avenue, Ashtabula, Ohio 44004.

10. Defendant Ashtabula County Medical Center is a nonprofit, two hundred-forty-nine-bed, multi-specialty hospital located at 2420 Lake Avenue, Ashtabula, Ohio in Ashtabula County, Ohio.

11. Defendant Nancy Kister, Chairperson, is a member of the Board. She resides at 1444 Morton Drive, Ashtabula, OH 44004.

12. Defendant Craig Sernik, Chairperson-Elect, is a member of the Board. He resides at 2617 Renko Road, Ashtabula, OH 44004.

13. Defendant Roger Corlett, Secretary-Treasurer, is a member of the Board. He resides at 2676 Lee Road, E., Ashtabula, OH 44004.

14. Defendant Michael Habowski, President & CEO, is a member of the Board. He resides at 7405 Mountain Quail Place, Painesville, OH 44077.

15. Defendant Peg Carlo is a member of the Board. She resides at 5118 Chestnut Hill Drive # 4, Ashtabula, OH 44004.

16. Defendant Joe Giangola is a member of the Board. He resides at 1925 Pleasantview Avenue, Ashtabula, OH 44004.

17. Defendant Bill Dingleline is a member of the Board. He resides at 4031 Briarwood Court, Ashtabula, OH 44004.

18. Defendant Rev. Vernon Palo is a member of the Board. He resides at 260 Valley Road, Salem, OH 44460.

19. Defendant Marlene Sartini is a member of the Board. She resides at 2019 Walnut Boulevard, Ashtabula, OH 44004.

20. Defendant David Pontius is a member of the Board. He resides at 4569 Overlook Drive, Ashtabula, OH 44004.

21. Defendant Jim Timonere is a member of the Board. He resides at 7 Ninevah Road, #BC, Ashtabula, OH 44004.

22. Defendant Katherine K. Hancock, Cleveland Clinic Representative, is a member of the Board. She resides at 10142 Forestwood Lane, North Royalton, OH 44133.

23. Defendant Jason Hergenroeder, Cleveland Clinic Representative, is a member of the Board. He resides at 38481 Berkshire Avenue, Avon, OH 44011.

24. Defendant Richard Parker, DO, Cleveland Clinic Representative, is a member of the Board. He resides at 225 Falls Walk Way, Chagrin Falls, OH 44022.

25. Defendant Sathish Adigopula, MD, APMC Chief of Staff, is a member of the Board. He resides at 5249 Century Bay Avenue, Ashtabula, OH 44004.

26. Defendant Alexander Taich, MD, APMC Vice-Chief of Staff, is a member of the Board. He resides at 8679 Cardinal Drive, Willoughby, OH 44094.

THE FACTS

Closure of the Maternity Unit Does Not Benefit Women or Newborns

27. Defendant Ashtabula County Medical Center (“ACMC”) is a nonprofit, two hundred-forty-nine-bed, multi-specialty hospital located at 2420 Lake Avenue, Ashtabula, Ohio in Ashtabula County, Ohio.

28. APMC is governed by a Board of Trustees (“Board”).

29. Since 1904, the ACMC has provided hospital care to the public in Ashtabula, County, and surrounding vicinities.

30. The hospital's Amended and Restated Articles of Incorporation ("Articles of Incorporation") state, in relevant part, the following:

THIRD. The purpose or purposes for which the CORPORATION is formed are:

- (a) ***To maintain and conduct a hospital*** organized and operated exclusively for charitable, scientific and educational purposes and not for profit, to provide health care ***for the residents of Ashtabula County, Ohio***, and other communities, including emergency, ***outpatient and inpatient programs of general and special health care***, community education and community health care planning, all of which provide patients with the services of qualified physicians, nurses, administrators and staff, afford patients their rights and their dignity from before birth through death, and provide preventative health education and care to the community;
- (b) In order to carry out the foregoing, among other things:
 - (i) ***To provide hospital care, clinics, and dispensaries for persons needing medical and surgical care and attention ...***

(Emphasis added).

31. ACMC is Ashtabula County's only hospital with labor and delivery services. The county has a population of approximately one-hundred-thousand residents. It performs approximately one birth per day in its Maternity Unit.

