



**NATIONAL UNION OF  
HEALTHCARE WORKERS**

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**Service Employees**  
**Collective Bargaining Agreement**  
**with**  
**Kindred Hospital**  
**San Francisco Bay Area**

**April 12, 2019 – October 31, 2021**

# **WEINGARTEN RIGHTS/STATEMENT**

## **Additional Representation Rights:**

The following holding of the U.S. Supreme Court in NLRB v. Weingarten, Inc., shall apply to investigatory interviews conducted by the employer that an employee, upon his/her request, is entitled to have a Union representative present during an investigatory interview in which the employee is required to participate where the employee reasonably believes that such investigation will result in disciplinary action. The right to the presence of a Union representative (Union Organizer or Union Steward) is conditioned upon a requirement that the Union representative be available for participation in such investigatory interview within twenty-four hours, excluding Saturday, Sunday, and Holidays, of the employee's request for his or her presence.

## **Weingarten Rules/Statement:**

"I request to have a Union representative present on my behalf during the meeting because I believe it may lead to disciplinary action being taken against me. If I am denied my right to have a Union representative present, I will refuse to answer accusatory questions and any I believe may lead to discipline."

**Rule 1:** The employee must make a clear request for Union representation before or during the interview. The employee cannot be punished for making this request.

**Rule 2:** After the employee makes the request, the employer must choose from among three options:

1. Grant the request and delay questioning until Union representation arrives and has a chance to consult privately with the employee;
2. Deny the request and end the interview immediately;
3. Give the employee a choice of having the interview without representation or ending the interview.

**Rule 3:** If the employer denies the request for Union representation and continues to ask questions, the employer commits an unfair labor practice and the employee has the right to refuse to answer. The employer may not discipline the employee for such refusal.

*This page is for informational purposes only and is not part of the collective bargaining agreement.*

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**THIS AGREEMENT** is made and entered into by and between **KINDRED HOSPITAL-SAN FRANCISCO BAY AREA** 2800 Benedict Drive, San Leandro, California, hereinafter called the "**Employer**", the "**Facility**" or the "**Hospital**" and the **NATIONAL UNION OF HEALTHCARE WORKERS**, hereinafter called the "**Union**" or the "**NUHW.**"

## **ARTICLE 1 – RECOGNITION**

### 1.1 Covered Employees

The Employer recognizes the Union as the exclusive bargaining agent for employees covered by this Agreement. This Agreement covers employees of the Employer who work at Kindred Hospital San Francisco Bay Area located at 2800 Benedict Drive, San Leandro, California 94577 (the "Facility") in one of the following job classifications: CNAs, LVNs, Unit Clerks, Housekeeping Aides, Dietary Aides, and Cooks. This Agreement does not apply to stationary engineers, technical and professional employees, confidential and managerial employees, guards, supervisors, nor to any other employees who are not specifically covered by this Agreement.

### 1.2 Efficient Operations and Constructive Relationship

Both parties recognize that the efficient and uninterrupted operation of the Facility is to their mutual advantage and in the interest of the Facility's patients. The purpose of this Agreement is to establish and maintain a harmonious and constructive relationship between the parties in order to achieve those results. The Employer and the Union agree that all Kindred employees, physicians and managers will treat each other, regardless of position, with dignity, respect, courtesy and trust. The forgoing principles shall also apply in providing service to patients and visitors.

#### a. Subcontracting

- i. If the Hospital decides to subcontract out any bargaining unit work, the Hospital agrees to notify the Union in writing at least sixty (60) days prior to the effective date. Upon written request of the Union, Kindred will meet with the Union to engage in good faith effects bargaining over the impact of such changes. This will not delay the subcontracting unless mutually agreed upon by Kindred and the Union.
- ii. Prior to subcontracting, Kindred shall inform the subcontractor of the existence of the CBA and shall provide a copy of this Agreement to the subcontractor. Further, as a condition of subcontracting:
  - (1) the subcontractor will hire the majority of then current bargaining unit employees of the Hospital (provided that the employees are qualified for the job(s)); and
  - (2) the subcontracted employees will receive no less than the wages and differentials specified in this Agreement.

When the subcontractor hires substantially all of the bargaining unit employees, the subcontractor shall recognize the Union as the exclusive bargaining agent of the currently represented employees. The subcontractor will be encouraged to implement substantially equivalent PTO, health, dental, and vision plans. Further, the subcontractor will be encouraged to offer life, disability, and other insurance products through carrier(s). The Hospital will secure a third-party agreement (a contract signed by the Union and subcontractor) to effectuate the provision of this Section. Nothing herein shall prevent the subcontractor and the Union from signing a more complete “me too” agreement if the subcontractor and the Union choose to do so. The Employer will not be liable for any breach by the subcontractor, through no fault of the Employer, of the provisions of this Section. The Union’s sole remedy in the event of a breach by the subcontractor (and not a breach by the Hospital) is to pursue an action against the subcontractor.

- iii. Employees whose employment is terminated as a result of any subcontracting shall be assisted in transferring to any other Kindred facilities, consistent with current practice and this Agreement, and shall receive payment for one hundred percent (100%) of all accrued and vested, but unused, PTO.
- b. Notice of Sale or Lease
- i. In the event this Facility is sold, assigned, leased, or transferred, the Hospital will notify the Union, in writing or via electronic mail, at least sixty (60) calendar days prior to such action. Such notice shall include the name and address of the prospective new owners, assignee, lessee, or transferee. The Hospital will meet with representatives of the Union to bargain over the effects of the transaction on bargaining unit employees and such bargaining shall begin no later than forty-five (45) days prior to the completion of any transaction.
  - ii. Prior to the sale, assignation, lease, or transfer, the Hospital shall inform the prospective acquiring entity of the existence of the CBA, shall provide a copy of it to the acquiring entity, and shall require as a condition of sale that the acquiring entity hire a majority of then-current bargaining unit employees of the Hospital (provided that the employees are qualified for the job(s)) and recognize the Union as the exclusive collective bargaining agent of the currently represented employee(s)/employee classifications.
  - iii. Employees whose employment is terminated as a result of any sale, closure, or transfer shall be assisted in transferring to any other Kindred facilities, consistent with current practice, and receive payment for one hundred percent (100%) of all accrued and vested, but unused, PTO. Employees who remain employed at any Kindred facility after a sale, closure, or transfer of operations shall be eligible to transfer one hundred percent (100%) of their PTO balance.

## **ARTICLE 2 – HIRING AND PROBATIONARY PERIOD**

### **2.1 Hiring Employees**

Kindred may hire employees from any source and shall be the sole judge of the fitness of any applicant for the job.

### **2.2 Probationary Period**

A probationary period of ninety (90) days from the date of first hiring shall be established for newly hired full-time and part-time employees. For per diem employees the probationary period shall be six (6) months or five hundred twenty (520) hours of work, whichever is later. During the probationary period the employee may be discharged for any reason, which in the opinion of Kindred is just and sufficient, and there shall be no recourse to Article 31 (Grievance and Arbitration Procedure).

### **2.3 New Member Orientation**

The Union shall be given thirty (30) minutes to provide a new member orientation during the Employer's normal orientation program for new hires in the bargaining unit.

## **ARTICLE 3 – UNION MEMBERSHIP**

### **3.1 Becoming a Member or Paying a Fee**

Not later than the thirty-first (31st) day following the beginning of employment, or the effective date of this Agreement, or the execution of this Agreement, whichever is later, every employee subject to the terms of this Agreement shall, as a condition of employment, become and remain a member of the Union paying the periodic dues and initiation fees uniformly required, or, in the alternative, shall, as a condition of employment, pay a fee in the amount equal to the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership, or, if the employee objects to the payment of that agency fee, such employee shall as a condition of employment pay that portion of the agency fee that is related to the Union's representation costs. The Union shall comply with its legal obligation under *Communications Workers v. Beck* to inform every new employee in writing that he or she has the right to be a nonmember, subject only to the duty to pay initiation fees and dues, and that nonmembers have the right to be given sufficient information to enable the employee to intelligently decide whether to object and to be apprised of any internal Union procedures for filing objections.

### **3.2 Lists of Employees**

No later than the tenth (10<sup>th</sup>) day of the month, the Employer will provide to the Union in electronic form a list of new hires, terminations and transfers into or out of the bargaining unit. The list will include the employee's full name, date of hire, current hire date (seniority date), social security number, home address, telephone number, department,

job title, wage rate (including any wage rate changes for transfers), status (e.g. regular full-time, regular part-time, per diem or temporary), and date of hire, termination (including reason for termination such as resignation, retirement, discharge, layoff) or transfer, as applicable.

Hard copies of the above data will be provided only upon separate request, no more than twice a calendar year.

3.3 An Employee's Failure to Comply with this Article

Employees who are required herein, to maintain membership or make payments described in Section 3.1 above, and fail to do so and employees who are required herein to join the Union and fail to do so shall, upon written notice to the Facility and upon examination of documentary proof that an employee failed to comply with 3.1 as above described, be terminated, unless the Facility has reasonable grounds for believing that the employee was denied the ability to comply with 3.1 or terminated for reasons other than failure to comply with 3.1 as defined above.

3.4 Notice to Employee

At the time of employment, a new employee who will be subject to this Agreement shall be informed of the Agreement and shall read or have paraphrased the provisions of this Article 3 and Article 4 following.

