UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Washington, D.C.

SODEXO AMERICA LLC

Case Nos. 21-CA-39086

and

PATRICIA ORTEGA, an Individual

SODEXO AMERICA LLC; AND
USC UNIVERISTY HOSPITAL

and

Case No. 21-CA-39109

SERVICE WORKERS UNITED

USC UNIVERSITY HOSPITAL

and

Case Nos.21-CA-39328
21-CA-39403

NATIONAL UNION OF HEALTHCARE
WORKERS

AFFIDAVIT OF LESTER F. APONTE IN SUPPORT OF MOTION BY RESPONDENT USC UNIVERSITY HOSPITAL FOR SUMMARY JUDGMENT

BATE, PETERSON, DEACON, ZINN & YOUNG LLP
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Attorneys for Respondent
USC UNIVERSITY HOSPITAL

I, Lester F. Aponte, hereby make the following statement:

1. I am an attorney at law duly licensed to practice before all state and federal courts in the State of California. I am Senior Counsel with the law firm of Bate, Peterson, Deacon, Zinn & Young, LLP, attorneys of record for Respondent USC University Hospital (the "Hospital"). I am over the age of eighteen (18) years and I am competent to give this statement. This affidavit is based on my personal knowledge of the facts and review of relevant documents.

2. On April 26, 2010, Region 21 of the National Labor Relations Board (the "Region") issued a Decision and Direction of Election for a unit of service and maintenance employees and a unit of professional employees at the Hospital, which were previously represented by Service Employees International Union ("SEIU"). A true and correct copy of the Decision and Direction of Election is attached as Exhibit 8. I was present and participated at the hearings which lead to this decision and at the election and vote counting that followed.

3. Prior to the election, SEIU disclaimed any interest in representing any Hospital workers. At the election, conducted on May 26 and 27, 2010, a majority of the employees in the service and maintenance unit elected to have the National Union of Healthcare Workers ("NUHW") as its representative. The majority of the professional unit voted for no union. NUHW immediately called for negotiations on a new contract, which are ongoing.

4. The Hospital was never served with a copy of the charge in case No. 21-CA-39086, which the complaint in this matter alleges was filed by Patricia Ortega against respondent Sodexo America, LLC ('Sodexo"). I have inquired of both counsel for SEIU, Bruce Harland, and counsel for NUHW, Florice Hoffman, whether they represent Ms. Ortega. They have both stated that they do not.

5. SEIU filed the charge in case No. 21-CA-39109 against the Hospital and Sodexo alleging that they had "implemented, maintained and enforced an illegal policy restricting employee access to public areas during their non-work time." This allegation refers to the Hospital's Off-Duty Access Policy (the "Policy"). A true and correct copy of a letter from attorney Jean C. Libby detailing the allegations in that charge, dated November 20, 2009, is attached as Exhibit 9.

6. By letter dated May 26, 2010, the Region issued a partial dismissal of Case 21-CA-39109. A true and correct copy of that letter is attached as Exhibit 10. The Regional Director made the following findings:

> With regard to the allegation that the Employers violated section 8(a)(3) of the Act, the region concluded that there was no evidence presented or revealed that the Employers selectively enforced their access policy against the employees engaged in union activity. With regard to the claim that the Employers violated section 8(a)(5) of the Act by unilaterally changing the employee access policy without bargaining with the Union, the Region concluded that there was no evidence presented that the policy was recently implemented. Rather, the investigation revealed that the policy was implemented in 1991 and revised in 2008.

7. SEIU appealed the Region's findings. On July 23, 2010, the Office of Appeals denied that appeal on the same grounds stated in the Regional Director's partial dismissal:

> The investigation did not establish that the Employers selectively enforced their access policy against employees engaged in union activity. Nor is there evidence that the access policy was recently implemented.

A true and correct copy of the letter denying the appeal, dated July 23, 2010, is attached as Exhibit 11.

8. While pursuing the appeal, SEIU also filed an amended charge in Case No. 21-CA- 39109 on May 28, 2010, which simply reasserts the allegations of the original charge. A true and correct copy of the amended charge is attached as Exhibit 12.

9. By letter dated November 24, 2010, the Region issued a decision to partially dismiss the amended charge. The Region again found that there is no evidence that Sodexo or the Hospital selectively enforced the off-duty access policy against employees engaged in union activity or that the Policy had been recently implemented. A true and correct copy of that letter is attached as Exhibit 13.

10. I have inquired several times, by phone and email, of counsel for SEIU, Bruce Harland and James Rutkowski, whether SEIU is interested in pursuing the charges it filed before it renounced any interest in representing the Hospital's employees or will agree to dismiss them. They have not responded to that inquiry.