32. ACMC is affiliated with the Cleveland Clinic, an Ohio nonprofit corporation that runs an academic medical center and one-hundred-seventy acre campus in Cleveland, as well as eleven regional hospitals, nineteen family health

centers in northeast Ohio, and hospitals in Florida, Nevada and Dubai, United Arab Emirates.

33. Access to the Maternity Unit at APMC is a critical need for pregnant women in Ashtabula County. Defendants have publicly acknowledged a greater frequency of high-risk pregnancies in the county and have hereto provided necessary and accessible obstetric and gynecologic medical services to pregnant residents through the Maternity Unit at their local APMC.

34. The Board voted to close the APMC Maternity Unit,¹ leaving the community with no local maternity unit to care for expectant mothers and their babies. Defendants post-closure “plan” for expectant mothers would have them drive to or be transported to Hillcrest Hospital to give birth, some 50 minutes away by car based on optimal driving conditions.

35. For residents living on the opposite side of Ashtabula County, the drive time is even longer. In the winter, drive times for expectant mothers to Hillcrest Hospital’s Mayfield Heights location can double or triple. In response to this completely unrealistic and, indeed, dangerous circumstance, Defendants would have expectant mothers deliver in the emergency room at APMC, which is not a maternity unit nor is it staffed with trained OB-GYN registered nurses and specialists.

36. Hillcrest Hospital is a comprehensive-care Cleveland area hospital on Mayfield Road in Mayfield Heights, Ohio. It is also part of the Cleveland Clinic

¹ APMC also announced the closure of its Skilled Nursing Unit, which had shut down altogether during the COVID-19 pandemic commencing in March 2020.

Health System, with five hundred registered beds. It serves as a level II trauma center for eastern Cuyahoga, Geauga, Lake, and Portage counties. It has a maternity ward as well.

37. The President of Hillcrest Hospital is Richard Parker, M.D., who also serves on the Board of Trustees of APMC.

38. A recipient of significant federal government funding, APMC has received over \$22,000,000.00 in COVID-19 funds alone since May 2020. Defendants' decision to deny pregnant residents of Ashtabula County health care services through a maternity unit at their local hospital is not due to a lack of funds, but instead is a choice that benefits Hillcrest Hospital, not expectant mothers in the county and surrounding areas.

39. On or about June 25, 2020 APMC informed ONA of its plan to restructure the hospital and close its Maternity Unit on August 1, 2020. Despite ONA and community demands, Defendants refuse to reconsider the decision notwithstanding the negative impact on pregnant women and newborns.

A Severe Negative Impact on Women's Health

40. APMC's own 2013 report on maternal health in Ashtabula County noted that while the overall birth rate in the county is lower than elsewhere, expectant mothers in the county are more likely to demonstrate high-risk behaviors. For example, teen pregnancies in the county are higher, expectant mothers are more likely to smoke while pregnant, and they are less likely to have adequate

prenatal care in the first trimester compared to other expectant mothers throughout Ohio and the U.S.

41. Hence, Ashtabula County has more high-risk pregnancies.

42. That same report noted that the percentage of teenage pregnancies in Ashtabula County is higher compared to Ohio as a whole and the United States.

43. Notwithstanding Defendants' acknowledgement of the risks facing pregnant women and their babies, ACMC would have expectant mothers see an obstetrician at ACMC for office visits (including for the high-risk obstetric visits currently offered) only to refer these women to the Cleveland Clinic's Hillcrest Hospital for delivery.

44. Not only does ACMC's plan increase the risk that a pregnant mother will give birth in transit, this plan unnecessarily breaks the continuity of care for the expecting mother who will have to switch from the doctor at ACMC, and who has been monitoring her pregnancy, to an unfamiliar doctor at Hillcrest, thereby increasing the chances of poor patient outcomes, particularly in the high-risk pregnancy category.

45. Mothers who cannot transport in time to Hillcrest are relegated back to ACMC, but with no maternity unit to care for them. For these women, an emergency room delivery is their last best option where available emergency room doctors, inexperienced in normal deliveries (let alone high-risk ones), will deliver their child. ACMC has only offered a few hours of training for ACMC emergency room nurses, including a mock birth to equip staff to perform emergency deliveries.

This is not only unconscionable as a matter of nursing practice, but it also unnecessarily exposes those nurses to liability claims. More importantly, it deprives mothers and their babies of the safe care they desperately need during this critical time.