## **ARTICLE 4 – VOLUNTARY WRITTEN ASSIGNMENT OF WAGES**

4.1 Dues and COPE

During the term of the Agreement, the Facility will honor written assignments of wages to the Union for payment of Union initiation fee and dues, and honor written assignment of wages to the Union's Committee on Political Education (COPE) fund, provided such assignments are submitted in a form agreed to by the Facility and the Union. The Union will pay whatever startup costs are applicable for the implementation of the program.

4.2 The Facility will promptly remit the monies deducted pursuant to such assignments with a written statement of the names of the employees for whom deductions were made. Such data will be provided in the form of the bank or service organization's computer run of deductions.

4.3 Dues Deductions

Normally, the deduction of such assigned wages will be made on the first (1<sup>st</sup>) pay period of each month for the then current Union membership fees. However, the Union and the Facility may make other arrangements by mutual consent.



4.4 Indemnification

The Union will hold harmless the Facility against any claim or obligation which may be made by any person by reason of the deduction of Union membership fees, including the cost of defending against any such claim or obligation. The Union will have no monetary claim against the Facility by reason of failure to perform under this Article.

**ARTICLE 5 – WAGES**

5.1 Schedule of Wages

The minimum straight-time hourly rates of pay shall be shown in Appendix A attached hereto and made a part hereof.

5.2 Payday

If the Facility's payday is on a Friday, the Facility will make reasonable efforts to pay employees working after 6:00 p.m. by the conclusion of their last shift which begins on Thursday. If the Facility's payday falls on an employee's day off, the Facility will make reasonable efforts to have the employee's paycheck available by the end of the shift on the previous workday. If the Facility uses symbols on payroll checks, such symbols shall be explained to an employee on request. In addition, the Facility will make reasonable efforts to issue paychecks no later than 3:30 p.m. on a payday. An employee shall be notified of a change in his or her regular rate of pay.

5.3 Meals

Employees working in the Dietary Department shall be entitled to the regular meals occurring within their shift without deductions in their compensation. All such meals shall be consumed in the Facility. All employees must clock in and out for meal periods.

5.4 Shift Differential

A shift differential shall be granted to all qualified employees working the night shifts as follows:

Department	Position	Shift Differential Hours	Shift Differential Rate
Nursing	LVN	7pm-7:30am	\$2.40
Nursing	CNA	7pm-7:30am	\$1.90
Housekeeping	All	2pm-11:30pm	\$1.40
Housekeeping	All	11pm-7:30am	\$1.90
Dietary	All	3pm-11:30pm	\$1.40
All	Unit Secretary	7pm-7:30am	\$1.90

James Fox will continue to receive the evening shift differential for all hours worked provided he remains on his current shift.

### 5.5 Shift Differential Eligibility

To qualify for shift differential the employee must work a minimum of four (4) hours during the shift differential period. Hours worked before or after the shift differential period will be paid at the employee's straight-time rate.

The shift differential will be included in the calculation of the overtime rate for hours worked that are subject to payment of shift differential. However, this shift differential shall not be included in the rate of pay for paid time off.

### 5.6 Dietary Classifications

In the event that the Employer establishes shifts such that employees in the dietary classifications work four or more hours between the hours of 11:30 p.m. and 7:30 a.m., the Employer, upon the Union's request, will meet to bargain about the establishment of a shift differential applicable to work performed during these hours.

## **ARTICLE 6 – HOURS OF WORK**

### 6.1 Employee Categories

- a. Full Time. A full time employee is one who is regularly scheduled to work thirty (30) or more hours per week.
- b. Part Time. A part time employee is one who is regularly scheduled to work twenty-four (24) or more hours per week.
- c. Per Diem. A per diem employee is an employee who works a variable number of hours or shifts as required by the Employer's work needs and the employee's availability and is employed through an in-house pool or in-house registry. To maintain their status, per diem employees must be available to work one (1) shift per week and one (1) major holiday per year (Thanksgiving, Christmas Eve, Christmas Day, and New Year's Eve). Per diem employees who work two (2) or more shifts (each shift being a minimum of eight hours) in a pay period shall receive a one dollar (\$1.00) per hour differential for all hours worked during that pay period. Per diem employees who work fewer than two (2) shifts (each shift being a minimum of eight hours) during a pay period will not receive the one dollar (\$1.00) differential for that pay period.
- d. Temporary Employee. Temporary employees are those employees who are hired for a specific period of time or on an "on call" basis.
- e. Categories of Employees Employed. The Facility shall be the sole judge of which categories of employee should be hired and how many employees in each category should be hired.

## 6.2 Change of Category

Part-time or per diem employees who for a period in excess of nine (9) consecutive pay periods, work thirty (30) or more hours per week, will, upon the request of the employee, be reclassified as a regular full-time employee.

## 6.3 Hours of Work

- a. Work Week. The workweek is defined as the seven (7) day period commencing at 6:00a.m. on Sunday and ending at 5:59a.m. on the following Sunday. Hours worked during a workweek are calculated in accordance with this definition.
- b. Forty (40) Hours/Five (5) Days a Week or Thirty-Six (36) Hours/Three (3) Days a Week. The workweek for full time employees shall be either (a) forty (40) hours, five (5) days per week, or (b) thirty-six (36) hours, three (3) days per week. The Facility retains the right to add other schedules after providing fourteen (14) days' notice to the Union of such additions or changes. The work schedules established by the Employer are normal hours of work and shall not be construed as a guarantee of hours of work per day or per week, or of days of work per week. Part time, per diem, and temporary employees may be scheduled to work up to twelve (12) hours per day.

## 6.4 Overtime

- a. Overtime for Employees Scheduled to Work Eight (8) Hour Shifts
  - i. When an employee is required to work in excess of eight (8) hours in any one (1) work day, the employee shall be paid overtime at the rate of time and one-half (1 1/2) the regular rate of pay for the hours worked over eight (8).
  - ii. When an employee is required to work in excess of forty (40) hours in workweek, the employee shall be paid over- time at the rate of time and one-half (1 1/2) the regular rate of pay for the hours worked over forty (40).
  - iii. When an employee is required to work in excess of twelve (12) hours in any one (1) workday, the employee shall be paid double (2x) times the regular rate of pay for the hours worked over twelve (12).
- b. Overtime for Employees Scheduled to Work Twelve (12) Hour Shifts
  - i. When an employee is required to work in excess of twelve (12) hours in any one (1) workday, the employee shall be paid overtime at the rate of double (2x) times the regular rate of pay for the hours worked over twelve (12).
  - ii. An employee who works in excess of forty (40) hours in a workweek shall be compensated at one and one-half (1 1/2) times the employee's regular rate of pay for all hours worked over forty (40) hours in the workweek.
  - iii. Extra Shift On Scheduled Day Off: The Employer will provide bargaining unit employees working twelve (12) hour shifts the following: when working an extra

shift on a day off, the employee would receive time and one-half (1-1/2) for the first eight (8) hours and double time (2x) for all remaining hours.

- c. Overtime Computation. Except for rest periods, only hours actually worked shall be considered hours worked for the purpose of computing overtime.

## 6.5 Scheduling

- a. Wherever practical and possible in the light of the Employer's requirements, the Facility will endeavor to schedule two (2) consecutive days off per week. No employee shall be required to work two (2) full shifts within a period of twenty-four (24) hours; provided, however, that if in an emergency the Employer cannot secure the consent of sufficient employees to work as is necessary within a unit or department, the Facility may require such work by assignment in the inverse order of seniority.
- b. Posting of Schedule. The Facility will post work schedules at least two (2) weeks in advance and notify promptly an employee whose posted work schedule is to be changed.
- c. Weekend Rotation. The Facility will use its best efforts to grant full time and part time employees every other weekend off.

## 6.6 Reporting Pay

An employee required by the Employer to report to work, and who does report, will be utilized and paid for half (1/2) the usual or scheduled day's work, but in no event fewer than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay. Any payment for work not performed shall not be treated as hours worked for any purpose. If the employee is offered work and elects to go home, then the employee shall not receive any reporting pay.

## 6.7 Meals and Rest Breaks

- a. Meal Breaks. The Hospital must provide, and Employees are entitled to take, and, barring extraordinary circumstances, shall take, one 30-minute unpaid, uninterrupted, non-working meal period on every shift where less than twelve (12) hours are worked. An Employee shall have the opportunity to take this first meal period before the end of the fifth hour of work. If an Employee works 12 hours or more (exclusive of the first 30-minute meal period), the Employee is entitled to take, and, barring extraordinary circumstances, shall take, a second 30-minute unpaid, uninterrupted, non-working meal period. Upon signing a waiver, clinical employees can waive 1 of the 2 meal periods should they so choose. Upon signing a waiver, non-clinical staff working a 12-hour shift can waive the second meal period if they so choose.
- b. Rest Periods. For employees working shifts of less than twelve (12) hours, the Hospital must provide, and such Employees are entitled to take, rest breaks of fifteen (15) minutes every four hours worked. For employees working shifts of twelve (12)

hours or longer, the Hospital must provide, and such Employees are entitled to take, two (2) rest breaks of (15) minutes and one (1) rest break of ten (10) minutes. In no case shall an Employee be provided, or take a rest break of less than 10 minutes' duration. Rest periods should not be combined with meal periods and must not be taken at the beginning or end of the shift. On a 12-hour shift, three rest periods should be taken, after approximately two, six and ten hours of work. Rest periods are paid.

