

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X

|                             |   |                           |
|-----------------------------|---|---------------------------|
| NEW YORK-PRESBYTERIAN       | : | 24-cv-05750-NRM           |
| BROOKLYN METHODIST, as      | : |                           |
| assignee of                 | : |                           |
| d/b/a NEW YORK-PRESBYTERIAN | : |                           |
| BROOKLYN METHODIST HOSPITAL | : | United States Courthouse  |
|                             | : | Brooklyn, New York        |
| Petitioner,                 | : |                           |
|                             | : |                           |
| -versus-                    | : | Thursday, August 22, 2024 |
|                             | : | 2:00 p.m.                 |
|                             | : |                           |
|                             | : |                           |
| NEW YORK STATE NURSES       | : |                           |
| ASSOCIATION,                | : |                           |
| Respondent.                 | : |                           |

- - - - - X

TRANSCRIPT OF CIVIL CAUSE FOR ORDER TO SHOW CAUSE  
BEFORE THE HONORABLE NINA R. MORRISON  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Petitioner: EPSTEIN BECKER & GREEN, P.C.  
875 Third Avenue  
New York, New York 10022  
BY: AIME G. DEMPSEY, ESQ.

For the Respondent: COHEN, WEISS AND SIMON LLP  
909 Third Avenue  
12th Floor  
New York, New York 10022  
BY: PETER D. DECHIARA, ESQ.

Court Reporter: Nicole J. Sesta, RMR, CRR  
Official Court Reporter

Proceedings recorded by computerized stenography. Transcript  
produced by Computer-aided Transcription.

1 THE COURTROOM DEPUTY: Civil cause for an order to  
2 show cause for case 24-CV-5750, New York-Presbyterian Brooklyn  
3 Methodist versus New York State Nurses Association.

4 Counsel, please state your appearances for the  
5 record, starting with the petitioner.

6 MS. DEMPSEY: Aime Dempsey with Epstein Becker &  
7 Green for the petitioner. With me in the courtroom are my  
8 associates Elan Nelberg and America Garza.

9 THE COURT: Good afternoon.

10 MR. DeCHIARA: Good afternoon, Your Honor.

11 Peter DeChiara from the law firm of Cohen, Weiss and  
12 Simon LLP for the respondent, New York State Nurses  
13 Association. With me in the courtroom is Rory Bartel, who is  
14 associate counsel in-house with the union and Rachel Feldman,  
15 the director.

16 THE COURT: Okay. We are here for a hearing on the  
17 petitioner, New York-Presbyterian Brooklyn Methodist Hospital,  
18 which I'll just refer to here as either the petitioner or the  
19 hospital, their application for a temporary restraining order  
20 that was filed on August 19th before me.

21 So Ms. Dempsey, let me start with you. I have some  
22 questions for you about a few things. The first big question  
23 I have is to get your response to the union's argument that  
24 this whole issue and the very thing you're complaining of  
25 covered by the Norris-LaGuardia Act. When I got the union's

1 response that they had to file on an expedited basis and  
2 focused very heavily on the act and the provisions of the act  
3 that appear on the face to divest me completely in this  
4 jurisdiction over this labor dispute, unless very carefully  
5 delineated exceptions apply, and I was quite surprised, I have  
6 to say, that you in your application, your brief, nowhere  
7 mentioned the act, much less addressed the requirements.

8 Even if you believe it doesn't apply, I was a little  
9 surprised you didn't raise that upfront. Let me hear from  
10 you. You can remain seated or stand, whatever you prefer.

11 MS. DEMPSEY: Before I start, I do want to advise  
12 the Court of one change that occurred this morning.

13 THE COURT: Okay.

14 MS. DEMPSEY: This morning, as I understand it,  
15 there was a call between Mr. Edelman and some members of the  
16 parties, my partner, Mr. Frank, and someone representing the  
17 union where Mr. Edelman advised that he is not available on  
18 August 26th but offered August 30th. So as far as our papers  
19 are concerned, you can sort of substitute the 30th for the  
20 26th, but I didn't want to let that not be mentioned to you.

21 THE COURT: Let me ask this. Mr. DeChiara, is the  
22 union prepared to proceed on the 30th, on that new date  
23 proposed by Mr. Edelman if I don't grant the injunction?

24 MR. DeCHIARA: Yes. The union did accept -- Counsel  
25 is correct that a conference call did happen. The arbitrator

1 offered the 30th. My client accepted the 30th and my  
2 understanding is that counsel for the hospital said he would  
3 get back to us.

4 THE COURT: Okay. Ms. Dempsey, at this point you're  
5 still here today because you haven't withdrawn an application  
6 seeking an injunction against the matter proceeding before Mr.  
7 Edelman at all, whether it's on the 30th or some other date.

8 MS. DEMPSEY: That's right.

9 THE COURT: Thank you for that update. Let me now,  
10 having answered my question, you can proceed.

11 MS. DEMPSEY: What the hospital is requesting here  
12 is not to enjoin the arbitration, which is where the LaGuardia  
13 Act comes from, the NLGA. We're requesting, in fact, relief  
14 that will allow us to proceed properly with the arbitration  
15 under the CBA. In other words, the CBA is being violated by  
16 the union in their insistence on going forward with an  
17 arbitrator who has not been agreed to or accepted by the  
18 hospital as the CBA requires.

19 Therefore, the hospital is seeking not to enjoin  
20 arbitration as prohibited by the NLGA, but to carry forward  
21 with arbitration that complies with the CBA agreed to between  
22 the parties.

23 THE COURT: Let me press back a little bit on that.  
24 Here is what I see in your proposed order to show cause and  
25 temporary restraining order. You asked me to have the Nurses

1 Association show cause as to why an order from this Court  
2 should not issue, and I'm reading from paragraph one of your  
3 proposed order; one, granting a preliminary injunction order  
4 and judgment.

5 So who are you asking me to enjoin and what are you  
6 asking me to enjoin? Because your request was that I grant an  
7 injunction.

8 MS. DEMPSEY: We're asking for the union to be  
9 enjoined with going forward with Mr. Edelman as arbitrator.

10 THE COURT: Okay. So you're asking me to enjoin the  
11 union from participating in an arbitration with Mr. Edelman  
12 because, as you've said in your papers, you don't agree to his  
13 appointment?

14 MS. DEMPSEY: Correct.

15 THE COURT: Let's put aside the merits of your claim  
16 that you didn't agree. I'm looking here at 29 U.S.C.  
17 Section 107, which, as you know, the NLGA subparagraph A,  
18 excuse me, the text of the act itself is Section 107.

19 It says that no court of the United States shall  
20 have jurisdiction to issue a temporary or permanent injunction  
21 in any case involving or growing out of a labor dispute as  
22 defined in this chapter, and continues. And then you go to  
23 subparagraph A with certain exceptions.

24 But you're asking me for a temporary injunction.  
25 You're saying it's about the union, they're supposed to not

1 show up at the arbitration. I'm a little unclear what you're  
2 asking me to tell them to do. You didn't name the AAA as a  
3 party. So I'm not enjoining them from having Mr. Edelman show  
4 up and proceed. But you're basically, as I see it, asking me  
5 to tell the union to tell the triple A that no one is going to  
6 show up.

7 Putting that aside, the particulars of what you're  
8 asking, you're asking me to issue an injunction in a case  
9 that, as the act says, involves or grows out of a labor  
10 dispute. I don't understand how in the world I have  
11 jurisdiction to do this.

12 MS. DEMPSEY: The NLGA is directed at preventing  
13 federal courts from enjoining against arbitration and against  
14 other delineated activities.

15 It does have the power -- it accepts the situation  
16 where a court can, for example, compel an employer to  
17 arbitrate and there are other exceptions that are in favor of  
18 arbitration in cases where there's a CBA in place that calls  
19 for arbitration as the dispute resolution process.

20 THE COURT: Let me stop you there. Is it your  
21 position that the NLGA doesn't apply at all, or that one of  
22 the exceptions that the courts have recognized under the NLGA  
23 authorize me to issue the injunction you're seeking?

24 MS. DEMPSEY: In the first place that it does not  
25 apply.

1 THE COURT: Tell me why that is. The statute itself  
2 says I can't issue a temporary permanent injunction in any  
3 case involving or growing out of a labor dispute.

4 Do you disagree that the dispute you have with the  
5 Nurses Association grows out of a labor dispute, that is a  
6 dispute over minimum staffing with the --

7 MS. DEMPSEY: No.

8 THE COURT: It grows out of a labor dispute and  
9 you're asking for an injunction. So what authority do you  
10 have, and you didn't address this in your brief at all, what  
11 authority do you have that says that the NLGA doesn't apply in  
12 these circumstances? Just because there's a bunch of cases  
13 that talk about courts' limited authority when one party or  
14 another doesn't want to participate in arbitration, but you  
15 didn't cite any of them because you didn't cite the statute at  
16 all. I want to know where you think the general proposition  
17 that the NLGA doesn't apply here even comes from.

18 MS. DEMPSEY: The Labor Management Relations Act  
19 requires that the CBA, such as this one, be enforced, which  
20 calls for arbitration. And the cases discussing the  
21 limitations include the *Textile Workers Union of America*  
22 *versus Lincoln Mills*, U.S. Supreme Court 353 U.S. 448; *Boys*  
23 *Market, Inc. versus Retail Clerks Union*. That's also a United  
24 States Supreme Court case, 398 U.S. 235; *Buffalo Forge Company*  
25 *versus United Steelworkers of America*. That's also a U.S.

1 Supreme Court case, 428 U.S. 397. It's evident from those  
2 cases and others, unlike the cases that were cited by the  
3 union, none of which are controlling here in the Second  
4 Circuit, that the federal courts are not divested of  
5 jurisdiction in cases where they are furthering the parties'  
6 arbitration obligations under CBAs that are in place.

7 THE COURT: When you say they're not divested of  
8 jurisdiction, they're not divested of jurisdiction to enjoin  
9 in arbitration or they're not divested of jurisdiction for  
10 some other purpose?