46. Again, because of the long drive to Hillcrest, expectant mothers – particularly low-income women without access to reliable transportation for the long trip – may be forced to forego natural delivery in favor of scheduled induced labor or cesarian section delivery, with both procedures increasing the risk of harm to mother and infant. To be clear, the women forced to make these “choices” will have been put in this position, not because it is in their best interest or the best interest of their babies, but because of ACMC and the individual Trustees’ decision to close the Maternity Unit and replace those services with a referral to Hillcrest Hospital.

47. Plaintiff Hall is thirty-two weeks pregnant ***and may deliver at any time because she is at high risk for doing so.*** She resides in Ashtabula County. Her pregnancy is considered high-risk due to her medical conditions. She has two children, both of whom were delivered at ACMC soon after she went into labor. She recently received a steroid treatment to help her fetus develop greater lung capacity in case she delivers early. She could deliver within a few weeks of the planned closure. Her doctor recently informed her of Defendants’ decision to close the Maternity Unit and of the risk that she will give birth to her child before arriving at Hillcrest Hospital. She may need transportation by emergency vehicle or helicopter.

Plaintiff Hall is concerned that she may give birth while in transit to Hillcrest and is concerned about the risks posed to her health and the health of baby by this unnecessary and avoidable circumstance. (Hall Declaration, Exhibit 1).

48. Plaintiff Spencer is twenty-six weeks pregnant. She resides in Ashtabula County and is employed by APMC as a Registered Nurse. She had planned to have her baby at APMC. Upon learning of Defendants' decision to close the Maternity Unit, she changed OB-GYN doctors and now plans to give birth to her child at Hillcrest Hospital, which is located 50 minutes away from her. She is concerned about how the unnecessary and avoidable travel time will affect her health and the health of her child. Plaintiff Spencer is also concerned about how the Defendants' decision will impact her professional career and the quality of health care services she and her fellow nurses provide to patients. Specifically, she is an operating room nurse, not an OB-GYN nurse trained in providing nursing care for emergency, high-risk or cesarean section births. While a c-section is an operation, in many cases infants require some form of neo-natal resuscitation, which requires the presence of a medical professional who is trained in monitoring fetal heart rates and other indicators of newborn health. Operating room nurses and emergency room nurses are not trained in these areas. She is concerned that the loss of a dedicated OB-GYN practice/Maternity Unit will unnecessarily increase risks to the health of mothers and babies as well as the professional liability of bargaining unit registered nurses. (Spencer Declaration, Exhibit 2).

49. Plaintiff Hall and Plaintiff Spencer are among the intended beneficiaries of APMC's mission and the medical services it provides. Indeed, the very purpose of the nonprofit corporation is to provide inpatient and outpatient medical care of a general and specialized nature at APMC to the residents of the county and surrounding area. Maintenance of a single, full-service Maternity Unit in the county is fundamental and essential to the health and well-being of women and newborns.

50. APMC has not offered any legitimate reason for the closure to ONA or in public statements.

51. There are ample, alternative modes of maternity care and medical methods to keep the Maternity Unit open that the hospital has failed to explore; APMC is indifferent to how its decisions affects Plaintiff Hall, Plaintiff Spencer and maternal and infant health in the county.

52. The decision of APMC to close the Maternity Unit and refer Plaintiff Stephanie Hall, Plaintiff Rebekah Spencer, and other expectant mothers to distant hospitals to deliver their babies unlawfully discriminates against them on the basis of sex.

53. By and through the actions referred to in this Complaint, APMC has discriminated against the individual Plaintiffs on the basis of sex in violation of the ACA, Section 1557.

54. By and through the actions referred to in this Complaint, the individual Trustee Defendants' decision to close the Maternity Unit is a breach of

their fiduciary duty under Ohio's Nonprofit Corporate Law, Ohio Revised Code, Chapter 1702 *et seq.* and at common law.

55. Absent preliminary and permanent injunctive relief, these irreparable harms to Plaintiff Hall, Plaintiff Spencer, and other pregnant women in the county and surrounding area, including in the ONA bargaining unit, will go unabated.

The Closure Violates ONA's Labor Agreement

56. ONA is the exclusive bargaining agent for registered nurses employed by ACMC.

57. ONA and ACMC are parties to a collective bargaining agreement (hereinafter, "CBA"). (Exhibit 3).

58. On or about June 25, 2020, ACMC informed ONA of its plans to close the Maternity Unit and refer expectant mothers to Hillcrest Hospital where non-bargaining unit employees and individuals would perform the work of OB-GYN registered nurses at ACMC.