- c. Tracking Meal and Rest Periods. Should the Employer desire to establish procedures for the tracking and/or reporting of meal or rest periods, the Employer will bargain in good faith with the Union over such procedures before implementation of any such procedures.

The Employer shall make reasonable efforts to ensure that Employees are relieved for meals and breaks. If an Employee believes he/she may miss a meal or break, the Employee shall attempt to report this to their Supervisor or Manager at the earliest opportunity, if possible. This will allow management to arrange for coverage to avoid missed meal or break penalties. In the event that an Employee is unable to take a meal or rest break, he/she shall document such missed meal or rest break on a form provided by the Employer, and the Employer shall comply with applicable laws regarding missed meals and breaks.

#### 6.8 Floating

The Employer will discuss floating at the union's request if bargaining unit employees are asked to float from one unit to another more than twice every six (6) months. The issue of floating (including but not limited to any decision to float employees) will not be subject to the grievance and arbitration process.

#### 6.9 Temporary Work Assignment Outside of Unit

A unit employee may be temporarily assigned to work in a classification not covered by this Agreement provided that the employee voluntarily agrees in writing to the assignment. While so employed, the unit employee will not be subject to the terms and conditions of this Agreement. Absent the union's written consent, any such temporary assignment shall not exceed sixty (60) days. When the temporary assignment ends, the unit employee shall return to his or her former classification and position without any loss of seniority.

#### 6.10 Assignment of Night Shift Unit Secretaries

The Employer may, in its sole discretion, place a registered nurse in the position of unit secretary during the night shift. Any such placement by the Employer shall not be subject to the grievance and arbitration process.

## ARTICLE 7 – EMPLOYMENT & INCOME SECURITY

- 7.1 The Hospital will continue to make every effort to avoid displacing employees (e.g., reduction in force, reduction in hours, daily cancellations, job elimination on a temporary, indefinite or permanent basis, etc.) and in so far as it is able, it will provide employment and income security to bargaining unit employees.
- 7.2 Cancellations/Flexing
- a. Every Effort to Avoid Cancellations/Flexing. Prior to making hours reductions on a daily or hourly basis, the Hospital shall make efforts to avoid daily cancellations/flexing. After making such efforts, the Hospital may make hours reductions on a daily or hourly basis for operational reasons (for example, a reduction in census or acuity), subject to any applicable terms in this Agreement. Such reductions can be made even after the schedule has been posted or during a shift. Cancellation/flexing must be approved by a supervisor, department manager or designee. Eligible employees who are cancelled/flexed may take the day off without pay or use PTO (where applicable), at the employee's discretion.
- b. Order of Cancellation/Flexing. Subject to patient care staffing needs, including adequate qualifications of employees, when it is necessary and unavoidable to cancel or flex an employee, the Hospital shall cancel/flex employees in the following order:
- i. The Hospital agrees to first seek volunteers, for all of the following categories before imposing mandatory cancellation/flexing. Volunteers may be accepted at any point in the process. Where the number of volunteers exceeds the number of employees to be cancelled/flexed, the Employer shall select volunteers, by seniority by shift, job position, and unit, in the following order:
- (1) full-time employees;
  - (2) part-time employees;
  - (3) per diem employees;
  - (4) temporary employees, agency or registry workers.
- ii. Prior to canceling full-time and part-time employees on their regular schedule for low census, the Hospital will first cancel:
- (1) agency or registry workers;
  - (2) temporary employees;
  - (3) part-time then full-time employees working overtime or on extra shifts; and
  - (4) per diem employees.
- iii. The Hospital will then cancel:
- (1) part-time employees, and
  - (2) full-time employees, based on rotating seniority by shift, job position, and unit, if appropriate.

That is, the Employer will first cancel the part-time employee with the least seniority. (After that cancellation, that employee shall not be cancelled again unless all other part-time employees who are working have been cancelled after that initial employee's cancellation.) The next employee to be cancelled shall be the part-time employee with the next-least seniority. (Again, after that cancellation, that employee shall not be cancelled again unless all other part-time employees who are working have been cancelled.) As cancellations are necessary, this process will continue. At no time shall a part-time employee X be cancelled when another part-time employee Y is working, unless Y has been cancelled sometime after X's last cancellation (within a shift, job position, and unit).

Similarly, the Employer will first cancel the full-time employee with the least seniority. (After that cancellation, that employee shall not be cancelled again unless all other full-time employees who are working have been cancelled after that initial employee's cancellation.) The next employee to be cancelled shall be the full-time employee with the next-least seniority. (Again, after that cancellation, that employee shall not be cancelled again unless all other full-time employees who are working have been cancelled.) As cancellations are necessary, this process will continue. At no time shall a full-time employee X be cancelled when another full-time employee Y is working, unless Y has been cancelled sometime after X's last cancellation (within a shift, job position, and unit). Also, at no time shall a full-time employee be cancelled while a part-time employee is working (within a shift, job position, and unit).

Within two (2) weeks of any request by the Union, the Hospital will provide the Union with a full record of cancellations in any unit or department and a current seniority list for any unit or department.

An employee with more than twenty (20) years of seniority shall not be cancelled, unless she/he is the least senior employee available.

An employee with more than ten (10) but less than twenty (20) years of seniority shall not be cancelled more than one (1) time per six month period (January through June and July through December), unless she/he is the least senior employee available.

- c. Once cancelled/flexed, an employee is considered off the schedule for that shift (or portion thereof), and shall not be required to maintain contact with the Hospital or be available to work, unless the employee has agreed to accept and be compensated for On-Call status, consistent with this Agreement, for the shift or portion thereof.
- d. Cancellation/Flexing Notice. The Hospital shall notify affected employees as soon as the need for cancellation/flexing is known to the Hospital. The Hospital shall call-off/flex employees at least two (2) hours prior to the commencement of their scheduled shift, if known. If the employee is not notified two (2) hours before the

shift, the Employer shall pay Reporting Pay when the employee reports to work. Reporting Pay provisions of this Agreement shall apply.

- e. The parties understand that executing the mandates of this Section can be difficult at times in a healthcare setting. Accordingly, the parties agree that, generally, the remedy for violations of the rotation for cancellations by rotating seniority shall be that the employee who is incorrectly cancelled shall have her/his next turn in the rotation skipped. However, one exception is when an employee is incorrectly cancelled and should therefore have her/his next turn skipped but is instead cancelled on this next turn, in which case the Union may seek an economic remedy. In determining an economic remedy for violations of contractual provisions regarding cancellations/flexing, the arbitrator may consider mitigating circumstances.

## **ARTICLE 8 – SENIORITY**

### **8.1 Definition**

Unless otherwise specified, seniority shall commence on the most recent date of hire into the bargaining unit by the Employer as a regular full-time employee and shall mean total service with the Facility thereafter, subject to termination of seniority under Section 8.5. Seniority shall have no application during the first ninety (90) days of continuous employment. Part-time and Per diem employees shall have seniority among themselves.

### **8.2 Displacement and Recall**

- a. Seniority shall be by department and shall apply in cases of displacement or re-call, except in cases where specialized work or skill or trained personnel is required.
- b. The Facility will make reasonable efforts to inform employees of displacements as soon as practical prior to the displacement.
- c. In the event of a permanent displacement (layoff) affecting at one time, ten (10) or more employees, the Employer agrees to bargain with the Union over the amount, if any, of severance pay to be paid to the displaced employees. The Union must request bargaining in writing within ten (10) days of notification that a permanent displacement will occur or within ten (10) days after the permanent displacement occurs.

### **8.3 Permanent Vacancies**

- a. Posting of Vacancies. All permanent vacancies in regular full-time and part-time classifications covered by this Agreement shall be posted for seven (7) days before they are filled. Current employees who wish to be considered for such vacancies shall submit a written request to the Employer's on-site Human Resources Coordinator (or any other individual designated in the posted notice)



- b. Filling a Vacancy. If no qualified employee submits a written request by 4 p.m. of the seventh (7th) day of the posting, the Employer shall be free to fill the vacancy from any source. The Employer shall select the qualified employee with the greatest seniority (giving preference first, regardless of seniority, to full-time employees within the department, then part-time employees within the department, then per diem employees within the department and then to any non-departmental employee with the greatest seniority.) However, the Employer is not required to select any employee, regardless of his or her seniority and regardless of the number of applicants for the vacancy, if within the year prior to the employee's request the employee received a written warning or a disciplinary suspension and/or if the employee did not receive an overall rating of "satisfactory" or better on the employee's most recent evaluation form. During any posting period, the Employer may fill the vacancy on a temporary basis.
- c. Sixty-Day Trial Period. Any employee who is selected to fill a vacancy by this procedure shall be given a sixty (60) day trial period. In the event, the Employer deems that the employee has not performed in a satisfactory manner, the Employer shall return the employee to his or her former position, without any break in department or bargaining unit seniority, and re-post the vacancy.
- d. Determination When a Vacancy Exists. The Facility, in its sole discretion, shall determine when there is a permanent vacancy.

