

**From:** (b) (6), (b) (7)(C)  
**To:** [Marshall, Sean R.](#); [Colangelo, David A.](#); [MacIntyre, David](#); [SM-Region 5, Baltimore](#)  
**Cc:** [Bock, Richard](#); [Szapiro, Miriam](#); [Dodds, Amy L.](#); [Shorter, LaDonna](#)  
**Subject:** Children School Services, 05-CA-258669 (COVID case closing email)  
**Date:** Tuesday, June 30, 2020 2:10:33 PM

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This case was submitted for advice as to whether the Employer, a government contractor that supplies nursing services within D.C. public schools, acted unlawfully in response to the citywide closure of schools due to COVID. We agree with the Region that the Section 8(a)(1) and (3) allegations and the 8(a)(5) allegations concerning the provision of information and bad faith bargaining lack merit. We further conclude that the Region should dismiss, rather than defer, the Section 8(a)(5) allegations concerning the layoff and the related offer of temporary work assignments in lieu of layoff, absent withdrawal.

As to the layoff allegation, we conclude that the Employer's actions were privileged by the collective-bargaining agreements under *MV Transportation, Inc.*, 368 NLRB No. 66 (2019). Not only did the contract contain an entire article devoted to layoffs (which may or may not apply to these "temporary" layoffs), but the management rights clauses also contained a general right to lay off. Thus, the decision to lay off the nurses while school was out was within the compass or scope of contract provisions granting the Employer the right to act unilaterally.

With respect to the offer of temporary assignments in partnership with the D.C. government to perform COVID testing and/or contact tracing in lieu of layoff, we likewise conclude that it did not constitute a unilateral change. Broad zipper clauses in the contracts likely foreclosed any obligation to engage in effects bargaining as to the layoffs or alternative work assignments in lieu of layoff. The contracts state that "any matters not specifically and expressly covered by this Agreement shall remain within the sole right and discretion of [the Employer]" and that the Union "voluntarily and unqualifiedly waives any further bargaining and agrees that [the Employer] will not be obligated to bargain . . . with respect to any subject or matter referred to or covered in this Agreement or with respect to any subject matter or matter not specifically referred to or covered in this Agreement. However, even assuming the Employer had an obligation to bargain, it engaged in pre-implementation bargaining over both issues, and we agree with the Region that the bargaining was sufficient to satisfy its obligations under the exigent circumstances present here.

Given that these allegations lack merit, deferral is not warranted, and the Region should dismiss them, absent withdrawal.

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