59. While urging ACMC not to close the Maternity Unit, ONA took action to protect the employment rights of bargaining unit members, including on or about June 29, 2020, demanding that ACMC bargain over job protections for affected bargaining unit registered nurses.

60. On or about June 30, 2020, ACMC responded that it could only agree to two of ONA's proposed job protections. However, no agreement was reached between the parties on the decision to close or the effects of the closing on the bargaining unit.

61. On or about July 7, 2020 ONA requested detailed information from ACMC so that the parties could discuss the terms of the restructuring at the parties' contractually required Labor Management Committee. Article 5 of the CBA requires the parties to reach consensus or impasse before ACMC can implement a restructuring of the hospital. (Exhibit 3). Closing the Maternity Unit, diverting patients to Hillcrest Hospital, and the resulting impact of the restructuring of the performance of bargaining unit work in the Emergency Room and Operating Room, is a restructuring under the CBA.

62. On or about July 16, 2020, the parties convened a telephone meeting of the Labor Management Committee. ACMC management told ONA labor representatives that the hospital had no obligation to bargain over the decision or the effects of its plan for the Maternity Unit.

63. On or about July 17, 2020, ACMC's legal counsel Michael Frantz responded to ONA's information request via email stating that the hospital would not provide any information to ONA about the decision to close the Maternity Unit:

Anne, your information request concerning the closure of the OB and Skilled Nursing Units has been referred to me for reply. In reviewing the Collective Bargaining Agreement I see no justification for your request. As you know, ACMC has reserved the right to close the units and the ONA waived any right to bargain about the decisions or effects of those decisions. I am also not aware of any other relevant basis for the request. Accordingly, we respectfully decline your request. However, if you wish to discuss our position and/or provide your position as to how your requests are relevant we will consider them.

Mike

64. There is nothing in the CBA expressly reserving the right to close units or waiving the right to bargain over a restructuring; rather, the CBA expressly requires that any such restructuring be foreclosed unless there is consensus or an impasse in such negotiations. (ONA CBA, Exhibit 3).

65. On or about July 21, 2020, ONA filed a class action grievance alleging a breach of thirty-one sections of the CBA, as well as past practices, and the obligation of good faith and fair dealing. (ONA Grievance, Exhibit 4). The grievance alleges that the hospital is prohibited from closing the Maternity Unit. It stated:

On or about June 25, 2020, the hospital announced that it was closing the OB/Maternity ward permanently on August 1, 2020 and did so without contractual notice or consent of the Union. The Hospital has refused to discuss this unsafe action which jeopardizes nurses and patient safety. The Hospital has simply transferred the work to CCF Hillcrest Hospital in contravention of the CBA and the Articles and Sections stated above.

66. On or about July 22, 2020, ONA responded to ACMC's counsel Michael Frantz's July 17, 2020 email denying ONA any information:

Dear Mike,

Thank you for your response to ONA's information request of July 7, 2020. We respectfully disagree with the Medical Center's response.

Attached please find two grievances challenging the Hospital's action as a breach of various express and implied provisions in the agreement. Please note that the version of the grievances that I have attached are before they were executed by ONA members and filed with the Medical Center. The grievances were filed yesterday evening, July 21, 2020.

We demand that the hospital cease and desist from taking action to close these units until we have reached a consensus or impasse, reserving our rights to argue that such closures are prohibited by the CBA and applicable law.

As you know, there are numerous provisions in the CBA which are implicated by the Hospital's decision. It also has enormous impacts on our patients and women's health in the community. Under Article 5, Section 5.1.5, ONA has the right to discuss workplace restructuring decisions such as this in an effort to reach consensus. This provision states:

Section 5.1.5. The Medical Center and the ONA recognize that providing quality patient care is the utmost priority. The parties also agree that nurses should continue to participate in decisions affecting the delivery of patient care and related terms and conditions of employment. Decisions regarding workplace restructuring shall be reached by consensus of the Labor Management Committee. The Labor Management Committee shall have the option of deferring the decision to the Nursing Advisory and Staffing Committee. In any event, the Medical Center shall not be prevented from implementing such restructuring if a consensus cannot be reached.