#### 8.4 No Bumping

It is understood that in none of the foregoing instances does this Agreement contemplate a bumping procedure.

#### 8.5 Loss of Seniority

Seniority shall be terminated by:

- a. Discharge;
- b. Resignation;
- c. Absence in excess of twelve (12) consecutive months by reason of industrial injury for employees with fewer than five (5) years of service, or absence in excess of twenty-four (24) consecutive months by reason of industrial injury for employees with five (5) or more years of service, unless extended by mutual consent;
- d. Absence in excess of six (6) consecutive months by reason of illness or non-industrial injury, unless extended by mutual consent;
- e. Failure to return from a leave of absence in accordance with the terms of the leave;
- f. Displacement of twelve (12) months or more;
- g. Failure to report to work for three (3) consecutively scheduled shifts (no call/no show) where the absence has not been excused by the Employer.

## **ARTICLE 9 – ADDITIONAL WORK**

- 9.1 The Employer shall attempt to replace a scheduled employee who is absent for any reason (e.g., vacation, call off due to illness, etc.) by offering work in the following manner and order, provided such employee has made him/herself available through procedures established by the Employer.
- a. Calling part-time employees by seniority until they have worked forty (40) hours in a week;
  - b. Calling per diem employees on an equitable basis;
  - c. Calling full-time employees by seniority.
- 9.2 A part-time or full-time employee who chooses not to be called for additional work will advise the Employer in writing and it is agreed that the Employer will not make such calls.
- 9.3 Overtime will also be offered by seniority.

## **ARTICLE 10 – WORK DISTRIBUTION**

The Employer will exercise its best efforts to distribute the workload equitably among employees; however, this Article shall not be subject to the grievance and arbitration procedure in this Agreement.

## **ARTICLE 11 – ELIGIBILITY OF BENEFITS**

Only full-time and part time employees, who have successfully completed their probationary period, are entitled to benefits in accordance with the provisions of the Employer's Employee Handbook. Employees working fewer than twenty-four (24) hours per week, per diem, and temporary employees are not eligible to receive benefits other than those required by law. In the event that the Employer ceases, for whatever reason, to use twelve (12) hour work shifts in this Facility, then only full time employees and those part time employees working a minimum of thirty (30) hours per week shall be entitled to benefits in accordance with the provisions of the Employer's Employee Handbook.

## **ARTICLE 12 – BEREAVEMENT LEAVE**

Bereavement leave up to three (3) days with pay shall be granted to eligible employees in cases of a death in the employee's immediate family which shall be defined to include spouse, mother, father, daughter, son, sister, brother, grandparents and parents-in-law. An additional two (2) days with pay shall be allowed for the employee to attend a funeral out of state of California as long

as the employee provides documentation of an out-of-state funeral. Pay for bereavement leave shall be at the same base rate and for the same number of hours the employee would have received had the normal schedule been worked, up to a maximum of eight (8) hours per day.

**ARTICLE 13 – JURY DUTY**

Eligible employees who are required to serve on a jury shall be paid the difference between jury duty pay and their regular pay. Payment shall be at the same base rate and for the same number of hours the employee would have received had the normal schedule been worked, up to a maximum of eight (8) hours per day and forty (40) hours per work week. Paid jury duty shall be capped at fifteen (15) days in any twelve (12) month period. As a condition to receiving jury duty pay, the employee must notify the Employer as soon as practicable after receiving the summons for jury duty and must provide the Employer with documentation of his/her jury duty pay.

**ARTICLE 14 – PAID TIME OFF (P.T.O.)**

- 14.1 Except as noted below, eligible full time employees shall be entitled to accrue, vest, utilize and cash out PTO to the same extent as hourly non-bargaining unit employees in this Facility.
- 14.2 For the life of this Agreement (Years 2018-2021), all PTO eligible full time employees in the bargaining unit will accrue PTO at the following rates:

Years of Service	PTO Rate (if scheduled to work 24-35 or 37-40 hours per week)	PTO Rate (if scheduled to work 36 hours per week)	Annual Maximum Hours. Cap PTO	Maximum Balance PTO
Up to 5 <sup>th</sup> year anniversary	.05770	.06414	120 Hours	180 Hours
From 5 <sup>th</sup> year anniversary to 10 <sup>th</sup> year anniversary	.06920	.07694	144 Hours	216 Hours
10 <sup>th</sup> year anniversary and thereafter	.08844	.09832	184 Hours	276 Hours

Years of service will be determined as of an employee's most recent date of hire at the Facility. Those part time employees receiving PTO as of April 12, 2019 (ratification date) will be grandfathered for the term of the Agreement.

The maximum amount of banked PTO an employee may have on the books at any given time is also indicated in the above chart.

### 14.3 PTO Calculation

The amount of PTO is calculated by multiplying the PTO Accrual Rate Per Hour Paid by all hours paid (including holiday, PTO, jury duty, bereavement leave and overtime hours) each biweekly pay period (up to the stated maximum per calendar year).

- a. The maximum number of hours that vests each pay period can be calculated by dividing the employee's maximum accrual by twenty-six (26). The employee vests in accrued PTO based on a maximum of seventy-two (72) hours per biweekly pay period (for employees working fewer than twelve (12) hour shifts the maximum is eighty (80) hours per bi-weekly pay period). Any PTO accruals that exceed the biweekly limit will be carried over to vest in a following pay period in which the employee has fewer paid hours than the biweekly limit.
- b. PTO will not accrue during unpaid time or when an employee is on an authorized leave of absence unless otherwise required by law.
- c. PTO will stop accruing when the employee's PTO balance reaches the combined maximum balance or the calendar year maximum accrual, whichever occurs first. PTO will resume accruing when the employee begins to use PTO and reduces the combined balance below the allowed maximums, so long as the calendar year maximum accrual has not been met. During any period that an employee's PTO account balance and/or annual accrual have reached allowed maximums, PTO does not accrue and any forfeited hours are not added retroactively to the employee's PTO account.

14.4 Accrued PTO hours shall accrue and become vested on a biweekly basis. PTO can only be used if vested; employees may not borrow against non-vested PTO. Eligible employees accrue PTO from date of hire but accrued PTO is not vested and available for the use of a new employee until the beginning of the first full pay period following the employee's first thirty (30) days of employment.

14.5 PTO may accrue from year to year; or in the alternative, an employee may elect to cash out all or part of PTO accrued each year at one hundred percent (100%) of the employees' then hourly rate; provided that the employee provides the Employer with written notice of the amount of PTO to be cashed out.

14.6 PTO is to be used for illness or other personal reasons, including vacation. An employee who leaves work early due to an illness or emergency may use PTO for the time remaining on his or her shift, but PTO may not be used to compensate employees who are late for work PTO may only be used to substitute for hours that the employee is regularly scheduled but does not work. Except for the cash out provision of Section 14.5, PTO may not be used to supplement pay for time away from work.

14.7 PTO must be used in a minimum of two (2) hour increments.

14.8 The Employer may require a physician's statement for employees who are absent three (3) or more consecutive days of work because of illness or injury.

14.9 Except for absences due to illness or emergencies, PTO must be scheduled in advance. PTO shall be granted on a first come, first served basis, except under the following circumstance:

Employees who elect to use PTO for vacation of one (1) week or more must request it in writing by February 1 of each year each year. Such vacation will be taken through February 1 of the following year. The Employer will respond to all requests made before February 1, by March 1. Based on the Employer's scheduling needs and staffing requirements, the Employer shall attempt, but is not required, to grant the employee's requested vacation.

Any requests for two (2) weeks or more of PTO made after February 1 may be denied based on late submission alone. Requests for two (2) weeks or more of PTO for vacation made within sixty (60) days of the first (1st) day of vacation may be denied due to late submission alone.

For all vacation requests, where two (2) or more employees in the same job classification, on a timely basis, make the same or overlapping requests and the Employer is unable to accommodate all of the requests, it shall use seniority in determining which request, if any, to grant. Once a request is granted, it shall not be changed absent the mutual consent of the Employer and the employee.

14.10 An employee who changes his or her status such that he or she is no longer eligible to accrue PTO (i.e., from full time to per diem) shall be paid his or her accrued PTO, whether or not vested, at the employee's hourly rate in effect immediately prior to the employee's status change.

14.11 Upon termination, all accrued PTO, whether or not vested, shall be payable to the employee except that an employee terminated within his or her probationary period shall not be entitled to be paid for any accrued PTO, whether or not vested.

14.12 In the event that the Employer changes its PTO Plan with respect to non-represented employees working in the Facility, before implementing any such changes with respect to the employees covered by this Agreement, it shall notify the Union and engage in good faith bargaining.

## **ARTICLE 15 – LABOR MANAGEMENT COMMUNICATIONS COMMITTEE**

The Employer and the Union agree to establish a Labor Management Communications Committee. The Committee will be composed of not less than two (2) nor more than five (5) employees and at least one (1) Employer representative. It will meet at least once every three (3)

months, or more frequently as mutually agreed, to discuss and attempt to resolve any job-related issues, including those related to job security, workload, assignments, patient care, safety, infectious disease control and any other work-related issues. The parties agree that such meetings shall generally be limited to two (2) hours at a time, unless the parties agree otherwise. Committee member employees who attend the committee meetings will be paid for their time spent in the committee meeting at the straight-time hourly rate, not to exceed two (2) hours of pay, but such time shall not be considered for purposes of the payment of overtime.