11 MS. DEMPSEY: They're not divested of jurisdiction  
12 to move forward in favor of arbitration.

13 THE COURT: Right. But that's not what you're  
14 asking.

15 MS. DEMPSEY: It is what we're asking.

16 THE COURT: Aren't all of those cases, I'm familiar  
17 with *Boys Market*, aren't all those cases where one party is  
18 resisting participating in the arbitration and essentially a  
19 federal court can grant a motion to compel? That's not what  
20 you're asking. You're not asking me to compel the union to  
21 show up at an arbitration they don't want to participate in.

22 MS. DEMPSEY: We are asking the Court to compel the  
23 union to follow the CBA in conducting an arbitration. We're  
24 not arguing that the hospital should not arbitrate this  
25 underlying labor dispute. We're arguing that the union is



1 attempting to do so unlawfully by proceeding with an  
2 arbitrator who has not been agreed to.

3 THE COURT: Are you saying that the unlawful acts  
4 exception in the NLGA is what applies here, that there's some  
5 sort of unlawful act because they're violating this contract?

6 MS. DEMPSEY: There is an unlawful act because  
7 they're violating the contract.

8 THE COURT: But your position, as I understand it,  
9 is that the NLGA doesn't apply at all?

10 MS. DEMPSEY: Initially that's right.

11 THE COURT: Let me ask you this. Of the cases that  
12 you've cited, or any others, do you know of any that have ever  
13 said not that the Court has the power to order someone to  
14 participate in arbitration, but that a Federal District Court  
15 has the power to halt an arbitration from proceeding, to tell  
16 the triple A you may not go ahead with this, or tell the union  
17 you may not show up and participate in this, when that  
18 arbitration has already been scheduled?

19 Is there any court that for any reason has concluded  
20 that they have the power to do that?

21 MS. DEMPSEY: I'm not aware of that at this moment,  
22 but I do want to point out that while there's a date that has  
23 been discussed and while there's a provision in the CBA that  
24 suggests that dates that have been offered by the arbitrator  
25 should be accepted, there has not been a scheduling of this

1 arbitration by triple A. There has not been an issuance of a  
2 schedule of an arbitration date.

3 THE COURT: How did the August 26th date get  
4 scheduled?

5 MS. DEMPSEY: The August 26th date was not scheduled  
6 as indicated in our papers, but the union has been pushing it  
7 because the arbitrator we thought initially said he was  
8 available.

9 THE COURT: So --

10 MS. DEMPSEY: There's -- I'm sorry.

11 THE COURT: Go ahead.

12 MS. DEMPSEY: There's a document, a scheduling  
13 document, that gets issued by triple A to schedule it after  
14 which time there are penalties for canceling at the last  
15 minute, that kind of thing. That was not done with the  
16 August 26th date, I believe because the parties have been at  
17 issue over Mr. Edelman's appointment, but I can't speak for  
18 that.

19 THE COURT: Is your expectation that there will be a  
20 scheduling document issued in connection with the August 30th  
21 date or at some other time?

22 Are you saying the dispute isn't even right now,  
23 even though you filed for an extraordinary remedy of an  
24 injunction?

25 MS. DEMPSEY: It's right because of the provision of

1 the CBA that requires the parties to accept the date offered  
2 by the arbitrator.

3 THE COURT: I think what I hear you saying is you  
4 came in representing to the Court that there was an emergency,  
5 a TRO that required this Court to turn away from other matters  
6 on its docket and in less than 48 hours read all of the briefs  
7 you all submitted and all these exhibits, give you a hearing  
8 because, in your view, you were going to be irreparably harmed  
9 if I didn't issue an order telling people to do something with  
10 respect to this Monday, August 26th arbitration.

11 And now you're standing up here telling me that it  
12 hasn't been scheduled, that you don't have to show up because  
13 the notice that you think you were supposed to get wasn't  
14 issued.

15 MS. DEMPSEY: It's the hospital's understanding that  
16 if they did not show up on the 26th, regardless of not having  
17 that piece of paper, that they could potentially be found in  
18 default.

19 THE COURT: Okay.

20 MS. DEMPSEY: I just wanted to clarify that  
21 particular nuance with respect to what was issued by triple A.  
22 But because of how CBA requires parties to accept first date,  
23 the hospital is and was under the understanding that if they  
24 don't go to arbitration when the union and the arbitrator say  
25 they're available, that there are ramifications and that they

1 would be in default.

2 THE COURT: Thank you. Let me ask you to have a  
3 seat and just for a minute have Mr. DeChiara respond to the  
4 threshold question of whether the NLGA applies. I presume  
5 you're probably well familiar with the U.S. Supreme Court  
6 cases that your adversary has cited here.

7 But I'm particularly addressing this question of  
8 whether there is some carve out under the NLGA for court  
9 orders with respect to arbitration.

10 MR. DeCHIARA: First, as to the question of whether  
11 the NLGA applies, I think there can't be any serious  
12 questions. It's clearly a labor dispute. It's clearly what  
13 brings us here today, clearly evolved or grows out of a labor  
14 dispute and there's a very, very -- in Section 29 U.S.C.  
15 Section 113, which is Section 13 of the statute, it defines  
16 what it means to be a labor dispute and to grow out of or be  
17 involved in a labor dispute. I won't go through that, but the  
18 Court can see, if it looks at that provision, it's  
19 extraordinarily broad.

20 So I don't think there's any serious dispute if  
21 there's a case growing out of or involving a labor dispute.  
22 Counsel is correct. There have been over the years exceptions  
23 to the Norris-LaGuardia Act, both in the statute and carved  
24 out judicially. But there's not one, as far as I'm aware, and  
25 apparently as far as counsel for the hospital is aware, that

1 applies to this situation, where however the hospital wants to  
2 dance around it, what it's trying to do is to stay an  
3 arbitration.

4 Not only am I not aware of any case that carves out  
5 an exception to the NLGA on that point, but we have cited  
6 cases, including, I would note, a Second Circuit case, that  
7 directly discussed how the NLGA divests federal courts from  
8 attempts to enjoin arbitration.

9 So an attempt to enjoin an arbitration cuts against  
10 the general policy in favor of resolving disputes for  
11 arbitration.

12 THE COURT: What is your response to what I  
13 understand to be the hospital's argument that they're not  
14 actually asking me to enjoin the arbitration. They're just  
15 asking me to direct triple A to appoint a different arbitrator  
16 to this matter because they haven't agreed to it.

17 MR. DeCHIARA: From the perspective of the NLGA,  
18 that difference and nuance or phrasing or framing doesn't make  
19 any difference because the NLGA talks about the divesting  
20 court's jurisdiction issue: A.) Temporary permanent  
21 injunction in any case.

22 So the statute has extraordinarily broad language.  
23 So whether this is framed as against the union or the triple  
24 A, or however the hospital wants to dance around the point and  
25 try to frame the issue, the statute is just so broad. It just

1 divests the Court of jurisdiction to issue any injunction,  
2 unless there's some statutory or judicial exception. And here  
3 there is none.

4 THE COURT: Thank you. Any response to that?

5 MS. DEMPSEY: I think there are limitations. We  
6 pointed out some limitations just now to you to how the  
7 statute is interpreted, and while there aren't situations that  
8 exactly match this one, apparently it's unusual, it does --  
9 the limitations do go toward what we're trying to do here,  
10 which is further arbitration.

11 THE COURT: Okay. Let me ask you this. Let's say I  
12 disagree with you that the NLGA doesn't apply, that I find it  
13 does apply for similar reasons to or the same reasons as the  
14 ones just stated by Mr. DeChiara, namely that you're asking  
15 for a temporary injunction in a case involving or growing out  
16 of a labor dispute.

17 As you know, the act does say that there are certain  
18 limited exceptions if I make certain findings that first,  
19 unlawful acts had been threatened and will be committed unless  
20 they're restrained, and goes on to specify the circumstances,  
21 and then has some additional other requirements.

22 I think I understand your position in the  
23 alternative is that there are unlawful acts that someone is  
24 about to commit. I noticed in the union's brief they pointed  
25 out a number of cases, and we were able to find several

1 others, saying the breach of contract is not an unlawful act  
2 under the NLGA, that is unlawful acts refer to an entirely  
3 different category of actions by the person you're seeking to  
4 enjoin.

5 Do you have any case at all, because I need you to  
6 brief this issue, but can you, sitting here today as someone  
7 who is a specialist in the field, think of any case at all  
8 where any court has held that one party to a labor dispute  
9 breaching the collective bargaining agreement with respect to  
10 arbitration or anything else is the kind of unlawful act that  
11 this Court has the jurisdiction to enjoin?

12 MS. DEMPSEY: Right sitting here, I'm not aware of a  
13 particular case that finds, that it turns on the breach of  
14 contract being the unlawful act.

15 THE COURT: Okay. Any case you can think of that's  
16 analogous, meaning the type of unlawful act that the Court did  
17 have the power to enjoin that you think even if it's not  
18 breach of contract is close enough that I think you have a  
19 likelihood of success on the merits of even a threshold claim  
20 that I have jurisdiction?

21 MS. DEMPSEY: Well, the cases that find the  
22 exceptions are those furthering arbitration, and that's what  
23 we're trying to do here. And the unlawful act here in  
24 violation of the CBA undermines the arbitration as agreed to  
25 in the CBA.

1 THE COURT: When you say undermines the arbitration  
2 as agreed to, how does it further -- how would an injunction  
3 preventing this arbitration from going forward to Mr. Edelman,  
4 with Mr. Edelman presiding, further the public policy favoring  
5 arbitration? You're really asking to halt it, not to order it  
6 to proceed, because both parties are willing to arbitrate as  
7 long as you have an agreeable administrator.

8 MS. DEMPSEY: Right. What we're asking is to order  
9 the union to comply with the CBA and only proceed with an  
10 acceptable arbitrator.

11 THE COURT: You may not have any such cases off the  
12 top of your head or in your preparation for this hearing. Can  
13 you think of any case where even in the injunction that  
14 relates to an arbitration context a federal court issued an  
15 injunction for anything other than compelling a party to honor  
16 its contractual obligation to arbitrate, that is that has in  
17 any way issued an order that directs the arbitration to  
18 proceed on certain terms and conditions, anything other than  
19 the yes or no question of do they have to show up and  
20 arbitrate?