The information which I previously requested is for this exact purpose – exploring the decision making of the Medical Center and trying to reach consensus or impasse on the issue. We cannot make arguments or proposals unless we have this basic information.

As indicated in the grievances, there a host of other provisions on nursing practice, staffing, patient safety and so on that make ONA's information requests relevant as well. Moreover, ONA needs to explore the role of the Cleveland Clinic in the decision, as it has a pattern of closing units like this in other areas of the state. Again, the Clinic's role would be relevant to our discussion, as well as its status as a single or joint employer codetermining terms and conditions of employment with ACMC. (e.g., note that I have added questions 5-10

below). ONA also needs to understand how this work has been transferred to unrepresented affiliate hospitals to determine if this is a breach of the agreement.

Accordingly, in order to implement the labor agreement, investigate grievances, and/or for decision and effects bargaining and/or consensus discussion over the closures, and without prejudice to further information requests, ONA is making this information request pursuant to Section 8(a)(5) of the National Labor Relations Act.

Please provide the following items and/or information in the possession, custody, control and/or awareness of ACMC to me immediately at my office but no later than Friday, July 24, 2020. Please provide the documents to me electronically via e-mail:

1. Date of the Board of Trustees Meeting when these decisions were made.
2. Copy of the Board of Trustees Meeting Agenda and meeting minutes when these decisions were discussed and voted upon.
3. Copies of all documents and information, including on-line resources, relied upon by the Medical Center in the following statement to the Press: “Of the approximately 1,000 births to Ashtabula County residents each year, a five-year average shows that only 34% of those were delivered at ACMC. This amounts to less than one baby per day being born at ACMC. The other 66% of births to Ashtabula County residents take place at hospitals outside of Ashtabula County”. Please redact patient identifying information.
4. Identify the State or Federal regulations that the Medical Center was referring to in its statement that “increased regulatory requirements” was a factor in the decision to close the Labor and Delivery unit.
5. Any documents (including without limitation in electronic form) which relate to the Cleveland Clinic Foundation and/or any of its affiliates participation in the decision to close these units.
6. Any agreements between any health care facility and ACMC regarding providing care for patients that was

normally performed by registered nurses at ACMC in these two nursing units slated to be closed.

7. Any agreements with Cleveland Clinic regarding ACMC.

8. Any documents regarding review by the Ohio Department of Health or any other agency of any transaction concerning the closure of these two nursing units.

9. Any studies and/or analyses performed by or for ACMC concerning the impact of the closures on the community including but not limited to women and infant health.

10. Any information considered and/or relied upon by ACMC to make the decision to close these nursing units.

11. Information relating to the number of patient visits by pregnant women that resulted in a live birth or fetal demise at the Medical Center. Please provide this information by month, broken down into each category (live birth or fetal demise), for the calendar years 2019 and 2020 (through June 30, 2020).

12. Information relating to the number of patient visits by pregnant women who came through the Emergency Department Registration or an OB/GYN physician visit that resulted in "triage" care and treatment by Labor and Delivery nurses, physicians and staff, without the patient being treated with an observation or admission. Please provide this information by month, for the calendar years 2019 and 2020 (through June 30, 2020).

13. Information relating to the number of patient visits by pregnant women who came through the Emergency Department Registration or an OB/GYN physician visit that resulted in "triage" care and treatment by Labor and Delivery nurses, physicians and staff, with the patient being treated with an observation or admission. Please provide this information by month, for the calendar years 2019 and 2020 (through June 30, 2020), broken down by the number of observations and the number of admissions. For all admissions that fall into this category, please provide information relating to the number of days the patient was an inpatient. This information should exclude all live births or pregnancies that resulted in fetal demise, as those are covered in #5 of this information request.

14. Number of newborns transferred to Hillcrest because of a need for a Level III nursery. Please provide this information by month, for calendar years 2019 and 2020 (through June 30, 2020).

15. Number of pregnant women transferred to Hillcrest because of a need for a Level III nursery or because of an at-risk pregnancy. Please provide this information by month, for calendar years 2019 and 2020 (through June 30, 2020).

16. Information relating to the number of admissions in the Skilled Nursing unit that were transferred to the unit from another inpatient unit at the Medical Center. Please provide this information by month for calendar years 2019 and 2020 (through the date of the closure in March 2020).