## **ARTICLE 16 – HOLIDAYS**

16.1 The Employer recognizes the following holidays:

New Year's Day	Thanksgiving Day
Memorial Day	Christmas Day
Independence Day	Martin Luther King's Birthday
Labor Day	

16.2 Observance of the holiday will be on the first, second, and third shifts that begin on the actual holiday.

16.3

- a. An eligible employee who works an eight (8) hour shift will receive holiday pay up to a maximum of eight (8) hours for a holiday recognized by the Employer. If the eligible employee works fewer than forty (40) hours per week, his/her pay will be pro-rated.
- b. An eligible employee who works a twelve (12) hour shift will receive holiday pay up to a maximum of twelve (12) hours for a holiday recognized by the Employer. If the eligible employee works fewer than thirty-six (36) hours per week, his/her pay will be pro-rated.
- c. Full-time employees who work on a holiday shall receive time and one-half (1-1/2) for all hours worked in addition to the holiday pay set forth in Subsections (a) and (b) above. Part-time and on call employees shall continue to receive time and one-half for all hours worked on the designated holidays.
- d. Employees will have the option of substituting their birthday for one of the seven holidays listed in the contract. Employees will give notice of their desire to substitute their birthday for a scheduled holiday at least ninety (90) days prior to the scheduled holiday that will be substituted. The Hospital will honor employees' requests to the extent staffing needs permit.

## **ARTICLE 17 – HEALTH PROGRAM**

- 17.1 All bargaining unit employees who are regularly scheduled to work thirty (30) hours a week or more are eligible to participate in the Employer’s standard medical, dental and vision plans and voluntary insurance plans, in the same manner and to the same extent that such plans are offered to the Hospital’s non-bargaining unit employees.
- 17.2 Except as specifically provided in this Article, the Employer reserves the right to change, alter, amend or eliminate its standard medical, dental, vision, and voluntary insurance plans including changes to the conditions or costs for coverage, the plan choices offered, benefits provided and employee premiums, provided that:
- a. any such action is consistent with changes made to the plan for non-exempt, non-bargaining unit employees in the Hospital; and
  - b. Kindred gives the Union thirty (30) days’ notice of any change to the extent reasonably possible. If Kindred eliminates its wellness program, the Employer agrees to meet and discuss with the Union how to implement such elimination consistent with Section 17.3, below.
- 17.3 No increases to employee contribution percentages (Kaiser Medium plan) from its current 2019 percentages. During the term of this Agreement, the Hospital agrees to maintain and not to increase the employee percentage of the total monthly premium for the Kaiser Northern California Medium plan choices. In other words, if an Employee pays 17.8% in 2019 of the total monthly premium for Kaiser/Employee-only coverage, the Employee shall pay 17.8% of the total monthly premium in 2020, 2021 and 2022.

## **ARTICLE 18 – GROUP LIFE INSURANCE**

Employees covered by this Agreement shall be entitled to the life insurance and death and dismemberment insurance program offered by the Employer.

## **ARTICLE 19 – SHORT AND LONG TERM DISABILITY INSURANCE**

Employees covered by this Agreement shall be entitled to the Short Term and Long term Disability Insurance Plans offered by the Employer.

## **ARTICLE 20 – RETIREMENT PLAN**

Employees covered by this Agreement shall be entitled to the Kindred 401(k) Retirement Savings Plan offered by the Employer.

## **ARTICLE 21 – LEAVES OF ABSENCE**

### 21.1 Personal Leaves

Personal leaves shall be granted at the discretion of the Employer.

### 21.2 Personal Medical Leaves

The Employer will grant an employee a leave of absence for a medical condition verified by a physician in conformance with state, federal and local laws. The maximum leave shall be one year.

### 21.3 Work Related Medical Leaves

The Employer will abide by state, federal and local law regarding the granting of work related medical leaves to employees. The maximum leave shall be one year. Employees on a work related medical leave shall receive up to twelve (12) weeks health insurance continuation.

### 21.4 Extensions

Extensions of any leave beyond the period required by law or Facility policies are at the discretion of the Employer.

### 21.5 Return from Leave

Upon return from a leave of absence, an employee will be returned to his/her former position or an equivalent position.

### 21.6 Employee Handbook Governs

The leave of absence policies in the Employer's Employee Handbook shall govern employee leaves of absences to the extent not specifically addressed herein.

### 21.7 Union Leaves

The Employer will grant one employee at any given time a leave up to one (1) year for the purpose of working for the NUHW. With four (4) weeks' notice, an employee may return to duty at any time during or at the end of the one (1) year period.

## **ARTICLE 22 – DISCRIMINATION**

The Employer and the Union agree that neither the Union nor the Employer shall discriminate in respect to employment and continuing employment, by reason of Union activity, political affiliation, race, color, creed, national origin, disability, veteran status, sex, age, sexual orientation or gender identity.



## **ARTICLE 23 – UNIFORMS**

When employees are required to wear uniforms or special type work clothes while in the employ of the Facility, the cost of laundering and furnishing same shall be borne by the Facility, provided that the Facility shall not be required to furnish or launder apparel traditionally worn by such employees in hospitals generally. The term "uniform" includes wearing apparel and accessories of distinctive design or color.

The Employer agrees to contract with a uniform/linen service to provide EVS employees with rented uniforms on a daily basis. Employees may take one clean uniform home so as to avoid the need to change clothes at the Facility.

Employees shall exercise reasonable care in maintaining their uniforms in good condition, given normal wear and tear, and shall return their uniforms to the Facility upon termination and prior to receiving their final paycheck. Employees shall be notified to these requirements upon receipt of a uniform.

## **ARTICLE 24 – MOONLIGHTING**

The Union will use its best efforts to cooperate with the Facility to prevent moonlighting that interferes with the employee's efficient performance of his/her duties with the Facility.

## **ARTICLE 25 – BULLETIN BOARD**

- 25.1 The Facility will provide a bulletin board directly next to the main cafeteria entrance for posting notices provided by the Union. This bulletin board shall be designated as a NUHW board and shall be equipped with a protective covering.
- 25.2 Upon submission by the Union to a designated representative of the Facility of a Union notice officially approved by the Union containing no editorial comment, the Facility will promptly post such notice on the bulletin board. Such notice will remain posted for a reasonable time commensurate with its purpose.

## **ARTICLE 26 – CONSCIENTIOUS OBJECTION**

The rights of patients to decline certain medical procedures and the obligation of the Facility to comply with such requests must be recognized and respected. In the case of withdrawal of life support systems, it is recognized that an employee may hold sincere moral or religious beliefs, which require the employee in good conscience to refuse direct participation in such medical procedures. An employee who has an assignment involving participation in the withdrawal of life support in such procedures shall notify his/her supervisor of this position in writing. The Facility agrees that an employee may refuse to participate directly in such medical procedures but retains the right reasonably to reassign or transfer such an employee.

## **ARTICLE 27 – UNION REPRESENTATIVES' VISITATIONS**

- 27.1 The Field Representative or qualified representative of the Union shall be allowed to visit the Facility for the purpose of ascertaining whether or not this Agreement is being observed or to observe job conditions under which employees are employed. This privilege shall be exercised reasonably and shall be related to the representative's responsibility for seeing that the Facility is in compliance with the Agreement.
- 27.2 The Field Representative or qualified representative of the Union shall report to a designated management official when entering the Facility and such representative shall not interfere with the normal conduct of work in the Facility. The Union representative may confer with employees, including Shop Stewards, only upon their own free time and in public areas within the Facility such as cafeterias or coffee shops or in designated non-work areas.
- 27.3 In the case of a tour to observe conditions, the Field Representative or qualified representative shall notify the designated management official where he/she intends to go within the permitted areas of the Facility. The Field Representative shall not engage in discussion or distribution of material in work areas.
- 27.4 In the case of a grievance investigation, the Field Representative shall make an appointment in advance with the designated representative of management. Prompt and reasonable arrangements will be made so that a joint investigation of the grievance can be made.
- 27.5 The Field Representative assigned to the Facility may request a job description or job descriptions of bargaining unit positions if such descriptions exist. Such description or descriptions shall be given to the Field Representative in all cases where they are available or, if in the process of revision, as soon as the revised description or descriptions become available.
- 27.6 Employees appointed or elected to the Union Negotiating Committee shall receive full credit towards accrual of seniority and benefits, including any payment thereof, for all time missed from their regular work schedules due to negotiations.
- 27.7 The Facility and the Union shall reasonably apply the provisions of this Article.

## **ARTICLE 28 – SHOP STEWARDS**

- 28.1 The Union may select a reasonable number of Shop Stewards for the Facility. The Union shall provide written notification to the Facility Administrator or her/his designee of the names of Shop Stewards as they are appointed and as their appointment ends.
- 28.2 It is preferred that the Shop Stewards shall be regular full-time or part-time employees with at least twelve (12) months of employment at the Facility.