21 MS. DEMPSEY: If I understand your question, I'm not  
22 thinking of any off the top of my head.

23 THE COURT: All right. Let me turn to the merits.  
24 I think this is not in dispute, but again, this is highly  
25 expedited. Let me make sure I understand everybody's



1 position. The hospital agrees that the underlying agreements  
2 about minimum staffing is arbitrable. Right? Both parties  
3 say this is arbitrable, in theory we want to arbitrate, we  
4 want to move forward with this.

5 MS. DEMPSEY: That's correct.

6 THE COURT: So I was a little troubled when I read  
7 the response papers, but even before, frankly, I got the  
8 response with the delay between the notice of Mr. Edelman's  
9 appointment on April 12th of 2024 and the time in June that  
10 you all claim that you made your first objection.

11 So explain to me why is it if your claim is that we  
12 never agreed to Mr. Edelman's appointment because our earlier  
13 statement in February when we put him on the list of people  
14 that were acceptable to us that we submitted confidentially to  
15 the triple A, that was only good in the round that we  
16 submitted it, but our silence was not consent to him after  
17 that. So this whole argument about why you haven't agreed,  
18 when was the first time that you raised it with anyone and why  
19 did you wait as long as you did?

20 MS. DEMPSEY: We did not wait. We raised it with  
21 the triple A immediately upon him being appointed on  
22 April 12th.

23 THE COURT: Where in the record is there any record  
24 of that being raised?

25 MS. DEMPSEY: In Mr. Frank's declaration,

1 paragraphs 14, 15.

2 THE COURT: Give me just a minute. Paragraph 14.  
3 So it says -- I do see in paragraph 14 that he declared that  
4 you immediately objected. There's a lot of emails and a lot  
5 of phone calls and a real record of all these other  
6 objections. Everybody was preserving it.

7 Why should I credit this statement that there's an  
8 objection when there's no contemporaneous record of it? He  
9 didn't say who objected, how, where they lodged it to. What  
10 is this based on?

11 MS. DEMPSEY: He sent an email to triple A.

12 THE COURT: Is that email anywhere in the record?  
13 Because I didn't see it. I saw a lot of other emails later  
14 on.

15 MS. DEMPSEY: I don't think that particular email is  
16 attached.

17 THE COURT: You can take a minute. While you're  
18 looking at it, Mr. DeChiara, are you aware of any such email  
19 that was copied to the union or sent at all?

20 MR. DeCHIARA: No, we're not, Your Honor. I think  
21 that would be a key email. So it's surprising, let's just  
22 say, that it's not in the record, put in the record by the  
23 employer.

24 MS. DEMPSEY: It was not, to be clear, it was not  
25 copied to the union.

1 THE COURT: Okay. Tell me -- you may have something  
2 that I don't have. I want to know what this representation is  
3 based on. I think one of your colleagues may want to come up  
4 and share something with you.

5 MS. DEMPSEY: Mr. Frank sent an email to Ms.  
6 McKenzie at the triple A on April 12th saying Howard Edelman  
7 was struck and is not agreed to by the hospital. Please  
8 correct the notice. It says ADSP. I think he meant ASAP.

9 THE COURT: So this has never been provided to the  
10 union before, this email?

11 MS. DEMPSEY: Not that I'm aware.

12 THE COURT: So let's go to what happened next in the  
13 case.

14 MR. DeCHIARA: Your Honor, I don't mean to  
15 interrupt. It sounds like, from what I heard counsel read,  
16 that Mr. Frank in that email said that Mr. Edelman's name was  
17 struck, which is patently false.

18 THE COURT: Let's do this, so we're all working on  
19 the same page quite literally. Why don't we take a minute and  
20 you can -- do you have an extra copy of that or just the one?

21 MS. DEMPSEY: I have two copies.

22 THE COURT: Why don't you hand one up to the court  
23 deputy and we'll mark it as a Court exhibit. I will without  
24 ruling on the admissibility, just for reference and  
25 identification, and I will give your adversary an opportunity

1 to look at it. Hand your copy to Mr. DeChiara. I'll take a  
2 look at this one, and we'll take a break and make other copies  
3 in a bit.

4 We're going to go off the record for a minute and  
5 get that copied. Let's take a short adjournment.

6 (Recess taken.)

7 THE COURT: We're back on the record. Now all the  
8 parties are looking at a copy of what's been marked as Court  
9 Exhibit 1 for identification. It is a three page, two sides  
10 per page, so four pages of text total, a printout of some  
11 emails from James Frank to Erin McKenzie at ADR.org.

12 It appears to be -- let me, since the petitioner is  
13 offering this for the first time, by way of explanation for  
14 the assertion of paragraph 14 of Mr. Frank's declaration, let  
15 me ask Mr. DeChiara if you need a minute to look at this and  
16 any response that you may have with what this document shows.

17 MR. DeCHIARA: Yes. I do not need a chance to look  
18 at it further. It's a short email. I think what Court  
19 Exhibit 1 shows is that Mr. Frank lied. He lied to the triple  
20 A in his April 12th email or he lied to both Arbitrator  
21 Edelman and to this Court.

22 Let me explain why I say that. In the April 12th  
23 email to the triple A, Mr. Frank asserts that: Howard Edelman  
24 was struck. Meaning he was struck from the February 2nd list.

25 In his submission to Arbitrator Edelman when this

1 issue came up before Mr. Edelman, this is what Mr. Frank  
2 wrote. This is ECF document 12-6. It's Exhibit K to the  
3 union's exhibits.

4 THE COURT: Give me just a minute. This is the  
5 letter, the email that looks like letter form dated July 11,  
6 2024?

7 MR. DeCHIARA: The July 11, 2024 submission by Mr.  
8 Frank to Howard Edelman. On page 2 under the fact section,  
9 the second paragraph under the fact section, the second line  
10 of that second paragraph under the fact section says: On that  
11 list, meaning February 2nd list, the hospital accepted Howard  
12 Edelman.

13 It's 100 percent inconsistent with what Mr. Frank  
14 told the triple A on April 12th. It doesn't end there. It  
15 gets worse.

16 THE COURT: Let me stop you there. Why isn't the  
17 fact that he uses the passive voice in Court's Exhibit 1 where  
18 it says Howard Edelman was struck, is there an interpretation  
19 that he's not here and he notably didn't reference this email  
20 in the declaration?

21 He's claiming that the union says that -- he's  
22 saying Howard Edelman was struck. He's not disclosing to the  
23 triple A the fact that he was struck originally by the union,  
24 and now says he's not agreed to by the hospital.

25 MR. DeCHIARA: Thank you. I appreciate that.

1           THE COURT: I'm not saying that's the proper  
2 interpretation. It could also mean that the whole clause  
3 refers to the hospital was struck and is not agreed to by the  
4 hospital. The hospital struck him and the hospital doesn't  
5 agree to him. Maybe at that point he was under the  
6 misimpression the hospital hadn't had him on their original  
7 list because they struck him back in February and somebody  
8 reminded him, nope, he was on our list before he issued this  
9 decision in early April we don't like.

10           MR. DeCHIARA: I appreciate the Court pointing that  
11 out. I'm seeing this document in realtime for the first time.  
12 I did not focus on the "was struck". If Mr. Frank said I or  
13 the hospital struck him, that's a lie. But it does say was  
14 struck. So it's completely plausible that he was not lying  
15 and what he meant was the hospital struck Mr. Edelman, which  
16 is accurate. And then the email goes on and says: And is not  
17 agreed to by the hospital.

18           The problem with that is this is post appointment.  
19 He had already been appointed. The reason he had been  
20 appointed was, as I was pointing out in the July 11th  
21 submission, was that the hospital accepted Howard Edelman. So  
22 the sequence is fairly simple. The February 2nd list, the  
23 hospital accepts him. The union doesn't.

24           They go through a couple more lists. There are no  
25 matches. The triple A says hey, we're not getting any

1 matches, why don't we do what's called the strike and release  
2 where either party can release one of its prior objections.  
3 The union writes in and says okay, we release our objection to  
4 Howard Edelman, boom, we have a match. That's how it worked.  
5 That's how it's worked many times in many cases.

6 The hospital is completely familiar with this  
7 process. It's simple. First your contract coordination. You  
8 have an outstanding offer from the hospital to accept Edelman.  
9 The union first said no and then says okay, you know what,  
10 we'll take him. That's it. Boom.

11 Once he's appointed on April 12th it doesn't matter  
12 that the hospital was unhappy with the outcome or that it had  
13 second thoughts about Howard Edelman. You can't have an  
14 arbitration selection process where someone is appointed and  
15 then one of the parties says hey, you know what, we're not  
16 happy.

17 THE COURT: What if it's before the appointment  
18 notice?

19 MR. DeCHIARA: That would have been different. If  
20 before the April 12th appointment notice went out.

21 THE COURT: That's right, because in this case the  
22 match was earlier but the appointment notice was on the 12th.

23 MR. DeCHIARA: Yes. So if before the triple A  
24 appointed Mr. Edelman, if Mr. Frank or anyone representing the  
25 hospital said you know what, we had originally accepted

1 Edelman but we changed our mind, we want to strike him now,  
2 I'm not exactly sure how that would play out but it would be a  
3 different situation. That is not -- that is not what  
4 happened.

5 THE COURT: Let me ask you a procedural history  
6 question here. I noticed in your papers to this Court you  
7 argued, and I relied on your representation, that the first  
8 notice that you had or awareness you had that the hospital was  
9 now saying they objected to Mr. Edelman didn't come until  
10 June, that is they didn't object after the appointment notice  
11 in April. They participated in the phone call in May to  
12 schedule a date with Mr. Edelman and didn't say anything, and  
13 in June at some point they said we're objecting, we never  
14 agreed.

15 MR. DeCHIARA: By June the union clearly had notice.  
16 There was a May conference call. The union representative who  
17 was at that call, who was on that call, is on vacation and we  
18 have not been able to reach out to her. In-house counsel for  
19 the union is here today was not on that call. Our  
20 understanding, and this is secondhand, was that Mr. Frank may  
21 have raised some concerns about Mr. Edelman's appointment.  
22 What he said, how he said it, I couldn't --

23 THE COURT: Do you know if it was before or after  
24 the May 17th call with Mr. Edelman and the parties?

25 MR. DeCHIARA: I think that was the call.



1           THE COURT: That was the call, okay. So is there a  
2 reason -- I don't know what the discovery rules are in the  
3 arbitration proceedings, I know that you've been in some  
4 discussion and there was actually I wouldn't call it  
5 litigation but certainly each party paid their lawyers to  
6 spend some time and effort before Mr. Edelman, leading him to  
7 write his decision, or as they call it in his business, award,  
8 in late July regarding whether he should be recused from that  
9 matter or otherwise participate.