17. Total number of patient stays per admission that are identified in #10 of this information request.

18. Information relating to the number of admissions in the Skilled Nursing unit that were transferred to the unit from another hospital or facility. Please provide this information by month for calendar years 2019 and 2020 (through the date of the closure in 2020).

19. Total number of patient stays per admission that are identified in #12 of this information request.

20. Average daily census for the Skilled Nursing unit. Please provide this information by month for calendar years 2019 and 2020 (through the date of the closure in 2020).

21. Copies of all meeting minutes and agendas for the OB/Peds ACMC Management and Physician Meetings for calendar years 2018, 2019 and 2020 (through June 30, 2020).

If you have any concerns or objections, please advise me immediately.

Thank you,

Anne

67. On or about July 26, 2020, ACMC, by and through its counsel, Mr. Frantz, once again refused to provide ONA with any of the information in its above-

referenced information requests, despite its obligation under Section 8(a)(5) of the National Labor Relations Act, to provide ONA with information relevant and necessary to determining compliance with the CBA, processing the grievances and bargaining.

68. Further, despite ONA's request to cease and desist implementing its restructuring plan to close the Maternity Unit, relocate bargaining unit work to the Cleveland Clinic's Hillcrest Hospital, and the related impact of the restructuring of bargaining unit work in the Emergency Room and Operating Room, ACMC has not relented in its continuing breaches of the CBA.

69. Article 8 of the CBA contains a broad arbitration clause covering the dispute culminating in final and binding arbitration. (ONA CBA, Exhibit 3).

70. ONA's grievance filed on July 21, 2020 is arbitrable on its face and is sufficiently sound to support the issuance of an injunction in aid of arbitration. (ONA Grievance, Exhibit 4).

71. If the status quo is not maintained through the issuance of preliminary injunctive relief pending arbitration, the arbitration will ultimately be a nullity as ACMC will close its maternity ward permanently on August 1, 2020, layoff the fifteen, seasoned labor and delivery registered nurses who work there, and lose its authority to perform deliveries as authorized by the Ohio Department of Health. Therefore, the arbitrator will have no power to reopen the Maternity Unit, despite the grievance and arbitration remedy provisions in the CBA.

72. Further, the arbitrator will have no power to remedy the immediate loss of maternity services at ACMC for registered nurses employed at the hospital who are now pregnant and expected to deliver in the near term. The imminent closure threatens the health of mother and baby right now.

73. The direct threat to the lives of expectant mothers and their babies posed by the imminent closure cannot be remedied in labor arbitration in time.

Necessity of Injunctive Relief in Support of Grievance Arbitration

74. Plaintiffs are likely to succeed on the merits of their actions because their allegations are well pled and supportable.

75. Plaintiffs will suffer irreparable harm without an injunction because the collective rights of ONA and the bargaining unit members it represents, and the individual rights of pregnant Plaintiffs, are threatened with permanent harm.

76. There is no adequate remedy at law because Plaintiffs' injuries cannot be remedied with a damages award in labor arbitration.

77. The harm that the Plaintiffs will suffer without the injunction is greater than the harm that preliminary relief would inflict on the Defendant because the relief sought merely requires Defendant to continue operations as it has for many years and serve the community in accordance with its nonprofit healthcare mission. Moreover, the relief will simply require the hospital to arbitrate the dispute as it has promised under the CBA.

78. An injunction is in the public interest because the public has a strong interest in preserving equal access to safe health care for women and newborns and

in the enforcement of collective bargaining agreements; the interests of the public are aligned with Plaintiffs herein.

79. No prior application has been made to this or any other court for the relief requested herein.

80. Plaintiff ONA has made every reasonable effort to resolve this dispute to no avail.

COUNT ONE

SEX DISCRIMINATION

(Violation of Section 1557 of the ACA)

81. The allegations of paragraphs 1 through 80 are incorporated by reference pursuant to Fed. R. Civ. P. 10(c).

82. Section 1557 of the Patient Protection and Affordable Care Act provides that:

[e]xcept as otherwise provided for in this title (or an amendment made by this title), an individual shall not, on the ground prohibited under ... title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) ... be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under this title (or amendments). The enforcement mechanisms provided for and available under ... title IX ... shall apply for purposes of violations of this subsection.

83. Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et*

seq. prohibits sex discrimination in education programs that receive federal financial assistance. Federal courts apply Title IX standards on sex discrimination to Section 1557 cases. See, *Rumble v. Fairview Health Services*, 2015 WL 1197415 (D. Minn. 2015).

84. Defendant APMC is a healthcare organization which “is receiving Federal financial assistance” within the meaning of Section 1557 of the ACA in that, among other things, it receives Federal Medicare and Medicaid reimbursement for the care provided through its “health care program” and thus, is governed by the obligation to refrain from discrimination on the basis of sex by Section 1557 in its provision of health care services.

85. The individual Plaintiff Hall and Plaintiff Spencer have the right under Section 1557 of the ACA to receive health care services free from discrimination on the basis of sex, and courts have interpreted discrimination on the basis of pregnancy as discrimination on the basis of sex for purposes of Title IX.

86. The conduct of Defendant APMC described herein constitutes sex discrimination against Plaintiffs on the basis of sex in violation of Section 1557. Defendants perpetrated this discrimination with malice, deliberate disregard for, or deliberate or reckless indifference to Plaintiffs’ rights. Further, APMC’s facially neutral action of closing its Maternity Unit has a disproportionate effect on women.

87. The conduct of Defendant APMC violates the HHS Final Rule in 45 C.F.R. § 92.101(b)(3)(iii) which insures basic access to healthcare free of

discrimination. It states:

In determining the site or location of a facility, a covered entity may not make selections that have the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any programs to which this regulation applies, on the basis of sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity on the basis of sex.

88. APMC's decision to close its Maternity Unit and divert patients to Hillcrest Hospital has, by definition, the effect of excluding pregnant women employed at the hospital in the ONA bargaining unit as well as on expectant mothers in the community from safe, nearby access to labor and delivery services. This action defeats and substantially impairs the hospital's mission, which is to provide safe and effective health care to the Ashtabula County community. Moreover, APMC does not deny access to healthcare to men regarding male-specific conditions such as treatment for prostate cancer, testicular cancer, erectile dysfunction, male chromosomal diseases, and other such male-specific conditions, regardless of the profitability of such care.

89. APMC has no substantial legitimate justification or "business necessity" for this action.

90. APMC has failed to explore equally effective alternative practices including continued maintenance of the Maternity Ward with altered modes of medical, nursing and business practices which have a less of a discriminatory impact.

91. Accordingly, Plaintiffs are entitled to immediate temporary,

preliminary, and permanent injunctive relief as prayed for herein to remedy this continuing violation of the ACA.

COUNT TWO

(Individual Trustee Breach of Fiduciary Duties)

92. The allegations of paragraphs 1 through 91 are incorporated by reference pursuant to Fed. R. Civ. P. 10(c).

93. The individual Trustee Defendants listed in paragraphs 11 through 26 are sued in their individual capacities as Trustees.

94. At all times relevant to the matters described in the Complaint, the individual Trustee Defendants had a duty of compliance arising under Ohio Revised Code, Chapter 1702 *et seq.* and common law, which included being faithful to the organizational purpose of ACMC as it relates to ensuring that Plaintiff Hall and Plaintiff Spencer and other expectant mothers in Ashtabula County (all of whom are the intended beneficiaries of the nonprofit corporation's very existence) have access to obstetric and delivery medical care services at the ACMC.

95. At all times relevant to the matters described in the Complaint, the individual Trustee Defendants had a duty of loyalty arising under Ohio Revised Code, Chapter 1702 *et seq.* and common law, which included refraining from transactions that undermined the organizational purpose of ACMC as applied to the Plaintiff Hall and Plaintiff Spencer and other expectant mothers in Ashtabula County, and acting at all times in their best interests as persons in need of ACMC's

Maternity Unit's medical services, rather than in the best interests of the Cleveland Clinic's Hillcrest facility.

96. At all times relevant to the matters described in the Complaint, the individual Trustee Defendants had a duty of care arising under Ohio Revised Code, Chapter 1702 *et seq.* and common law, which included carrying out their duties as Trustees in a manner consistent with sound and independent judgment and the level of care, skill and diligence an ordinarily prudent person in the same position would use under similar circumstances for the benefit of Plaintiff Hall and Plaintiff Spencer and other expectant mothers in Ashtabula County.