- 28.3 The Shop Steward shall only deal with the representatives of the Facility designated to handle grievances.
- 28.4 The function of the Shop Steward shall be to assist employees in settling problems arising in connection with the application or interpretation of the provisions of this Agreement directly with the Facility Administrator or such other person as the Facility may designate and to participate, at the option of the employee, in the Grievance Conference described in Article 31 (Grievance and Arbitration Procedure).
- 28.5 The Shop Steward shall perform his/her functions outside of his/her working hours on his/her own time; provided, however, that if grievance meetings are scheduled during working hours, participating stewards shall not suffer any loss in pay.
- 28.6 The Shop Steward shall not direct any employee how to perform or not perform his/her work, shall not countermand the order of any supervisor, and shall not interfere with the normal operations of the Facility or any other employee. His/her activities as a Shop Steward shall in no way interfere with his/her assigned duties as an employee.
- 28.7 The Facility's designated representative is only required to meet with one (1) Shop Steward on any grievance.
- 28.8 In connection with investigatory interviews required by the Facility in which an employee reasonably believes that such investigation will result in disciplinary action, an employee upon his or her request shall be entitled to have a Union representative, Field Representative, and/or Shop Steward present, provided that such disciplinary interviews are not delayed by the inability to have both Union representatives present. It is understood that the role of the Union representative be strictly in accord with NLRB v. WEINGARTEN. In those cases where there are two (2) Union representatives present, there shall be only one (1) spokesperson, and the other representative shall serve only as observer.

## **ARTICLE 29 – COMPLAINTS**

- 29.1 It is hoped that most questions arising under this Agreement can be settled short of following the formal Grievance Procedure. The Facility recommends that an employee who has a claim or complaint discuss the matter with his/her supervisor. If the employee prefers, however, the employee may first consult with a Union official. There will be no retaliation against any employee for presenting a claim or complaint or for consulting a Union official in the first instance.
- 29.2 If an employee has any complaints, which the employee believes have not been properly considered by the supervisor, the employee may confer with the Administrator or his/her designated representative. At this conference, the employee may be accompanied by a

Union official. The employee shall be entitled to an answer within a reasonable length of time.

- 29.3 Included among the subjects upon which conferences may be requested are problems relating to verbal warnings, workloads, and adequate staffing. It is agreed that such cases or subjects are not subject to the Grievance Procedure except as otherwise specifically provided in this Agreement. However, conferences may be requested in cases of disciplinary layoff or discharge, and such cases shall be subject to the Grievance Procedure, including arbitration, as provided below.
- 29.4 An employee who receives a written warning or counseling memorandum shall be given a copy of the warning and shall sign a receipt which indicates the employee acknowledges having received the document. Acknowledging receipt of such document shall not constitute an admission of the employee's agreement with the substance of the warning. An employee may grieve a written warning or counseling memorandum provided the grievance is presented in writing within thirty (30) working days upon receipt of the warning or memorandum. Letters of warning and counseling memoranda shall be given consideration based upon the seriousness of the incident and the length of time since the occurrence of the incident.
- 29.5 Periodic performance evaluation reports are intra-Facility records and are not subject to the provisions of this Article or the Grievance Procedure. Upon request, an employee may have a copy of his or her performance evaluation.

### **ARTICLE 30 – DISCHARGE FOR CAUSE**

- 30.1 The Facility shall have the right to discharge or suspend any employee for just cause.
- 30.2 The Facility may draft such reasonable policies as may be deemed necessary for governing the conduct of employees. Where such rules are not included in the Employer's Employee Handbook at the time the parties enter into this Agreement, the Employer must send a copy of any such changes to the Union at least thirty (30) days in advance of the effective date of intended implementation.
- 30.3 Use of Disciplinary Documents
- No disciplinary documentation shall be utilized for progressive discipline beyond twelve (12) months of its issuance, provided no further occurrence of the same nature has taken place within that time, in which case the twelve (12) month period will start over as of that time. In the case of a disciplinary action for patient care issues, disciplinary documentation shall not be utilized for progressive discipline beyond twenty-four (24) months of its issuance, provided no further occurrence of the same nature has taken place within that time frame, in which case the twenty-four (24) month period will start over as of that time.

#### 30.4 Progressive Discipline

Except for cases of serious misconduct or serious job performance deficiencies, which may result in immediate separation of employment or other serious discipline, the Employer shall take a performance improvement and progressive corrective action approach. Progressive discipline steps include coaching, verbal counseling, written counseling and/or warning, final written warning or warnings, disciplinary suspension without pay, and termination of employment.

#### 30.5 Investigatory Suspension

Employees shall be paid while on investigatory suspension for the employees' scheduled hours, including any differentials that would have applied if the employee had worked such scheduled hours.

#### 30.6 Patient Care Complaints

- a. In cases involving patient care, the Hospital may issue discipline if the Hospital had a reasonable and good faith belief after a thorough investigation which included a fair opportunity for the employee to tell his/her side of the story, that the alleged actions or failure to act occurred. The Employer agrees to submit to the Union the substantive results pertaining to the employee against whom discipline has been issued, of any investigation conducted by:
  - i. the Hospital, or
  - ii. the State of California Department of Health on the incident in dispute.
- b. The following factors will apply in determining whether the Employer's belief was reasonable and in good faith:
  - i. the strength of the Employer's investigation;
  - ii. the strength of the evidence supporting the allegation;
  - iii. the employee's work history;
  - iv. the resident's complaint history;
  - v. the resident's cognitive ability;
  - vi. physical evidence, if any; and
  - vii. other such factors traditionally reviewed in disciplinary cases.
- c. Employees have an affirmative duty to honestly cooperate in Employer investigations relating to employee conduct and patient care issues. Employees have an affirmative duty to report suspected patient abuse or violation of resident rights.
- d. The Employer and the Union agree that, absent exceptional circumstances, patients should not be compelled to be involved in the Grievance and Arbitration process. Therefore, the parties agree that the arbitrator shall decide whether to admit into evidence any statements received from patients who do not appear as witnesses at the

arbitration (the arbitrator may also decide whether to admit statements from non-testifying family members and visitors).

The Arbitrator shall also determine the appropriate weight to be given in the event of the failure of any patient, visitor, or family member to testify at arbitration, subject to cross examination. The parties further agree that the arbitrator may allow patients, visitors, or family members to testify telephonically, subject to cross-examination, in cases where such persons are ready, willing and able to do so.

- e. The Arbitrator shall determine the weight of the Union's lack of access to interview and/or to cross-examine the Hospital's witness(es), if the Union lack such access.

## **ARTICLE 31 – GRIEVANCE AND ARBITRATION PROCEDURE**

- 31.1 Any problem arising in connection with the application or interpretation of the provisions of this Agreement, including the problems of discharge or layoff, which cannot be amicably adjusted between an employee of the Facility and the Department Head, or such other person as the Facility Administrator may designate, shall be reduced to writing, signed by the employee or Union representative, whichever is appropriate, and submitted to a Facility representative designated by the Facility. No grievance shall be considered unless it has been first presented in writing within thirty (30) days of the alleged occurrence giving rise to the grievance. All incidents leading to disciplinary action must be presented to the employee within thirty (30) days of the Employer's discovery of the incident. Failure to do this will make the disciplinary action untimely.

The Union has the right to grieve the changes to the Employer's Employee Handbook, regarding rules, regulations and employment policies as to their being reasonable when they are applied.

- 31.2 Grievance Conference

Within seven (7) days of receipt of the written grievance by the Facility, the Union, the employee, and the Facility Administrator or his or her designee shall meet and attempt to resolve the matter informally.

- 31.3 Arbitration

- a. Upon receipt of a timely, written request, the Union and the Facility shall within thirty (30) days select an impartial third party to be the Arbitrator to hear and determine the issues. The decision of the Arbitrator shall be final and binding on all parties, subject to the limitations of jurisdiction and authority contained in (b) below. In the event the parties cannot agree on the selection of an impartial third party, within thirty (30) days they shall request a list of Arbitrators from the Federal Mediation and Conciliation Service. The parties shall, within five (5) days of the receipt of the list, alternately strike names from such list until one name remains, which person shall be the Arbitrator.

- b. The Arbitrator shall not have any power to add to, subtract from, or to change any of the terms or provisions of this Agreement. Jurisdiction shall extend solely to claims of violation of specific written provisions of the Agreement and involve only the interpretation and application of such Agreement. The decision and award shall be based upon the joint submission agreement of the parties with respect to the specific interpretation and application of the Agreement.
  - c. The fee of the Arbitrator, as well as other expenses connected with the formal hearing, shall be borne equally by both parties.
  - d. Unless both parties agree in writing to waive the use of a Court Reporter, a Court Reporter will be used for every arbitration hearing and the parties will share equally the cost of the original and two (2) copies of the transcript, as well as the per diem fee of the Court Reporter.
- 31.4 A Field Representative or qualified representative of the Union may, with the employee's written authorization, and as relates to a particular grievance concerning the interpretation or application of this Agreement, inspect relevant material in such employee's personnel file upon which the Facility is or will be relying.
- 31.5 The time limits provided for herein may be waived only by the mutual written agreement of the Facility and the Union.

## **ARTICLE 32 – SAFETY**

The Facility will comply with applicable Federal and California laws and regulations pertaining to occupational safety and health. Likewise, it is the duty of each employee to comply with all health and safety regulations of the Employer. In the event any safety or health hazard is detected, it shall be promptly reported to the Employer. The Employer shall then have a reasonable period of time to remedy the situation. If, in the judgment of the employee or the Union, the Employer shall thereafter fail to completely remedy the situation, the employee or the Union shall be free to contact the Industrial Safety Commission of the State of California for appropriate action. Disputes concerning conditions of health and safety within the Facility shall not be subject to the complaints and the grievance and arbitration procedure of this Agreement, but shall be subject to the applicable administrative procedures established by Federal and California laws.