10           Is there any reason why this email should have been  
11 turned over to you earlier or at some other point in the  
12 proceedings before it got to me?

13           MR. DeCHIARA: If the question is in labor  
14 arbitration do the parties usually copy each other when they  
15 communicate with the arbitrator, I don't know whether there's  
16 a rule on that. It's certainly best practice. I've been  
17 practicing labor law for --

18           THE COURT: I'm not asking about copying in the  
19 original email, especially when there's this blinded process  
20 of selection. I'm really talking about since -- I mean there  
21 was a lot of history, not a long one, but some history of you  
22 all arguing of whether the agreement was binding or not, or  
23 whether there was agreement prior to this time and all of you  
24 submitted extensive exhibits on that long history, and today  
25 is the first time you as counsel for the union have ever seen

1 this email that they're saying supports a timely objection, I  
2 don't understand why you didn't get this earlier.

3 I'm not saying it would have made a difference, but  
4 it seems like a fairly important document if the hospital's  
5 position is they objected. And I am a bit concerned that  
6 despite my giving Mr. Frank, who is not here, the benefit of  
7 the doubt that the passive voice was struck might have  
8 referred to the hospital that he actually made a  
9 misrepresentation to the arbitrator about the hospital  
10 previously striking him, and that that is the reason that this  
11 email got buried. I don't know because he's not here to  
12 answer that, but that's my concern.

13 MR. DeCHIARA: Your Honor, one thing that occurs to  
14 me is the doctrine of clean hands. The hospital is coming to  
15 this Court asking for equitable relief, dramatic drastic  
16 extraordinary equitable relief. When a party comes to the  
17 Court, it needs clean hands. It needs to be playing fairly.

18 If this is a key document and the hospital didn't  
19 include in our papers and never showed it to the union before  
20 and we're just seeing it now, I strongly question whether it's  
21 coming to this Court with clean hands.

22 THE COURT: Let me ask the hospital's counsel to  
23 address this point. First, why was this document not attached  
24 to the Frank declaration? He obliquely references we objected  
25 but he doesn't say how or to whom or where, and you attached a

1 whole lot of other correspondence. So why am I and the  
2 union's counsel seeing this for the first time?

3 MS. DEMPSEY: I think because the statement in the  
4 declaration that he advised of the objection was as a, I  
5 guess, strategy matter, whatever thought to be clear enough  
6 because Mr. -- I mean the email itself is a little bit  
7 cryptic.

8 Your Honor, I appreciate your interpretation. I  
9 think it is correct that Mr. Frank was referring to Mr.  
10 Edelman having been struck previously, and is not acceptable  
11 to the hospital because I want to make sure the Court  
12 understands that it was a fairly lengthy process that there  
13 were lists, that the February 2nd list was actually the second  
14 list that was provided by triple A. There was no agreement  
15 arising from that list.

16 Then triple A tried to institute a procedure where  
17 they provided a list of five names and said that neither party  
18 should strike any of that.

19 THE COURT: I'm familiar with that history.

20 MS. DEMPSEY: And the union jumped up and said they  
21 couldn't do it that way because they wouldn't have the  
22 opportunity to accept the arbitrator as the CBA requires.

23 And it's in the papers, but to be clear, the clause  
24 in the CBA says notwithstanding anything to the contrary in  
25 the triple A's rules, no arbitrator may serve hereunder unless

1 he or she is acceptable to both parties.

2 THE COURT: I don't think -- I think it's very clear  
3 that nobody in this case is disputing that your contract with  
4 the union requires both parties to agree to the arbitrator.  
5 They're not saying that you were entitled to proceed with Mr.  
6 Edelman if both parties didn't agree.

7 What I understand their position to be is that you  
8 are not remotely likely to succeed on the merits of your claim  
9 that there was not a binding agreement under New York contract  
10 law if I even have the jurisdiction to reach that question  
11 because prior to the notice of appointment being issued on  
12 April 12th, you had agreed to Mr. Edelman.

13 The union changed its position and released him from  
14 the list of previously struck candidates, but you would agree  
15 they accepted, essentially both parties indicated there was an  
16 agreement and there was an appointment. So I think that's  
17 what I understand their position to be.

18 MS. DEMPSEY: I think that is their position. I  
19 want to be perfectly clear. To the extent that there was a  
20 period of time that the hospital did not strike Mr. Edelman  
21 off of a list, it was two months prior to him being appointed  
22 and he was -- in other words it was a list that was issued on  
23 February 2nd and it was pursuant to -- he was appointed or --

24 THE COURT: Let me stop you there. I know we're  
25 working on limited time here. I understand that history. Let

1 me ask you a different question about that history. After the  
2 initial round failed to produce any candidates acceptable to  
3 both parties, and then there was some additional back and  
4 forth, you went through two additional rounds.

5 After the third round in March, there was a list of  
6 arbitrators. Everybody agreed on April 3rd that there was no  
7 mutually acceptable arbitrator. Then the triple A suggests  
8 that the parties consider releasing previously struck names  
9 from the prior list to secure a match. Right?

10 MS. DEMPSEY: That's right. And that's a procedure  
11 the hospital never agreed to.

12 THE COURT: Right.

13 MS. DEMPSEY: The parties --

14 THE COURT: Let me finish this question. So they  
15 say we don't have a match, why don't you go ahead and consider  
16 releasing previously struck names.

17 You say we never agreed to that, but did anybody  
18 from the hospital's end write either in an email that was  
19 private to the triple A or copied to the union or any other  
20 way say we don't agree to that and, in fact, we're not going  
21 to even -- we want to revisit our list of struck names.

22 Why couldn't the triple A rely on your silence as  
23 indication that you no longer objected to -- that you didn't  
24 have any new objections to the people you already agreed to?

25 MS. DEMPSEY: The hospital -- I don't know that they

1 specifically came out and said we don't agree to that process.

2 THE COURT: And unlike this email from Mr. Frank we  
3 just looked at, you don't have an email somewhere that I  
4 haven't seen yet that says we don't agree to that process that  
5 you're aware of?

6 MS. DEMPSEY: That's right.

7 THE COURT: Do you want to just check with your  
8 colleague here? I know she's not an officer of the court, but  
9 do you want to check to see if there's anything else that  
10 we're not aware of?

11 MS. DEMPSEY: I don't know what you mean by that  
12 whole question.

13 THE COURT: What I'm getting at is, do you agree  
14 that based on all the investigation and knowledge that your  
15 firm has to date of the history of this matter, you have not  
16 learned of any communication, specific communication, on the  
17 hospital's part saying we don't agree to this procedure that  
18 was proposed on April 3rd until the notice of appointment came  
19 up?

20 MS. DEMPSEY: Nine days later, yes.

21 THE COURT: So for nine days you agreed that as far  
22 as you know the hospital said nothing about not agreeing to  
23 that proposed procedure?

24 MS. DEMPSEY: I don't think the hospital said  
25 anything about agreeing to that proposed procedure.

1 THE COURT: And it didn't say, just to be clear, we  
2 disagree, we're opposed to that?

3 MS. DEMPSEY: They did not specifically say we're  
4 opposed to that procedure. What had happened in the meantime  
5 is that the fourth list that came out in March prior to no  
6 agreement there was an entirely new administrative fee and an  
7 entirely new list, and the hospital would not have thought  
8 that going back to the prior list was in the offing.

9 In other words, it's like a restart in March, number  
10 one. Number two, the hospital did tell triple A right away  
11 that Mr. Edelman was not acceptable and the union is trying to  
12 say that they could change their mind but the hospital  
13 couldn't change their mind about Mr. Edelman being acceptable.  
14 That's what happened.

15 THE COURT: I think what the union is saying,  
16 counsel can correct me if I'm wrong, but I think what I heard  
17 him just say is we could change our mind about Mr. Edelman  
18 before there's an agreement. We can change our mind about him  
19 up until the point where both parties have indicated he's  
20 acceptable, but once both parties have said on different  
21 dates, on the same dates, whenever it is, that he's acceptable  
22 and that notice of appointment goes out, we're both bound to  
23 it.

24 That's what I understand to be their position. Why  
25 is that wrong? Why can they change their mind or you change

1 your mind after the notice of appointment goes out?

2 MS. DEMPSEY: Because the clause in the CBA is an  
3 additional -- is in addition to and notwithstanding the  
4 process of triple A that they were going through and saying --  
5 and it says that no arbitrator shall serve unless he's  
6 acceptable.

7 THE COURT: Let me ask you this. Go ahead. I'm  
8 sorry. Finish.

9 MS. DEMPSEY: It doesn't say there's an appointment  
10 date that's definitive no matter what the hospital, or the  
11 union for that matter, may have thought about the particular  
12 proposed arbitrator two months before.

13 THE COURT: So under the contract, after the  
14 appointment notice goes out and triple A thinks there's an  
15 agreement, can either party continue to object or withdraw  
16 their consent indefinitely? What's the line?

17 MS. DEMPSEY: Well, in this particular case the  
18 hospital objected right away. I would say that to the extent  
19 that someone was found to be not acceptable before they  
20 initiated proceedings in the arbitration, they could be deemed  
21 not acceptable.

22 THE COURT: So what does initiated proceedings mean  
23 in this context?

24 MS. DEMPSEY: In this context, holding an  
25 arbitration.



1           THE COURT: Let's put that as the outer limit on one  
2 end. In between that, let's say, for example, in a normal  
3 case, ordinary case where there's not releasing previously  
4 struck names, but both parties submit their list, maybe  
5 there's a few rounds, triple A notifies everybody that there's  
6 a match.

7           We found somebody acceptable to both parties.  
8 People get on the phone with the arbitrator, they schedule a  
9 hearing, maybe you have some pre-hearing submissions, you're  
10 working out some ancillary issues, all of a sudden in between  
11 the appointment and when the hearing is supposed to happen the  
12 arbitrator issues a decision that one side or another doesn't  
13 like in a similar case.