97. By authorizing, permitting and/or failing to prevent the closure of the Maternity Unit at ACMC, the individual Trustee Defendants have breached their fiduciary duties and will thereby cause severe and irreparable harm to Plaintiff Hall and Plaintiff Spencer and other expectant mothers that rely upon ACMC to provide them, and their babies, with safe and accessible medical care.

98. On account of said breaches, this Court should enjoin the Board's action to prevent irreparable harm.

COUNT THREE

INJUNCTION IN AID OF ARBITRATION

(Section 301 of the LMRA - Reverse *Boys Markets* Injunction)

99. The allegations of paragraphs 1 through 98 are incorporated by reference pursuant to Fed. R. Civ. P. 10(c).

100. By its words and conduct, Defendant APMC has failed and refused to honor its contractual obligation to arbitrate disputes and refrain from closing its Maternity Unit by proceeding with the planned closure of the Maternity Unit and diversion of patients to a remote hospital affiliated with the Cleveland Clinic, all before an arbitrator has an opportunity to construe the CBA and determine whether its action violate its negotiated provisions.

101. ONA's grievance challenging the closure of the Maternity Unit is arbitrable on its face under the broad arbitration clause of the CBA and is sufficiently sound to support an injunction in aid of arbitration.

102. Because of the Defendant's refusal to honor its contractual obligations, immediate and severe irreparable harm is threatened, and will occur, unless this Court takes immediate action to prevent such harm. More particularly, the Plaintiffs will suffer irreparable harm because an arbitrator will be unable to formulate an effective remedy to restore the status quo in response to Defendant's disregard of its contractual obligations.

103. Defendant's threatened action of closing the Maternity Unit and sending pregnant mothers to a remote hospital literally threatens health and life of mothers, fetuses, and infants. Such physical harm, as well as the potential overwhelming emotional harm to affected mothers and families, is irreparable in labor arbitration, as such remedies are nonexistent in that forum.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs respectfully request that the Court grant the following relief:

A. That the practices of Defendant ACMC complained of herein be adjudged, decreed, and declared to be violative of the rights secured to the Plaintiffs by the ACA § 1557.

B. That temporary, preliminary and permanent injunctive relief be issued requiring that Defendant ACMC adopt practices in conformity with the requirements of the ACA § 1557, including an order requiring ACMC to keep open and maintain its Maternity Unit's normal operations, refrain from diverting patients to Hillcrest Hospital and refrain from laying off its labor and delivery nurses as a consequence of the planned closure.

C. That temporary, preliminary and permanent injunctive relief be issued prohibiting individual Trustee Defendants from closing the Maternity Unit to preserve the status quo pending adjudication of the claim that they breached their fiduciary duties under and Ohio's Nonprofit Corporate Law, Ohio Revised Code, Chapter 1702 *et seq.* and at common law.

D. That temporary, preliminary, and permanent injunctive relief be issued prohibiting Defendants from closing its Maternity Unit to preserve the status quo pending arbitration of ONA's grievance and any subsequent enforcement of such an award rendered on said grievance.

E. That the Court retain jurisdiction until such time as the Court is satisfied that the Defendants have remedied the practices complained of herein

and is determined to be in full compliance with the law.

F. That the Court order Defendants to pay counsel for Plaintiffs their reasonable attorneys' fees and the costs and expenses of this action.

JURY TRIAL DEMAND

Pursuant to Fed. R. Civ. P. 38, Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: July 27, 2020.

Respectfully submitted,

/s/ James Petroff

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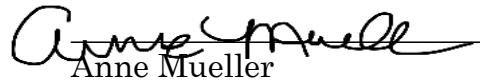
VERIFICATION

Based on my own personal knowledge, I hereby declare as follows:

1. I have reviewed this Verified Complaint.
2. The allegations in its paragraphs 4-7, 10, 11-26 (1st sentence only for all of these paragraphs), 27-29, 31, 33-37, 38 (2nd sentence), 39, 43, 45 (1st and 3rd sentence), 48 (2nd sentence, 3rd sentence, 9th sentence), 49 (1st sentence), 50-52, 55-76, 78-80, 84, 88 (1st and 2nd sentence), 89-90, and 100-103 are within my personal knowledge and are factually accurate.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 27, 2020.

Dated: July 27, 2020.


Anne Mueller



This document was signed by:

Anne Mueller



TM

Date

7/27/2020 5:24 PM UTC

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Confirmation

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