## **ARTICLE 33 – SAVINGS CLAUSE**

If any provision of this Agreement or the application of such provisions to any persons or circumstances be ruled contrary to applicable law, the remainder of this Agreement or the application of such provision to other persons or circumstances shall not be affected thereby.

## **ARTICLE 34 – MANAGEMENT RIGHTS**

- 34.1 It is mutually agreed that it is the duty and right of the Administration to manage the Facility and direct the workforce.
- 34.2 The employer retains the right to hire, direct and schedule the workforce; to plan, direct, and to control operations; to dis-continue or reorganize any or all departments or operations; to transfer, to promote, layoff, and discharge employees for just cause; to implement reasonable rules, regulations and employment policies; to introduce new or improved methods of facilities and in all respects to carry out the ordinary and customary functions of Management. All other rights of the Employer are also expressly retained even though not particularly enumerated above. The foregoing provisions shall be subject to the terms and conditions of this Agreement. The terms and conditions set forth in the Employer's Employee Handbook shall govern the employment of employees covered by this Agreement to the extent that the Employee Handbook is not inconsistent with this Agreement.

## **ARTICLE 35 – NO STRIKE-NO LOCKOUT**

There shall be no strike, slowdown, walkout, shutdown, or other stoppage of work by the Union or Union employees and no lockout by the Employer during the life of this Agreement.

The observance of a picket line at covered Employer which is established by a labor organization presently recognized by the Employer for purposes of collective bargaining, and which picket line is authorized by the Central Labor Council shall not be a violation of this Agreement; provided, however, that if the Union supports another Union's picket line during the term of this agreement, the Union recognizes its obligation to maintain essential services.

## **ARTICLE 36 – PATIENT CARE**

The Facility, its employees and the Union understand and agree that it should be the objective of all parties to provide high quality healthcare. The Facility and employees must be committed to serving the Hospital's patients by delivering the highest quality care possible. The parties agree and understand that high quality patient care can help be achieved if management and employees discuss and address patient care issues together.

## **ARTICLE 37 – CUSTOMER SERVICE/PATIENT SERVICE INITIATIVES**

Employees shall participate in any reasonable customer service or patient/family service initiatives of the Employer, work time permitting. The Employer will review these initiatives with the Union upon written request.



## **ARTICLE 38 – EMPLOYMENT BONUS PROGRAMS**

The Employer shall be privileged to offer sign on, refer-a-friend, extra shift, pick up shift and other employment bonuses in its discretion. The Hospital shall offer any such bonuses in a fair and equitable manner and not engage in scheduling or other favoritism. The Employer shall notify the Union if it intends to offer any of the bonus' described herein or other such incentives.

## **ARTICLE 39 – GIFTS AND AWARDS**

The Employer may present employees with gifts (*e.g.*, Holiday Turkeys) and allow them to participate in similar employee recognition programs (*e.g.*, years of service award programs). Any such gifts, awards, recognition programs do not constitute a binding practice upon the Employer and may be discontinued by the Employer in its discretion, with prior notice to employees and the Union. All such gifts and reward programs shall be applied consistently among eligible employees.

## **ARTICLE 40 – POLICIES AND PROCEDURES**

The Employer may implement or amend Policies and Procedures (*e.g.*, uniform; attendance; no-smoking) if reasonable, provided such Policies and Procedures do not conflict with the provisions of this Agreement. The Hospital will provide the Union with at least thirty (30) days' notice before it intends to implement any new or modified Policy or Procedure. Upon request of the Union, and beginning within ten (10) days of the notice, the parties agree to meet and bargain over the effects and impact of such changes. The Employer may proceed with reasonable policy changes after the thirty (30) day period, subject to any further effects bargaining or mutually agreed upon modifications.

The Hospital shall make a copy of the Employee Handbook available to employees on the Employer's website, as may be amended consistent with this Article. The Union may request a Labor-Management Communications Committee meeting to discuss all Policies and Procedures, including the Employee Handbook, and all practices arising from such policies.

## **ARTICLE 41 – DRUG TESTING**

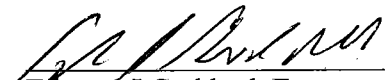
Kindred may continue its post-offer/pre-employment drug testing and background checks and may continue its reasonable cause drug testing, which shall include circumstances involving suspected drug diversion. The Hospital may apply this Policy, consistent with the Policies and Procedures, Discipline and Discharge (including, without limitation, the Just Cause and Progressive Discipline provisions of that Article), Grievance Procedure and Arbitration Articles, and any other applicable portions in this Agreement.

If an employee has a medical condition which could be mistaken for drug or alcohol use, the Employee will have the opportunity to provide medical documentation of symptoms, which the Hospital will take into consideration in making a disciplinary decision. Nothing herein shall preclude an employee from exercising his/her legal rights to refuse drug testing however refusal to take a required drug test may be subject to disciplinary action up to and including termination.


**ARTICLE 42 – TERM OF AGREEMENT**

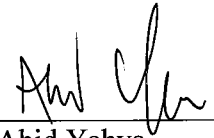
This Agreement shall be effective April 12, 2019 and shall remain in full force and effect without change, addition, or amendment through October 31, 2021, and shall be renewed from year to year thereafter subject to reopening by either party upon ninety (90) days' written notice to the other party prior to October 31, 2021 or any October 31 anniversary date thereafter.

**KINDRED HOSPITAL  
SAN FRANCISCO BAY AREA**

  
\_\_\_\_\_  
Edward J Goddard, Esq.  
Vice President, Labor Relations  
Kindred Healthcare  
Date: 2/24/2020

**NATIONAL UNION OF  
HEALTH CARE WORKERS**

  
\_\_\_\_\_  
Sal Rosselli, NUHW President  
Date: 2/5/2020

  
\_\_\_\_\_  
Abid Yahya  
Union Bargaining Spokesperson

**NUHW BARGAINING TEAM**

- Michelle Dick
- James Fox
- Shonda Hansen
- Evelyn Jackson
- Premila Kashyap
- Tequila Killingsworth
- Navneet Singh
- Paula Washington
- Sheilan Zuniga

## APPENDIX A – WAGES

### 1. Wage Increases

Effective the first full pay period following June 1, 2019, the Employer will provide a 2.75% wage increase to all full-time and part-time employees with more than six (6) months of Kindred service.

In the event any full time or part time employee is currently paid less than the Step 1 rate on the attached hiring grid, such employee shall, upon ratification, be placed on to the Step 1 rate or shall receive 2.75%, whichever is greater.

Effective the first full pay period following June 1, 2019, the Employer will provide a 1.25% wage increase to all per diem employees with more than six (6) months of Kindred service.

In the event any per diem employee is currently paid less than the Step 1 rate on the attached hiring grid, such employee shall, upon ratification, be placed on to the Step 1 rate or shall receive 1.25%, whichever is greater.

Employees employed as of the ratification date with less than six (6) months of Kindred service shall receive the above across-the-board increases (either 2.75% if full-time or part-time or 1.25% if per diem) at the first full pay period following six (6) months of service. These increases will be implemented retroactively approximately six (6) months following ratification of this agreement.

Effective the first full pay period following June 1, 2020, the Employer will provide a 1.25% wage increase to all full-time and part-time employees with more than six (6) months of Kindred service.

Effective the first full pay period following June 1, 2020, the Employer will provide a 1.25% wage increase to all per diem employees with more than six (6) months of Kindred service.

Effective the first full pay period following December 1, 2020, the Employer will provide a 1.5% wage increase to all full-time and part-time employees with more than six (6) months of Kindred service.

Effective the first full pay period following June 1, 2021, the Employer will provide a 2.75% wage increase to all full-time and part-time employees with more than six (6) months of Kindred service.

Effective the first full pay period following June 1, 2021, the Employer will provide a 1.25% wage increase to all per diem employees with more than six (6) months of Kindred service.

2. Longevity Increases

Effective the first full pay period following June 1, 2019, all full time and part time employees who have a minimum of ten (10) years as of that effective date, shall receive an additional one and one-quarter percent (1.25%).

Effective the first full pay period following June 1, 2019, all full time and part time employees who have a minimum of five (5) years of service, but less than ten (10) years, as of that effective date, shall receive an additional three-quarters percent (0.75%)

Effective the first full pay period following December 1, 2020, all full time and part time employees who have a minimum of ten (10) years as of June 1, 2020, shall receive an additional one and one-quarter percent (1.25%).

Effective the first full pay period following December 1, 2020, all full time and part time employees who have a minimum of five (5) years, but less than ten (10) years, as of June 1, 2020, shall receive an additional three-quarters percent (0.75%).

Effective the first full pay period following June 1, 2021, all full time and part time employees who have a minimum of ten (10) years as of June 1, 2021, shall receive an additional one and one-half percent (1.5%).

Effective the first full pay period following June 1, 2021, all full time and part time employees who have a minimum of five (5) years, but less than ten (10) years, as of June 1, 2021, shall receive an additional three-quarters percent (0.75%).

