

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SODEXO AMERICA LLC

and

Case 21-CA-39086

PATRICIA ORTEGA, an Individual

SODEXO AMERICA LLC; AND  
USC UNIVERSITY HOSPITAL

and

Case 21-CA-39109

SERVICE WORKERS UNITED

USC UNIVERSITY HOSPITAL

and

Cases 21-CA-39328  
21-CA-39403

NATIONAL UNION OF HEALTHCARE  
WORKERS

SODEXO AMERICA LLC'S JOINDER IN MOTION FOR  
SUMMARY JUDGMENT FILED BY RESPONDENT USC UNIVERSITY HOSPITAL

Respondent Sodexo America LLC joins in the motion for summary judgment filed by Respondent USC University Hospital ("Hospital"). The motion is particularly appropriate with respect to Sodexo and should be granted.

As to Sodexo, the General Counsel only allegations that Sodexo maintained the off-duty access policy that is referred to in Hospital's motion. *Consolidated Complaint*, paragraphs 11 and 15; *USCH Motion at 6*. As to Sodexo, there is no allegation that the

policy was not disseminated or that it was discriminatorily enforced. Further, there is no allegation against Sodexo that any employee was disciplined for violating the policy. Thus, the General Counsel’s complaint against Sodexo stands or falls on whether the policy on its face is enforceable.

In this case, Sodexo employees work in the cafeteria. Thus, the cafeteria is a work area for the Sodexo employees. *USCH Motion* at 5. Indeed, the Consolidated Complaint does not allege that Sodexo maintained the off-duty policy as to non-work areas.

Under the Board’s decision in *Tri-County Medical Center*, 222 NLRB 1089 (1976), an employer can promulgate and enforce an off-duty access policy that “limits access solely with respect to the interior of the plant or other working areas . . . .” *Id.*

In two prior unfair labor practice proceedings, the General Counsel alleged that virtually identical off-duty access policies violated National Labor Relations Act § 8(a), 29 U.S.C. § 158(a)(1). *San Ramon Regional Med. Center*, 2003 WL 22763700, \*2 (Nov. 12, 2003) (Kennedy, ALJ); *Tenet Healthsystem Hospitals, Inc.*, 2002 WL 31402769, \*14 (Oct. 16, 2002) (Parke, ALJ). Significantly, the *Tenet* case was prosecuted by Region 21. In each case, the General Counsel took the position that they, the off-duty access policy, on its face, violated section 8(a)(1). In both cases, the administrative law judge rejected the General Counsel’s position, found that the policies complied with *Tri-County Medical Center*, and dismissed the complaints. Significantly, in neither case did the General Counsel ask the Board to review the administrative law judge’s decision. Sodexo maintains that *San Ramon* and *Tenet* cases correctly decided that the off-duty access policies did not violate section 8(a)(1).

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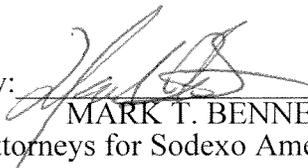
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Here, the General Counsel again asserts that the off-duty access policy is unlawful on its face. Given that there have been two prior decisions at the administrative law judge level finding the same policy was lawful, the Board should grant motion for summary judgment as to Sodexo and the Hospital without a hearing.

DATED: January 31, 2011

Respectfully submitted,

MARKS, GOLIA & FINCH, LLP

By: 

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860.080/30X5576/bdp

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Region 21

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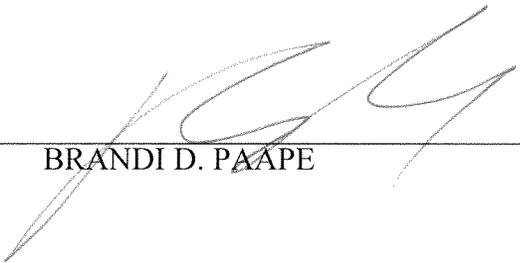
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Executed on January 31, 2011.



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BRANDI D. PAAPE