11. On May 7, 2010, NUHW filed a charge in Case No. 21-CA-39328, based on the suspension and subsequent demotion of respiratory therapist Michael Torres for insubordination, failure to cooperate in an investigation, exercising poor judgment, and violating the off-duty access policy. NUHW filed amended charges on July 13 and September 27, 2010 alleging that the Hospital has maintained and enforced "an overly broad off-duty access policy" and disciplined Torres based on that policy. True and correct copies of the original and amended charges in Case No. 21-CA-39328 are attached hereto, collectively, as Exhibit 14.

12. On June 30, 2010, NUHW filed a charge in Case No. 21-CA-39403, alleging that the Hospital had violated the National Labor Relations Act when it issued verbal warnings to

bargaining unit employees Ruben Duran and Alex Corea for violating the Policy. A true and correct copy of that charge is attached as Exhibit 15.

13. On July 14, 2010, NUHW filed an amended charge in Case No. 21-CA-39403, which adds similar allegations regarding employee Noemi Aguirre. A true and correct copy of that amended charge is attached as Exhibit 16.

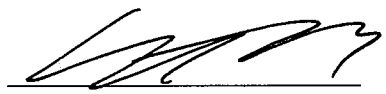
14. A true and correct copy of the Order Consolidating Case, Consolidated Complaint, and Notice of Hearing in this case, dated November 24, 2010, is attached hereto as Exhibit 17.

15. A true and correct copy of the Hospital's answer to the consolidated complaint, dated December 13, 2010, is attached hereto as Exhibit 18.

16. In discussions with this office, the Region's representatives have consistently maintained that, to be valid, an off-duty access policy must bar off-duty employees from the facility for all purposes (even medical care). Otherwise, the Hospital is not allowed to restrict off-duty access at all. The Region further demands that the Hospital reinstate Michael Torres with backpay.

Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing affidavit is true and correct.

Executed this 31ST day of January 2011 in Los Angeles, California.



Lester F. Aponte

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 888 S. Figueroa Street, 15th Floor, Los Angeles, California 90017.

On January 31, 2011, I caused to be served the foregoing documents described as AFFIDAVIT OF LESTER F. APONTE IN SUPPORT OF MOTION BY RESPONDENT USC UNIVERSITY HOSPITAL FOR SUMMARY JUDGMENT on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed per the service list below.

By MAIL as follows: I am "readily familiar" with Bate, Peterson, Deacon, Zinn & Young LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of party served, service shall be presumed invalid if postal cancellation date or postage meter is more than one (1) day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the state of California that the above is true and correct.

Executed on January 31, 2011, at Los Angeles, California.

Jeremy Ra

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Exhibit 8

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

USC UNIVERSITY HOSPITAL,

Employer

and

Case 21-RC-21163

NATIONAL UNION OF HEALTHCARE WORKERS,

Petitioner

and

SERVICE EMPLOYEES INTERNATIONAL UNION,
UNITED HEALTHCARE WORKERS-WEST,

Incumbent Union

DECISION AND DIRECTION OF ELECTION

On September 24, 2009, the National Union of Healthcare Workers, herein called the Petitioner, filed the above-referenced petition seeking an election in two bargaining units consisting of approximately 82 professional employees and 604 service, maintenance, and technical employees, respectively, employed by USC University Hospital, herein called the Employer.[1]

On March 16 through 18, 2010, a hearing in this matter was held before a hearing officer of the National Labor Relations Board, herein called the Board. Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, herein called the Act, the Board has delegated its authority in this proceeding to the undersigned.

[1] As used hereinafter, the acronym "USC" refers to the University of Southern California located in Los Angeles, California. The registered copyright of this acronym does not have periods between the letters.

I. ISSUES

The threshold issue herein, as raised by the Service Employees International Union, United Healthcare Workers-West, herein called the Incumbent Union, is whether there is a collective-bargaining agreement in effect between the Incumbent Union and USC University Hospital so as to present a contract bar to the instant petition. The Incumbent Union further contends that if there is no contract bar, that the petitioned-for units are inappropriate, in that there should be three units consisting of professional employees, service and maintenance employees, and technical employees, respectively. An additional issue raised by the Incumbent Union is whether other classifications of heretofore unrepresented employees at both the USC University Hospital and Norris Cancer Hospital should be included in any appropriate units, inasmuch as the two entities are both owned by the University of Southern California (USC).

II. SUMMARY

Based upon the record, including the post-hearing briefs filed by the parties, I find there is no contract bar based on the lack of evidence of a signed contract between the Incumbent Union and the Employer. I further find that, contrary to the contentions of the Incumbent Union, that the petitioned-for units are appropriate ones and that there is no basis for accreting additional unrepresented employees into those units. Accordingly, I shall direct certification elections in the two petitioned-for units.

III. FACTS

A. Bargaining History

Prior to April 1, 2009, USC University Hospital was owned by Tenet Healthcare Corporation, herein called Tenet. On June 23, 2004, the Board certified the Incumbent Union as the exclusive collective-bargaining representative for a unit of service, maintenance, and technical employees, and a unit of professional employees, respectively, at USC University Hospital.