14           Could that party suddenly say, you know what, under  
15 the contract we have to agree, we're no longer agreeing and  
16 we're withdrawing our agreement? Is that what agreement means  
17 in your interpretation of the contract?

18           MS. DEMPSEY: I guess in your scenario it depends on  
19 what kind of proceedings took place. Here, no proceedings  
20 took place or have taken place directed to the facts and  
21 merits of the arbitration itself.

22           THE COURT: Right. I think what I'm getting at is  
23 it's very difficult for a federal court in particular to  
24 determine what the parties to this contract intended. I could  
25 see a lot of scenarios. It's your burden here getting this

1 drastic remedy of an injunction, where if I ruled for you and  
 2 said that agreement means they have to agree up until the days  
 3 of the hearing or up until some point where there's  
 4 substantive proceedings, and you're in a time sensitive  
 5 situation where all the parties have an interest in getting  
 6 this arbitrated and you're talking about hospital and staffing  
 7 levels, which are really serious issues, and you rely on a  
 8 notice of appointment and agreement, and the night before the  
 9 hearing maybe nothing happened, nobody has done anything, the  
 10 night before the hearing one party decides they get a tactical  
 11 advantage by putting it off for a month.

12 So they say we don't agree with this arbitrator  
 13 anymore, and under this provision of the contract we have to  
 14 agree. If I ruled for you, wouldn't I be facilitating that  
 15 kind of gamesmanship?

16 MS. DEMPSEY: I don't think so.

17 THE COURT: Tell me why.

18 MS. DEMPSEY: It's a matter of whether the  
 19 arbitrator is acceptable to the parties. And here he is not  
 20 for reasons the Court alluded to.

21 THE COURT: In my hypothetical the arbitrator is not  
 22 acceptable. I can't read minds. I wouldn't know why they're  
 23 saying he's not acceptable, but if the union suddenly said you  
 24 know what, we have to represent our client and we don't think  
 25 this person is acceptable to us.

1           You don't have to give the triple A reasons in your  
2   initial list. You just strike people. If they just said on  
3   July 25th or August 25th we just don't want this person  
4   anymore, start from scratch. Couldn't they keep doing that  
5   under your reading of the contract at any time for any reason?

6           MS. DEMPSEY: I don't think so. I think that the  
7   timing is important. These things do go fast. And at that  
8   point there would have been engagement by the arbitrator in  
9   the merits of the case.

10          THE COURT: There would have been engagement. So in  
11   a hypothetical where there's no engagement, the only thing the  
12   arbitrator does is set the hearing date, some period of time  
13   goes by, the eve of the hearing one party could withdraw their  
14   agreement under the contract?

15          MS. DEMPSEY: I don't think so in cases where they  
16   had indicated the arbitrator was acceptable all along. Here  
17   that's not what happened.

18          THE COURT: Okay. Let me hear from your adversary  
19   on that point.

20          MR. DeCHIARA: Your Honor, I don't have much to add  
21   to your questions and comments to hospital's counsel. I think  
22   you hit the nail on the head. The interpretation of the  
23   contract that the hospital is offering is completely  
24   untenable. It would open the game to unlimited gamesmanship  
25   if after appointment either side could renege and say you know

1 what, this arbitrator is no longer acceptable.

2 The only thing I would add is the language  
3 acceptable appeared -- so 17.02 is the provision of the  
4 contract that deals with choosing an arbitrator. The language  
5 that the hospital relies on appears right after the language  
6 about the triple A putting out a list.

7 So there's a clear nexus between the acceptable  
8 language and the language about the pre-appointment selection  
9 process.

10 THE COURT: Tell me which page you're looking at.

11 MR. DeCHIARA: I'm looking on page 50 of the  
12 collective bargaining agreement, which is Exhibit A to the  
13 union's exhibits. It's page 50 of the contract,  
14 Section 17.02.

15 I agree with the Court that it's not this federal  
16 court's job to parse this contract. But just to show how much  
17 the hospital's reaching, I would point out the 17.02, just the  
18 first three sentences or so, where this acceptable language  
19 that the hospital relies on appears. It's all of a piece with  
20 the selection process.

21 So the clear inference, the clear implication, is  
22 that it's acceptable whether someone -- acceptable, an  
23 arbitrator is acceptable or not, is a decision that's made as  
24 part of that selection process.

25 THE COURT: And once that process is concluded and

1 the triple A has fulfilled its role of finding a mutually  
2 acceptable arbitrator, that's when agreement has been reached?

3 MR. DeCHIARA: Exactly. When the triple A puts out  
4 its list, and you can see an example, the February 2nd list  
5 itself, which is Exhibit C of the union's exhibits, it tracks  
6 that language. It says after striking the name of any  
7 unacceptable arbitrator. So it picks up on that unacceptable  
8 language that it's in the contract.

9 Again, this all just ties together showing that this  
10 whole process is about selecting the arbitrator. Once the  
11 arbitrator is selected it would create chaos in the labor  
12 relations world if parties could willy-nilly say you know  
13 what, we didn't like the way the arbitrator looked at us at  
14 that prehearing conferences, he's no longer acceptable. It  
15 just wouldn't work.

16 THE COURT: Let me ask briefly about the question of  
17 irreparable harm. Why, Ms. Dempsey, isn't the remedy of  
18 simply moving to vacate the award if you don't prevail at  
19 arbitration, and please correct me if I have that term wrong,  
20 essentially the equivalent of an administrative appeal or an  
21 internal appeal? If the substantive arbitration doesn't go  
22 your way, why wouldn't you be able to incorporate the question  
23 of the arbitrator was properly agreed to in that proceeding?

24 MS. DEMPSEY: We would be able to, but it's not the  
25 equivalent of an appeal. There's a much, much more limited

1 review of vacatur of an arbitration award once it's issued.

2 THE COURT: Thank you for that. Let me ask you a  
3 better question. So now that you've said that you would still  
4 have preserved this question of whether Mr. Edelman was  
5 properly designated as the arbitrator because of what you  
6 claim is a lack of agreement and that issue could be brought  
7 up after the arbitration hearing, why does that fact not  
8 defeat your claim of irreparable harm?

9 Because the harm you're complaining of, which is  
10 having to be bound by a ruling of the arbitrator that you say  
11 you didn't agree to, could be vacated through that  
12 administrative review after the arbitration happens. Then  
13 you'd get a new arbitration with a new person that you do  
14 agree to.

15 MS. DEMPSEY: A few things. For one thing, as the  
16 Court noted, there is an urgency to these proceedings. But  
17 besides that, the grounds and the view that any Court gives to  
18 an arbitration award once decided is extremely limited.

19 And in the meantime, an arbitrator who is not  
20 acceptable to the hospital will have issued potentially an  
21 award that includes other aspects that violate the CBA.

22 And so to look at this whole process only at the end  
23 is irreparable harm because it's not the same as -- it's not  
24 the same scrutiny as an appeal in a federal court.

25 THE COURT: Regardless of what level of scrutiny

1 applies, it's not irreparable if it can be undone. I mean, I  
2 agree with you there's some urgency to getting this resolved.  
3 Nobody disputes that. But I'm not legally empowered to grant  
4 the extraordinary remedy of an injunction, unless you convince  
5 me that there's irreparable harm; not urgency, not expediency,  
6 but irreparable harm.

7 What would happen if the arbitration proceeded on  
8 August 30th with Mr. Edelman that could not be undone or  
9 remedied by money damages or an administrative remedy having a  
10 do over with a different arbitrator?

11 MS. DEMPSEY: He could have issued an award based on  
12 his predisposition to find a matter against the hospital that  
13 he's demonstrated already, that then has a potential for being  
14 confirmed and issuing penalties against the hospital.

15 THE COURT: Right. But is there no review of that  
16 award? I mean I thought you just said all of that could be  
17 reviewed.

18 MS. DEMPSEY: The review of an arbitration award is  
19 under the FAA and otherwise very, very limited, almost every  
20 court in the Second Circuit -- all courts to my knowledge in  
21 the Second Circuit find that that's the case.

22 THE COURT: That's judicial review or something  
23 within the triple A?

24 MS. DEMPSEY: Judicial review. There's nothing  
25 within the triple A.

1 THE COURT: Okay. Let me ask your adversary the  
2 same question.

3 MS. DEMPSEY: I'm sorry. There is one thing I  
4 wanted to address from his last comment.

5 THE COURT: Sure.

6 MS. DEMPSEY: If we review the CBA and the language  
7 about the arbitrator having to be acceptable the way he's  
8 asking the Court to review it, we're writing that clause out  
9 of the CBA because he essentially is saying you have to -- if  
10 you follow triple A's procedures, which on their lists for  
11 this arbitration and every other arbitration, regardless of  
12 what the CBA says, say on the lists that strike those who are  
13 not acceptable.

14 So to the extent we don't permit an evaluation of  
15 whether an arbitrator is acceptable at the time that the  
16 notice comes out, as it did here in triple A, we're writing  
17 that particular clause out of the contract, and that is --  
18 it's not in every CBA.

19 It is in this one for a reason. In other words,  
20 aside from and on top of the procedures in triple A, which  
21 always do try to seek an acceptable arbitrator through the  
22 strike rank process, once an arbitrator is named, if he can't  
23 be objected to at that point, that clause has no meaning.

24 THE COURT: If he can't be objected to after it's  
25 been named then it has no meaning?



1 MS. DEMPSEY: At the point that he's been named. If  
2 he can't be deemed to be acceptable or not, at that point then  
3 all we're saying -- the CBA should just say that the triple A  
4 rules are what should be filed. That's not what it says.

5 THE COURT: Okay. The contract does also say, I  
6 believe, that at a certain point incorporates the triple A  
7 rules which say that if the parties can't mutually agree  
8 triple A could just appoint somebody. Right?

9 MS. DEMPSEY: Right.

10 THE COURT: And as of today, in your view, there is  
11 no agreement between the parties?

12 MS. DEMPSEY: That's right.

13 THE COURT: So given that you started the process of  
14 selecting an arbitrator way back in February and we're now in  
15 August, under your contract, whatever I do about this  
16 injunction request, couldn't triple A tomorrow say well, you  
17 all haven't been able to agree, we're appointing Mr. Edelman  
18 and just issue a new appointment order tomorrow?

