

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**SAN MIGUEL HOSPITAL CORP. d/b/a
ALTA VISTA REGIONAL HOSPITAL**

and

**Cases 28-CA-21896
28-RC-6518**

**DISTRICT 1199NM, NATIONAL UNION
OF HOSPITAL AND HEALTHCARE EMPLOYEES**

**ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S
RESPONSE TO NOTICE TO SHOW CAUSE**

Counsel for the Acting General Counsel (General Counsel) files this Opposition to Respondent's Response to Notice To Show Cause (Respondent's Response), as filed by attorney Bryan T. Carmody (Counsel for Respondent). In the Response, Counsel for Respondent offers arguments as to why the General Counsel's Motion for Summary Judgment should not be granted in Case 28-CA-21896. In support of its opposition to this Response, the General Counsel states the following:

1. Counsel for Respondent claims that General Counsel's Motion for Summary Judgment should not be granted because the Board took what Counsel for Respondent deemed to be very little time to rule upon a Certification of Representation it issued on September 30, 2010 for Case 28-RC-6518. This Decision and Certification of Representation issued four days after the matter had been remanded by the Court of Appeals for the District of Columbia Circuit on September 24, 2010. Respondent asserts that it was denied due process because Respondent was not afforded an opportunity to apprise the Board of six RM petitions it filed on September 27, 2010 that involved the same parties. The General Counsel submits that Respondent's claim is baseless. Although the RM petitions referenced by

Counsel for Respondent are arguably affected by any decision associated with certifications that may issue in Case 28-RC-6518, those RM petitions play no role on the validity of these certifications or whether the certification of representations should be granted in accordance with the underlying election that took place in Case 28-RC-6518.

Respondent's insinuations that the Board did not fully give consideration to the issues presented in Case 28-RC-6518 regarding the validity of certification of representation is likewise unfounded. The three-member Board had the same fully-developed record before it that was considered by the prior two-member Board for purposes of determining the validity of the Certification of Representation. Respondent was given full opportunity to present its evidence regarding that record. To argue that the Board did not give any meaningful consideration to the matter in issuing its most recent Certification of Representation on September 30, 2010, is unjustified speculation and without merit.

2. In its September 30, 2010 Decision and Certification of Representative, the Board granted the General Counsel leave to amend the Complaint in Case 28-CA-21896 to conform with the current state of the evidence. Respondent is correct that the General Counsel did not amend the Complaint. Respondent argues, however, this lack of amendment by General Counsel equates somehow to the General Counsel admitting that Respondent has not unlawfully refused to bargain with the Union or alternatively results in the General Counsel's failing to prosecute the allegations in Case 28-CA-21896. Respondent's argument is without merit.

The General Counsel did not file any amendments because nothing had changed regarding Respondent's alleged unlawful conduct. Respondent has refused and continues to refuse to bargain with the Union. Respondent has taken this same position since the first

certification and has continued this conduct since the issuance of the second certification. There was no need to amend the Complaint to repeat what is already properly alleged in the original Complaint regarding this unlawful conduct. The General Counsel should not be held accountable for failing to do so when such action would not be necessary or appropriate.

Based on the foregoing, the General Counsel respectfully requests that the arguments presented by Respondent in its Response be found to be without merit and that the Board grant General Counsel's Motion for Summary Judgment.

Dated at Albuquerque, New Mexico, this 1st day of December 2010.

/s/ David T. Garza

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CERTIFICATE OF SERVICE

I hereby certify that a copy of ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S RESPONSE TO NOTICE TO SHOW CAUSE in SAN MIGUEL HOSPITAL CORP. d/b/a ALTA VISTA REGIONAL HOSPITAL in Cases 28-CA-21896 et al., was served via E-Gov, E-filing, e-mail and overnight delivery via United Parcel Service on this 1st day of December, on the following:

Via E-Gov E-Filing:

Lester A. Heltzer, Executive Secretary
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/s/ Katherine Stanley

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