In about 2007, the Incumbent Union executed a collective-bargaining agreement, herein called the Master Agreement, with Tenet for a single state-wide unit for 14 Tenet-owned hospitals, including USC University Hospital. The Master Agreement was effective by its terms from January 1, 2007 through March 31, 2011.

Subsequently, about January 2009, in apparent anticipation of the sale of USC University Hospital, the Incumbent Union and Tenet executed a separate collective-bargaining agreement, herein called the Agreement, which purported to contain only those provisions of the Master Agreement that pertained to USC University Hospital, deleting all references to Tenet. Apparently, this Agreement was administratively prepared by the Incumbent Union without benefit of any prior negotiation with Tenet. This Agreement recognized the two original certified units described above, and further provided that in the event of a sale of USC University Hospital, that this Agreement shall be in full force and effect immediately upon the effective date of the sale, thereby replacing and superseding any previously existing Agreements between the parties. The effective dates for this Agreement were the same as for the Master Agreement, to wit,

January 1, 2007 through March 31, 2011, and it was executed by the Incumbent Union and Tenet.

Thereafter, on about April 1, 2009, USC acquired University Hospital and began to operate it without hiatus in basically unchanged form. Just prior to the effective date of the sale, representatives of the Incumbent Union attended a meeting with representatives of USC and their respective counsel during which USC made statements to the effect that they intended to be bound by the contract and adhere to its language. The Incumbent Union likewise agreed to be bound. However, neither party specified which contact it was referring to (the state-wide Master Agreement or the later Agreement particular to this facility), and nothing was reduced to writing or executed at this or any subsequent meeting.

At the hearing, all parties stipulated that since about April 1, 2009, USC University Hospital recognized the Incumbent Union as the exclusive collective-bargaining representative of the employees in the two units recognized in the Agreement described above. The Incumbent Union and USC University Hospital have continued to abide by the terms and conditions of employment set forth in the Agreement, specifically with respect to the filing and processing of grievances.

B. The Appropriate Unit

The Incumbent Union asserts that the two units certified by the Board in 2004 and subsequently voluntarily recognized by the Employer are no longer appropriate units for the purpose of collective bargaining, and seeks to amend them in two respects.

First, the Incumbent Union asserts that there should be three, rather than two units, based upon significant changes since the original Board certification. Specifically,

the Incumbent Union asserts that several new classifications have been created at USC University Hospital that, had they existed at the time of the certification, would have been included in a third unit.[2] Moreover, the Incumbent Union asserts, there are approximately 50 employees currently working at the Norris Cancer Hospital in the same job classifications as employees currently in the bargaining units at USC University Hospital represented by the Incumbent Union who, in light of the extent of interchange and integration between the two facilities, should also be included in any appropriate unit. Largely anecdotal evidence was presented to support these arguments with respect to the scope of the bargaining unit.

Second, the Incumbent Union argues that any bargaining units be expanded to include certain employees employed at the Norris Cancer Hospital, a separate facility on the USC Medical Campus that, like USC University Hospital, is owned and operated by USC.[3] It is undisputed that the two facilities share the same chief operating executive, chief executive officer, administrator of clinics, and human resources personnel. Also, several departments in the respective hospitals, including but not limited to respiratory therapy, occupational therapy, materials management, and finance, share common directors. No employees at the Norris Cancer Hospital are presently represented by the Incumbent Union. Some limited evidence of interchange between the two facilities was proffered at the hearing, specifically with regard to one endoscopy/gastrointestinal technician and a patient care technician who was assigned there on light duty. Further

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[2] The Incumbent Union concedes that it initially agreed to a combined unit of maintenance and technical employees, despite the extant rules setting forth appropriate units in acute care hospitals on the premise that such combined unit was appropriate to the workplace at that time. The Incumbent Union argues that since then, however, changes in the workplace militate in favor of three distinct units.

[3] Norris Cancer Hospital is occasionally referred to in the hearing record as Norris Cancer Center. However, the latter refers to non-licensed facilities located within the Norris Cancer Hospital which are not at issue herein.

evidence of substantial interchange between the two facilities is anecdotal. Apparently, unit employees at USC University Hospital can request to work extra shifts at Norris Cancer Hospital, although actual transfers must be approved and the employee seeking the transfer must complete a new job application. Similarly-classified employees at the respective facilities also receive different wages and benefits. Moreover, the work of employees similarly classified differs because of the focus on cancer treatment and care at the Norris Cancer Hospital.