19 MS. DEMPSEY: The triple A procedures are  
20 incorporated into the contract, and then there's the  
21 additional clause, notwithstanding anything to the contrary  
22 and triple A rules, no arbitrator may serve hereunder unless  
23 he or she is acceptable to both parties.

24 So if triple A were to say the strike rank process  
25 is not working and we will appoint someone, whether it's Mr.

1 Edelman or someone else, that is the only time when the  
2 parties could evaluate whether the arbitrator is acceptable to  
3 them and if they can't then say that they're not acceptable,  
4 then that clause of the contract has no meaning.

5 THE COURT: So what happens then? Let's say we get  
6 into a scenario where you haven't been able to reach an  
7 agreement and this has been pending for a year, and the  
8 hospital keeps saying no, not this one, not that one, we don't  
9 agree, the union says not this one, not that one, does the  
10 dispute just sit there and it's not arbitrable? What happens  
11 at that point?

12 MS. DEMPSEY: That has not come to pass. I don't  
13 know what happens at that point. The triple A has an  
14 innumerable amount of arbitrators that it can suggest.  
15 Perhaps the parties can agree on someone. There's definitely  
16 an effort and an urgency to try to agree on somebody, but it's  
17 a particular part of the collective bargaining agreement that  
18 an arbitration be conducted with someone who is acceptable to  
19 both sides.

20 THE COURT: Thank you. Let me ask you briefly,  
21 before I get back to the question of irreparable harm, to  
22 address this point about what happens if the parties can't  
23 agree. As I understand it, your adversary has argued that you  
24 all have exempted yourselves by contract from the part of the  
25 triple A rules that says the agency can appoint an arbitrator

1 if you don't agree.

2 MR. DeCHIARA: That's correct. So what the contract  
3 language says is to the extent the triple A's rules would  
4 allow for the appointment of an arbitrator that the parties,  
5 or either party didn't -- was unacceptable, that triple A  
6 procedure would be null and void. But that's not what  
7 happened here.

8 THE COURT: I understand your position.

9 MR. DeCHIARA: So you had some other hypothetical  
10 where the parties just forever couldn't agree to someone, I  
11 frankly don't know what would happen. The Court need not go  
12 there because that's not what happened.

13 THE COURT: Let me have you address this point of  
14 irreparable harm. Tell me, in your own words, what the  
15 hospital's remedy would be if they proceeded with the  
16 arbitration on the 26th or the 30th of August with Mr. Edelman  
17 and thought that not only did they wish to challenge the  
18 substance of his ruling, but wanted to raise a challenge to  
19 the question of whether they agreed to it at that point.

20 Would they have any remedy at that point or is that  
21 resolved by the recusal that they sought and failed to obtain  
22 on July 29th?

23 MR. DeCHIARA: So labor arbitration awards are not  
24 self executing. Let me back up. So first of all, let's not  
25 lose sight of one thing. The hospital may win this

1 arbitration. So let's just not forget that. If in the event  
2 the hospital loses the arbitration, it doesn't have to do  
3 anything. The burden is on the union to then go to court and  
4 enforce the award.

5           The employer can also affirmatively move to vacate.  
6 Either way, the Court -- the case would find itself in federal  
7 district court and then it would be in front of the -- the  
8 award would be before the Court to enforce or vacate the  
9 award. So there is post award relief that's available to the  
10 employer.

11           And here, Your Honor, the Court need not write on a  
12 clean slate. We cite cases in our brief, page 12, page 13 of  
13 our brief where courts, including this court, have made  
14 exactly that point, that there's no irreparable harm in a  
15 situation like this because the party that's resisting  
16 arbitration, if it loses, has the right to seek court review.

17           Now, certainly it's not the same review as a  
18 district court judge going to a Court of Appeals. It's more  
19 deferential. But there is review. Some things are out of  
20 bounds. Fact-finding by the arbitrator is out of bounds.  
21 There's certain things that a court is just not going to  
22 review.

23           But would it review whether the arbitrator was  
24 appointed or not? I frankly haven't had that case. I don't  
25 want to opine on the record as to what the standard would be.

1 But there would be review.

2 THE COURT: Is it your view that the, or the view of  
3 any courts that you're aware of, that the specific definition  
4 of irreparable injury or the requirement for a petitioner who  
5 seeks to show irreparable injury under the Norris-LaGuardia  
6 Act, namely 29 U.S.C. 107, subpart B, that substantial and  
7 irreparable injury to complainant's property will follow  
8 requires a different or more particularized showing, if I were  
9 to find the act applies, then the standard irreparable harm  
10 that applies to all requests for preliminary injunctive  
11 relief?

12 MR. DeCHIARA: I'm not aware of any cases off the  
13 top of my head on that point. But certainly the face of the  
14 statute, the standard appears and is much heavier.

15 It's not your plain vanilla irreparable harm. It is  
16 written in a way to indicate that Congress very much wanted  
17 the movant to show some very serious harm.

18 THE COURT: Thank you. Last question, I think, on  
19 this point. Ms. Dempsey, you've said that the review is very  
20 limited, meaning you may not prevail even if you're correct if  
21 it goes to arbitration, then you have to go to a court to  
22 either resist an order trying to get the award enforced or  
23 somehow get it vacated.

24 But aren't you saying to me in asking me to enter  
25 this extraordinary injunction that you have such a strong case

1 that you've shown a likelihood of success on the merits of  
2 your claim that the contract was violated by Mr. Edelman's  
3 selection. I mean you're saying the burden would be so high,  
4 but you have a very high burden before me too.

5 So if you have enough to prevail before me, why  
6 wouldn't you have enough to prevail in a much more orderly  
7 fashion without this expedited proceeding before a court if  
8 you were to lose the arbitration, which you may not.

9 MS. DEMPSEY: I would hope that a court would see it  
10 this way if we had to go there. But in the meantime, the  
11 hospital will have had to go conduct an arbitration where  
12 there are a lot of decisions and aspects of the arbitration  
13 conducted by somebody that they don't find acceptable that are  
14 not subject to review under the FAA.

15 THE COURT: Just tell me in your own words, as  
16 simply as you can, why the harm that you're alleging from  
17 having to go through this arbitration is actually irreparable,  
18 as opposed to something that you would prefer not to take the  
19 chance of but which could be repaired or remedied by a court  
20 or you lose the arbitration.

21 MS. DEMPSEY: Because at that point the hospital has  
22 been forced to conduct an arbitration or participate in an  
23 arbitration in violation of the collective bargaining  
24 agreement to which they've agreed and operate under and that  
25 was heavily negotiated in the first place, and that many of

1 the aspects of the arbitration conducted in violation of the  
2 CBA are not subject to review.

3 THE COURT: Thank you.

4 MS. DEMPSEY: If I may, I'd like to point out one  
5 additional thing with respect to the Norris-LaGuardia Act  
6 discussion, in terms of some of the cases that we did name and  
7 discuss. In particular, the Textile Workers Union case I  
8 think expresses a little bit better than I was trying to the  
9 aspect of an exception that the Court should look to  
10 permitting the federal court to fashion a body of federal law,  
11 or courts in general, for enforcing a CBA in performances of  
12 the promises therein.

13 So in addition to the union attempting to unlawfully  
14 require the hospital to operate in violation of the CBA, an  
15 injunction in this case, or a TRO in this case, would allow  
16 the Court to further enforcement of the CBA and the  
17 performances of the promises therein.

18 THE COURT: Thank you. Let me ask you just to  
19 address that point about the Textile Workers Union case and  
20 then I'll let you know how I'm going to proceed.

21 MR. DeCHIARA: Your Honor, I don't have that case in  
22 front of me. I'm familiar with the name. I would have to  
23 refresh my memory on the case, but I think it's safe to say  
24 that the context of that case, as well as the other cases that  
25 the hospital relies on, are all in favor of furthering the

1 general national labor policy of promoting arbitration, so  
2 compelling a party resisting arbitration to arbitrate.

3 Boys Market, of course, was where the union goes on  
4 strike when it could have arbitrated the issue. The Supreme  
5 Court carved out an exception to Norris-LaGuardia there in  
6 furtherance of the policy of favoring arbitration. Here the  
7 employer is not trying to compel arbitration. And, again,  
8 however it chooses to phrase or frame its relief, it is  
9 seeking to stay or delay or play some sort of games with what  
10 is an arbitration that should go forward on April 30th.

11 There are a lot of nurses that work at the hospital,  
12 not very far from this courtroom, who are working understaffed  
13 who need the relief. They're trying to provide the best care  
14 they can for their patients, and this understaffing issue  
15 needs to be resolved and this gamesmanship should not be  
16 tolerated.

17 THE COURT: One thing I realized I wanted to ask you  
18 about. Ms. Dempsey, let me ask you about the terms of your  
19 proposed order, if you have that in front of you. I'm looking  
20 at page 2, which is the text of what you're asking me to do.

21 I was a little puzzled, and maybe you can explain  
22 why it's captioned this way, that you asked me to grant the  
23 preliminary injunction not to enjoin the triple A from  
24 proceeding with the arbitration, but ordering the only party  
25 that you sued, the union, to direct the triple A to stay the



1 hearing.

2 And then you asked me in paragraph B to order the  
3 respondent to join the hospital in directing the triple A to  
4 remove Howard Edelman and to order the union to engage with  
5 the hospital to select a new arbitrator. Let me focus on A  
6 and B first. I can theoretically direct the union to tell the  
7 triple A to do something.

8 But aren't you really just asking me to direct the  
9 triple A to stay the hearing? You're asking me to enjoin the  
10 triple A and they're not a party here.

11 MS. DEMPSEY: I'm asking you to direct the union to  
12 not participate in the hearing that violates the CBA as  
13 stated. If the union doesn't participate with Mr. Edelman,  
14 there's no arbitration.

15 THE COURT: Right. Let me ask you this. What is  
16 your response to the union's argument that you didn't join a  
17 necessary party because you didn't have the triple A show up?  
18 They're the ones who made the appointment. You're saying they  
19 did it in violation of the rules of the contract, and they're  
20 the ones who are holding the arbitration.

21 Why aren't they the ones that I would be enjoining?

22 MS. DEMPSEY: They're the forum for the arbitration.  
23 It can't be held without both parties, and the union is the  
24 one who is insisting that Mr. Edelman be the arbitrator. And  
25 so no, the triple A is merely the forum. They are not, in our

1 view, a necessary party.