3. The following is minimum Hiring Scale to establish the minimum starting wage rates of employees hired into a bargaining unit position. Placement of new unit employees into the scale will be based on years of prior experience as determined in Kindred's sole discretion. The scale will not be used for any purpose other than to establish minimum rates upon hire into the unit. Once hired into the unit, new employees will be eligible for the annual increases, as described above, but not any further scale increases. The scale will not be adjusted upward by the annual increases, above.

Hiring Scale until the first full pay period following June 1, 2020:  
(Years of Prior Experience)

	<b>0 (start)</b>	<b>1 year</b>	<b>2 years</b>	<b>3 years</b>	<b>4 years</b>	<b>5 years</b>
LVN	\$24.17	\$24.65	\$25.14	\$25.64	\$26.15	\$26.67
CNA	\$16.59	\$16.92	\$17.26	\$17.61	\$17.96	\$18.32
Dietary Aide	\$15.91	\$16.23	\$16.55	\$16.88	\$17.22	\$17.56
Unit Secretary	\$17.15	\$17.49	\$17.84	\$18.20	\$18.56	\$18.93
Cook	\$17.30	\$17.65	\$18.00	\$18.36	\$18.73	\$19.10
Housekeeping	\$15.91	\$16.23	\$16.55	\$16.88	\$17.22	\$17.56
Lead Housekeeping	\$19.25	\$19.64	\$20.03	\$20.42	\$20.84	\$21.25

Hiring Scale effective the first full pay period following June 1, 2020:  
(Years of Prior Experience)

	<b>0 (start)</b>	<b>1 year</b>	<b>2 years</b>	<b>3 years</b>	<b>4 years</b>	<b>5 years</b>
LVN	\$24.65	\$25.14	\$25.64	\$26.15	\$26.67	\$27.20
CNA	\$16.92	\$17.26	\$17.61	\$17.96	\$18.32	\$18.69
Dietary Aide	\$16.23	\$16.55	\$16.88	\$17.22	\$17.56	\$17.91
Unit Secretary	\$17.49	\$17.84	\$18.20	\$18.56	\$18.93	\$19.31
Cook	\$17.65	\$18.00	\$18.36	\$18.73	\$19.10	\$19.48
Housekeeping	\$16.23	\$16.55	\$16.88	\$17.22	\$17.56	\$17.91
Lead Housekeeping	\$19.64	\$20.03	\$20.43	\$20.83	\$21.26	\$21.68

4. Minimum Wage Rate Increases

Should any federal, state or local minimum wage law or ordinance so require, the Hospital may immediately increase the hourly base rate of any employee to meet the applicable minimum wage.

## **SIDE LETTER OF AGREEMENT – MISC.**

### **1. TARDINESS/ABSENTEEISM POLICY**

Employer shall modify the current Handbook Provision on tardiness/absenteeism as follows:

- a. Counseling Procedures. Add same time scale to progressive discipline under tardiness as appears under absenteeism.
- b. Absenteeism-Related Discipline. Add the following paragraph to the end of this section: "Also, the employees will not be disciplined for isolated occurrences of tardiness where the employee is less than five (5) minutes late; however, any patterns of such tardiness will be subject to discipline.
- c. Miscellaneous. Add "FMLA" and "Workers Comp Leaves" to the list of approved leaves which are not covered by this policy.

### **2. PTO FOR PART TIME EMPLOYEES**

Part-Time employees receiving PTO benefits as of December 11, 2015 shall be grandfathered for the term of the Agreement.

### **3. HEALTH CARE SUBSIDY**

Employees enrolled and receiving insurance coverage in the 2015 medical insurance plan (Kindred or Kaiser) shall be paid a subsidy in the amount of \$200 per employee after the first full pay period following January 1, 2016.

## **SIDE LETTER OF AGREEMENT – UNIT-BASED SCHEDULING**

Kindred Hospital San Leandro (“Hospital”) and National Union of Healthcare Workers (“NUHW”) hereby agree as follows regarding all NUHW-represented CNAs, LVNs, and RNs at the Hospital:

1. The Hospital shall implement a unit-based schedule in which CNAs, LVNs, and RNs shall be assigned to one unit for two (2) six-week schedule periods. Employees shall be rotated to a new unit at the beginning of every other six-week schedule period; that is, every twelve (12) weeks. When each rotation occurs, CNAs shall be rotated in one direction while RNs and LVNs shall be rotated in the other, such that each employee will be working with a different overall cohort of fellow employees in each twelve-week period. At the beginning of each twelve-week period, the Hospital shall provide a thorough training/orientation to all employees in the new units to which they are assigned.
2. During each twelve-week period following execution of this Side Letter, employees will work on their assigned unit except when necessary for operational reasons (e.g., the need to float) or for other exigent circumstances.

The Hospital shall maintain a list of employees who are willing to float away from their assigned units. Any employee interested in being on this float list shall submit her/his name in writing to the Director of Nursing (DON). The hospital shall use this list of float volunteers when floating is necessary for operational reasons or for other exigent circumstances. If the number of volunteers on the maintained list is insufficient for a particular operational or exigent circumstance, then the Hospital may, after floating all volunteers, float additional employees. This particular clause is subject to the grievance and arbitration process, though the parties agree that no economic remedy shall result from these particular grievances.

3. Approximately three months after implementation of this agreement, the Hospital and NUHW will meet to earnestly and collaboratively assess the success of this unit-based scheduling procedure, with a particular focus on both its effect on patient outcomes and how employees feel about it. Both parties will provide data and information, as necessary, toward this end. If, at this point only, either party desires to negotiate over possible modifications to this Agreement, then the parties will engage in good faith bargaining over such. However, the implementation of this Agreement as it was initially agreed to will not be paused or rescinded in the course of such negotiations.
4. The Hospital and NUHW agree that all rights and obligations under the collective bargaining agreements between them remain in full force and effect unless specifically inconsistent with this Side Letter of Agreement.
5. The parties further agree that this Side Letter of Agreement shall be attached to both collective bargaining agreements between the parties.



**SIDE LETTER OF AGREEMENT – MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding between Kindred Hospital San Leandro and National Union of Healthcare Workers is intended to clarify and supplement current language in the parties' collective bargaining agreements relating to Overtime for 12-Hour Shift employees and the Hospital's Extra shift Bonus Program.

1. OVERTIME FOR 12-HOUR EMPLOYEES WORKING AND EXTRA SHIFT

The parties agree that the intent behind the language in Article 6.4(b)(3) of the RN/Tech contract and Article 6.4(b)(3) of the Service and Maintenance contract is as follows:

Employees who are scheduled for 12-hour shifts shall receive overtime for all hours worked on a 4<sup>th</sup> 12-hour day in a week as follows: all hours paid up until the first 8 hours on the 4<sup>th</sup> day shall be paid at time and one-half and all hours paid after 8 hours shall be paid at double time. The Hospital agrees to this pay practice even though some of the hours worked during the 4<sup>th</sup> 12 hour day may still result in fewer than 40 hours worked per week.

2. EXTRA SHIFT PREMIUM PAY PRACTICE

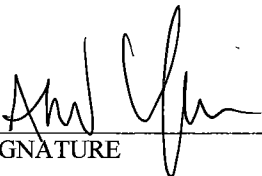
The parties agree that the Hospital may continue to offer an Extra Shift Premium Pay Practice in its discretion in accordance with current practice. The Hospital will provide the Union with notice of when the Pay Practice is implemented and when it is ended. The terms of the pay practice shall remain the same unless modified in writing by the parties. The following amounts are paid for an extra shift for the following groups of employees:

CNAs:	\$4.17 per hour
LVN/RT	\$6.25 per hour
RN:	\$12.50 per hour

Employees who call off for another shift during the pay period forfeit the extra shift premium during that pay period.

*Signed on behalf of NUHW:*

Abid Yahya  
\_\_\_\_\_  
PRINT NAME

  
\_\_\_\_\_  
SIGNATURE

2/3/20  
\_\_\_\_\_  
DATE

*Signed on behalf of Kindred SFBA:*

Edward J Goddard  
\_\_\_\_\_  
PRINT NAME

  
\_\_\_\_\_  
SIGNATURE

2/24/2020  
\_\_\_\_\_  
DATE

## **THE SEVEN POINTS OF JUST CAUSE FOR DISCIPLINE**

If the answer to these seven questions is **YES**, Management has a just cause for discipline:

1. **Fair Notice** – Did Management make the worker aware of the rule or policy which they are being accused of violating?
2. **Prior Enforcement** – Has Management recently enforced the rule or policy or penalized other workers for violating the same rule or policy?
3. **Due Process** – Did Management conduct an interview or hearing before issuing the discipline, take action promptly and list charges precisely?
4. **Substantial Proof** – Was Management's decision to accord discipline based on credible and substantial evidence?
5. **Equal Treatment** – Is the punishment Management is proposing consistent with the punishment other workers received for the same or substantially similar offense?
6. **Progressive Discipline** – During the disciplinary process, did Management issue at least one level of discipline that allowed the employee an opportunity to improve?
7. **Mitigating and Extenuating Circumstances** – Was the discipline proportional to the gravity of the offense, taking into account any mitigating, extenuating or aggravating circumstances?

*This page is for informational purposes only and is not part of the collective bargaining agreement.*