2 THE COURT: And your language that I should direct  
3 the triple A, I should order the union to direct the triple A  
4 to stay the hearing, that the union somehow through whatever  
5 contract or retainer you have with the triple A, the union  
6 could unilaterally direct the triple A to stay the hearing?

7 If I signed your order, notwithstanding the fact  
8 that you put another judge's name on it, if I signed the order  
9 as submitted, how would the union have the authority to tell  
10 the triple A go ahead and stay this hearing? The order is not  
11 addressed to the triple A.

12 MS. DEMPSEY: Right. But the hospital already has  
13 stated that Mr. Edelman is not acceptable to them. So what  
14 we're asking is for the Court to order the union essentially  
15 to abide by that provision of the CBA and not try to proceed  
16 with Mr. Edelman as they've been trying to do. I apologize  
17 about the name on the order. It was assigned to Judge  
18 Vitaliano initially.

19 THE COURT: I understand. I was only teasing on  
20 that. I also know often people submit forms to others and it  
21 doesn't get copied in translation.

22 Mr. DeChiara, let me ask you to address this point  
23 and then we'll take a short break.

24 MR. DeCHIARA: Yes, Your Honor. You're exactly  
25 right. The union has no authority to direct the triple A to

1 do anything. If you enjoin us from showing up at the hearing,  
2 we're in risk of defaulting on our own grievance.

3 The triple A is not just the forum, it's not just a  
4 place where the arbitration takes place, but it's the agreed  
5 administrator of the arbitration process and it sets rules, it  
6 sets procedures. The union has to abide by those as much as  
7 the employer does.

8 We can't just willy-nilly tell the triple A what to  
9 do or not show up. If there's going to be meaningful relief,  
10 and of course for all the reasons we've discussed there should  
11 be no relief, but if there's going to be meaningful relief,  
12 the triple A would need to be the one who is enjoined from  
13 proceeding.

14 THE COURT: Let's do this. It is now 3:40. I'm  
15 going to take a break for about half an hour and look at some  
16 of the authorities and some of the other parts of the record  
17 you've called my attention to. I'll let you know if I have  
18 anything further for you at that point.

19 Let's come back at 4:10 p.m. In the meantime, does  
20 either party have any objection knowing that I can rely on  
21 hearsay in this proceeding to Court's Exhibit 1 being admitted  
22 as evidence in this proceeding?

23 MR. DeCHIARA: No objection.

24 MS. DEMPSEY: No objection. I would, just on that  
25 last point, call the Court's attention to *Kuruwa versus the*

1 *American Arbitration Association*, 2013 WL 2433068, where a  
2 district court judge did find that a case brought against the  
3 triple A was improperly brought against the triple A and the  
4 relief being sought should have been as to the parties.

5 THE COURT: Thank you. We're adjourned. I'll see  
6 you in half an hour. If I'm not quite ready by then, I'll  
7 have Freddie let you know an estimated time frame and you're  
8 welcome to leave the courtroom in that time.

9 (Recess taken.)

10 THE COURT: We're back on the record. I'm going to  
11 issue an oral ruling in this case. After due consideration,  
12 the petitioner's motion for a temporary restraining order and  
13 a preliminary injunction with respect to the parties pending  
14 arbitration under Federal Rule of Civil Procedure 65 is  
15 denied.

16 Now I will state my reasoning for the record.  
17 First, I find that the Norris-LaGuardia Act, 29 U.S.C. 107,  
18 clearly and unequivocally divests this Court of jurisdiction  
19 to issue the injunction that the petitioner is requesting.  
20 The NLGA limits the jurisdiction of courts to enjoin labor  
21 disputes. See *Jou-Jou Designs, Inc. versus International*  
22 *Ladies Garment Workers Union*, 643 F. 2d 905, at 911, Second  
23 Circuit, 1981, holding that the NLGA forbids injunction  
24 preventing labor injunction. *AT&T Broadband, LLC versus*  
25 *International Board of Election Workers*, 317 F. 3d 758, 763,

1 Seventh Circuit, 2003, joining other circuits that have,  
2 "understood the Norris-LaGuardia Act to preclude injunctive  
3 relief against the arbitration of a labor dispute."

4 As the parties note, the NLGA broadly defines labor  
5 dispute in Section 13(c) to include any controversy concerning  
6 terms or conditions of employment, or concerning the  
7 association while representation of persons in negotiating,  
8 fixing, maintaining, changing, or seeking to arrange terms or  
9 conditions of employment regardless of whether or not the  
10 disputants stand in the approximate relation of employer and  
11 employee.

12 It's clear that the dispute before this Court is,  
13 indeed, a labor dispute within the meaning of the statute.  
14 Section 7 of the NLGA broadly precludes courts from issuing  
15 either a temporary or permanent injunction in any case  
16 involving or growing out of a labor dispute.

17 Petitioner argues today that this broad language  
18 does not apply because the Supreme Court and some lower courts  
19 have, notwithstanding the terms of the NLGA, occasionally  
20 issued injunctions with respect to arbitration proceedings  
21 between the parties to a labor dispute.

22 But all the cases that plaintiff has identified,  
23 including *Textile Workers Union of America versus Lincoln*  
24 *Mills of Alabama*, 353 U.S. 448, 1957; *Boys Market, Inc. versus*  
25 *Retail Clerks Union*, 398 U.S. 235, 1970, and *Buffalo Forge*

1    *Company versus U.S. Steel Workers of America*, 428 U.S. 397,  
2    1976, are limited to courts compelling reluctant parties to  
3    participate in arbitrations where the parties entered into an  
4    earlier agreement to arbitrate as part of the labor contract.

5            The petitioner has not identified a single case in  
6    more than 90 years that the NLGA has been law in which a court  
7    has ever found that the statute authorizes an injunction  
8    barring an arbitration from proceeding because the Court  
9    concludes in its view that one or more of the terms of that  
10   arbitration were not encompassed by the parties' agreement.  
11   This Court is similarly aware of none.

12           The hospital also, it seems, attempts to rely on the  
13   exception in Section 107(a) of the act in which a court may  
14   issue such an injunction if it finds that one party to a labor  
15   dispute is engaged in a "unlawful act". For example, that is  
16   the case in certain limited exceptions, but I find this  
17   clearly is not applicable because I don't believe there is  
18   even a colorable argument that a breach of contract, even if  
19   the petitioner were right on that front, constitutes such an  
20   unlawful act.

21           In this respect I share the view of the Third  
22   Circuit in Philadelphia, *Marine Trade Association versus Local*  
23   *1291, International Longshoremen's Association*, 909 F. 2d 754,  
24   757, Third Circuit, 1990. I'll quote from that case,  
25   Section 7(a). The Norris-LaGuardia Act permits injunctions

1 against "unlawful acts". We can find no authority for  
2 equating breach of contract with unlawful act. Indeed, to  
3 equate the two would render the accommodation in *Boys Market*  
4 unnecessary. The Third Circuit is referring to the U.S.  
5 Supreme Court's decision in the *Boys Market* case that I cited  
6 previously.

7 With respect to the other factors in the preliminary  
8 injunction, even if I did not hold, as I have, that the  
9 Norris-LaGuardia Act divests me of jurisdiction entirely to  
10 provide the relief that the petitioner seeks, petitioner has,  
11 in my view, not come close to meeting its burden with respect  
12 to either prong required to obtain a preliminary injunction.

13 A preliminary injunction is an extraordinary and  
14 drastic remedy, one that should not be granted unless the  
15 movant by a clear showing carries the burden of persuasion.  
16 That's a quote from *Mazurek versus Armstrong* 520, U.S. 968,  
17 972, 1997, emphasis and original.

18 If the NLGA applies, then the bar for issuing an  
19 injunction in this case is quite high, as I found that it had.  
20 But even under the standard framework for issuing a PI,  
21 petitioner's motion must be denied. As well understood, a  
22 party seeking a preliminary injunction must show a likelihood  
23 of success on the merits, a likelihood of irreparable harm in  
24 the absence of preliminary relief that the balance of equities  
25 tips in the moving parties favor and that an injunction is in

1 the public interest. That's from *American CLU versus Clapper*,  
2 804 F 3d 617, Second Circuit, 2015.

3 I find that the petitioner here has not met its  
4 burden as to any of those elements; first, with respect to a  
5 likelihood of success on the merits or a serious question  
6 going to the merits. I find that the hospital is not likely  
7 to prevail on the merits of its claim that the appointment of  
8 Mr. Edelman as the arbitrator was a breach of Section 1702 of  
9 the parties' contract requiring mutual agreement.

10 Notably, the hospital did not strike Mr. Edelman  
11 when it had the chance to do so prior to the issuance of the  
12 notice of appointment on April 12th of this year.

13 After months of back and forth during which the  
14 parties could not agree on an arbitrator and rejected  
15 approximately 50 candidates, the hospital and the union were  
16 both given notice that if either party released a candidate it  
17 had previously stricken and that candidate was not objected to  
18 by their adversary, that candidate might get appointed as the  
19 arbitrator.

20 The petitioner points out it did not affirmatively  
21 assent to this notice or procedure by triple A, but it has  
22 acknowledged here today, and it's clear from the record, that  
23 at no time did it voice an objection to proceeding in that  
24 fashion or indicate that it believed it would be a violation  
25 of the parties' contract to rely on a list of candidates it



1 previously approved.

2 And, indeed, the union has submitted evidence here  
3 that the hospital had participated in a highly similar, if not  
4 identical process with respondent before. Thus, I find that  
5 after the union withdrew its earlier strike of Mr. Edelman, he  
6 was duly agreed to by the parties and that the hospital was  
7 bound by that agreement under their contract, or at the very  
8 least that the hospital is not likely to succeed on the merits  
9 of its claim that it was not somehow bound.

10 I also agree with the position of the union today  
11 that for me to hold, as the petitioner asked me to do, that  
12 the parties' contract would allow one party to withdraw its  
13 agreement after the notice of appointment is issued as long as  
14 the arbitrator had not conducted the hearing itself or engaged  
15 in what petitioner's counsel variously characterized as some  
16 sort of other substantive adjudication, and would essentially  
17 allow either party to withdraw a prior agreement after  
18 appointment at any time before the hearing, I agree with  
19 counsel for the respondent that that would sow chaos on the  
20 collective bargaining process and the enforcement of those  
21 contracts with respect to agreements to arbitrate.

22 It would clearly allow for all kinds of gamesmanship  
23 up to the eve of a scheduled hearing and undermine the  
24 national policy favoring arbitration and favoring the  
25 expeditious resolution of disputes that the parties as here

1 have agreed to arbitrate.

2 I also find as a secondary matter that the hospital  
3 is equally unlikely to succeed on its claim that Mr. Edelman's  
4 personal interest in the decision here about his own  
5 appointment requires his recusal, if I even of course have the  
6 jurisdiction to decide that issue before the arbitration has  
7 taken place and after Mr. Edelman has already declined  
8 respondent's motion to recuse himself in this case.

9 Here the hospital relies almost exclusively on a  
10 single case, *Pitta versus Hotel Association of New York*, 806  
11 F. 2d 413, Second Circuit, 1986 to support this claim. But  
12 *Pitta* is readily distinguishable and does not stand for the  
13 proposition, as the Second Circuit made clear, that an  
14 arbitrator can never decide an issue that would have any  
15 bearing on his or her compensation. *Pitta* was clearly limited  
16 on its face to circumstances where an arbitrator's long-term  
17 employment to oversee multiple disputes at "a substantial  
18 salary" was at stake.

19 That is a far cry from the situation presented here,  
20 a single dispute that was slated to be arbitrated over what  
21 all parties estimated would be a single day and a day during  
22 which the arbitrator would have been employed on some other  
23 triple A matter, if not this one.

24 As to irreparable harm, demonstrating irreparable  
25 harm is a prerequisite for obtaining a preliminary injunction.

1 A party must show that such harm is likely before the Court  
2 may address the other elements of the inquiry. That's from,  
3 among other cases, *Rodriguez ex rel Rodriguez versus DeBuono*,  
4 175 F. 3d 227, Second Circuit, 1999, pages 233 to 34.

5 This Court has no difficulty concluding that the  
6 hospital has failed to allege irreparable harm here. First,  
7 even if this case proceeds to arbitration, Mr. Edelman could  
8 still rule in the hospital's favor. Second, even if Mr.  
9 Edelman rules against the hospital's position, and even if the  
10 union moves to enforce an award from Mr. Edelman, the hospital  
11 could still seek vacatur of an award on the same grounds it  
12 opposes his appointment here, namely that he exceeded his  
13 authority because in the hospital's view there was no  
14 agreement to have him serve as the arbitrator.

15 Third, on this record, the Court does not find that  
16 the limited time and expense of participating in what has been  
17 projected to be a single day of arbitration between  
18 sophisticated parties who routinely participate in arbitration  
19 and under the CBA clearly agreed to participate in that  
20 process would be an irreparable harm.

21 This is not to say that there could never be a case  
22 where even with judicial review available after the award, or  
23 the completion of the arbitration process, a participant to an  
24 arbitration could not demonstrate irreparable harm from  
25 participating on terms that were not contemplated by the

1 contract that truly worked irreparable harm on that  
2 individual, but I am convinced that on a particular fact  
3 intensive analysis I'm required to conduct, the petitioner  
4 here has not made that showing.

5 Finally, the balance of equities. That requires the  
6 Court to consider "which of the two parties would suffer most  
7 grievously if the preliminary injunction motion were wrongly  
8 decided." That's from *Goldman, Sachs and Company versus*  
9 *Golden Empire Financial Authority*, 922 F Supp 2d 435, 444,  
10 SDNY 2013.

11 Here the balance of equity is tipped decidedly in  
12 the union's favor, not the petitioner's. This grievance has  
13 been pending since December of 2023. If the Court were to  
14 deny the injunction and the hospital were to participate in  
15 the arbitration hearing next week, in the event that the  
16 hospital loses, which is in no way certain, the hospital still  
17 retains the right to seek to vacate any award on grounds it  
18 has raised here concerning Mr. Edelman's appointment.

19 The union, by contrast, has made a showing that its  
20 members and its interests would be unfairly prejudiced because  
21 further delay in addressing what it contends is a violation of  
22 minimum staffing requirements of the contract is a critical  
23 workplace issue affecting its members, which is why the CBA  
24 calls for this type of grievance to be handled on an expedited  
25 basis through arbitration.

1 I also note in the balance of equities related to  
2 this litigation I have some real concerns about the delay on  
3 the hospital's part in voicing its objections to the notice of  
4 appointment. We discussed today, and it was brought to the  
5 union's attention and raised here and presented to this Court  
6 for the first time the email marked as Court Exhibit 1, in  
7 which the hospital notified triple A but not the union that by  
8 email that it objected to the arbitration. There are some  
9 concerns that counsel for the union raised, I think fairly, as  
10 to whether the statements in that email were correct and true.

11 Regardless, there's no dispute that the union was  
12 not copied on an email and that the first time the union was  
13 notified at the very earliest of the hospital's objection to  
14 Mr. Edelman and its claim that there was no valid or binding  
15 agreement was in a conference call on or around May 17th, and  
16 it's not even clear that they were notified at that time.

17 The hospital could have provided the union with a  
18 much more timely notice of its challenge to Mr. Edelman and  
19 chose not to do so. Finally, I find that the public interest  
20 heavily favors denying the motion for an injunction and  
21 allowing this matter to proceed to arbitration as scheduled on  
22 August 30th of 2024, or the earliest date practicable that the  
23 parties and Mr. Edelman can conduct.

24 This grievance arises from an allegation that the  
25 hospital is understaffing in the maternity ward with nurses,

1 in violation of the minimum staffing guidelines in the CBA.  
2 That is a serious allegation and one that affects the staff  
3 that works at the hospital and the community that relies on  
4 the hospital for care. In addition, there's a strong national  
5 policy in favor of arbitrating labor disputes expeditiously  
6 that militates against granting that injunction here, and the  
7 parties acknowledge that beyond the national policy generally  
8 this particular kind of staffing dispute requires expeditious  
9 resolution per the terms of the CBA. For those reasons, the  
10 motion is denied.

11 I do have one more thing that I wish to address with  
12 each of you, and particularly with petitioners. I have grave  
13 concerns about -- and you're welcome to stay seated for this  
14 and if you need to address me afterwards, you may. I really  
15 have grave concerns about the fact that this case was brought  
16 at all to this Court. As it was clear from my ruling, I think  
17 that the Norris-LaGuardia Act clearly provides me with no  
18 jurisdiction to consider it.

19 The cases that you cited don't appear to even  
20 provide for a good faith extension of existing law to allow me  
21 to do so, much less to do so in a highly expedited posture.  
22 Not only do I not think that there is a good faith application  
23 of the Supreme Court precedent or any Second Circuit  
24 precedent, or even out of circuit precedent to allow me to  
25 enjoin the arbitration, I am even more concerned that you

1 didn't flag for me in your original motion and supporting  
2 materials that you were asking me to so find.

3           It wasn't until I received respondent's brief in  
4 opposition that I was even aware that the hospital was  
5 claiming that the NLGA didn't apply, that there was some kind  
6 of unlawful act allegation, or that you believe that Supreme  
7 Court cases, which clearly discuss the Norris-LaGuardia Act,  
8 had any bearing whatsoever on this case.

9           The fact that you did so on a highly expedited  
10 posture is very prejudicial to this Court, to my limited  
11 resources, to those of my staff. We had less than four  
12 business days before the arbitration was scheduled to proceed  
13 with a very busy docket on our hands of many other matters,  
14 over which we do have jurisdiction.

15           But because you brought it to this Court and because  
16 of the issues at stake with maternity ward staffing, a labor  
17 dispute that affects the community, we had to give it due time  
18 and due care. We were severely hampered in our ability to do  
19 so by the fact that the basis for your action was really  
20 hidden until after we received the respondent's brief.

21           For these reasons, I will say that I considered  
22 issuing an order to show cause today as to why you should not  
23 be required to pay the respondent's attorneys' fees and costs  
24 in connection with this proceeding. After due consideration I  
25 decided not to order that sua sponte under Rule 11, but I will

1 say that I know you all litigate against one another all the  
2 time, you have institutional interest in perhaps moving on  
3 from these kinds of disputes.

4 On the other hand, I think the union has a  
5 legitimate claim that they had to expend unnecessary time and  
6 resources in addressing what I found to be a plainly meritless  
7 application.

8 For that reason, I will leave it to the union to  
9 decide if and whether it wishes to file a motion for sanctions  
10 under Rule 11(b)(1) or (b)(2) or any other applicable  
11 provision in the form of an award of fees and costs. At that  
12 time I assure you I will not pass any prejudgment on it. I  
13 recognize that this was done in a highly expedited posture.  
14 There may be some considerations I'm not aware of and I  
15 certainly will consider it along with your opposition if and  
16 when it is filed.

17 That said, as an interim measure, I will direct the  
18 petitioner's counsel to order an expedited transcript of  
19 today's hearing and to provide it to the union's counsel so  
20 they can confer with their members and their colleagues and  
21 assess their options, and also to provide it to your client at  
22 the hospital, whoever your point of contact is, whether it's  
23 the general counsel or someone else.

24 I am concerned, frankly, that you're a firm engaged  
25 in an unnecessary use of the hospital's time and resources in



1 bringing this application in this posture, and I will leave it  
2 to you to discuss that issue with your client but I had to be  
3 candid about that concern.

4 MS. DEMPSEY: I appreciate the time and effort that  
5 the Court has put into this. We respectfully disagree with  
6 the decision as to jurisdiction in particular. I'll leave it  
7 at that.

8 THE COURT: Okay. Thank you. Anything further on  
9 respondent's part?

10 MR. DeCHIARA: No, Your Honor.

11 THE COURT: Thank you. With nothing further, thank  
12 you all for your patience today. We are adjourned.

13 MS. DEMPSEY: Thank you.

14 MR. DeCHIARA: Thank you.

15  
16 (Proceedings concluded.)

17 - - - - -

18  
19 I certify that the foregoing is a correct transcript  
20 from the record of proceedings in the above-entitled matter.

21  
22 /S/ Nicole Sesta, RMR, CRR  
23 Court Reporter/Transcriber

24 August 27, 2024  
25 Date