IV. POSITIONS OF THE PARTIES

With regard to the contract bar issue, the Petitioner and Employer assert there is no contract bar because no collective-bargaining agreement was negotiated or executed between the Incumbent Union and USC, the current owner of USC University Hospital. The Petitioner and Employer further assert that even if there were a valid collective-bargaining agreement in effect, the effective terms of the agreement are for more than four years and would not therefore serve as a bar to an election.

The Incumbent Union asserts that there is a contract bar by virtue of the Agreement executed by the Incumbent Union and prior owner Tenet, which successor USC orally agreed to be bound by and subsequently honored the terms and conditions contained therein. Assuming the effective date of the Agreement to be the adoption date (April 1, 2009), and not the stated commencement date, this Agreement would be for a period of less than three years and thus would serve as a bar to the instant petition, according to the Incumbent Union.

With regard to the appropriate units, the Petitioner and Employer stipulated that the two units currently represented by the Incumbent Union as set forth in the original

certifications and subsequently voluntarily recognized by Employer are appropriate for the purposes of collective bargaining.[4] These units are:

COMBINED SERVICE, MAINTENANCE, TECHNICAL, AND SKILLED MAINTENANCE UNIT

Included: All full time, regular part-time and per diem service, maintenance, technical, and skilled maintenance employees employed by the Employer at its facility located at 1500 San Pablo Street, Los Angeles, California;

Excluded: All other employees, managers, supervisors, confidential employees, guards, physicians, residents, central business office employees (whether facility-based or not) who are solely engaged in qualifying of collection activities, employees of outside registries and other agencies supplying labor to the Employer and already-represented employees.

PROFESSIONAL EMPLOYEES UNIT

Included: All full-time, part-time and per diem professional employees (except for Registered Nurses and Physicians) employed by the Employer at its facility located at 1500 San Pablo Street, Los Angeles, California;

Excluded: All other employees, managers, supervisors as defined in the Act, office clerical employees, confidential employees, guards, registered nurses, all other professional employees including, without limitation, physicians and residents, Central Business Office employees (whether facility-based or not) who are solely engaged in qualifying or collection activities, employees of outside registries and other agencies supplying labor to the Employer, and already-represented employees.

The Petitioner and the Employer further agreed that there approximately 604 employees in the above-described combined service, maintenance, technical, and skilled maintenance unit, and approximately 82 employees in the above-described professional unit.

[4] These unit descriptions omit any original references to Tenet contained in the certifications.

The Incumbent Union seeks three units consisting of employees employed at both the USC University Hospital and the Norris Cancer Hospital – a service unit, a technical unit, and a professional unit. The proposed units are described in a number of exhibits proffered at the hearing listing various wage scales interlineated with "S" for the proposed service unit, "T" for the proposed technical unit, and "P" for the proposed professional unit. An additional exhibit lists only classifications of employees with the alphabetic designations described above, and no indication as to where these particular employees work. The employees to be excluded from each of the three proposed unit are described as only "standard language" exclusions omitting the employees in the other two proposed units. The Incumbent Union asserts that there are approximately 60 employees employed at the Norris Cancer Hospital and 50 new employees at some unspecified facility, but does not provide aggregated estimates for the number of employees in each of its proposed three bargaining units.

V. ANALYSIS

A. Contract Bar

When a petition is filed for a representation election among a group of employees who are alleged to be covered by a collective-bargaining agreement, the Board must decide whether the asserted contract exists in fact and whether it conforms to certain requirements. If the Board finds in the affirmative on both issues, the contact is held a bar to an election: this is known as the contract bar doctrine. *Hexton Furniture Co.*, 111 NLRB 342 (1955). The burden of proving that a contract is a bar is on the party asserting the doctrine. *Roosevelt Memorial Park*, 187 NLRB 517 (1970)

Among the requirements for a collective-bargaining agreement to act as a contract bar is the existence of a "collective" agreement that has been freely bargained and has been reduced to writing. *J.P. Sand & Gravel Co.*, 222 NLRB 83 (1976); *Frank Hager, Inc.*, 230 NLRB 476 (1977). Not only must the contract in question be reduced to writing, but it must be signed by all the parties at the time the representation petition is filed. *Herlin Press*, 177 NLRB 940 (1969). Although the contract-bar doctrine does not require a "formal final document," the relied-upon documents must lay out substantial terms and conditions of employment and must be signed. *Waste Management of Maryland,* 338 NLRB 1002 (2003), and cases cited therein.

In the instant case, the Incumbent Union has failed to meet its burden of showing there is a contract bar. A signed document executed before the filing of a representation petition is still required, even though the parties may consider any discussions to be concluded and have put into effect some or all of its provisions; in fact, even informal documents that are exchanged between the parties must be signed by all the parties in order to serve as a bar to an election. *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). It is undisputed that the only signed agreements in effect are between the Incumbent Union and the predecessor Tenet, and that there is no signed document between the Incumbent Union and USC setting forth terms and conditions of the unit employees. Thus, even though USC may have orally adopted the terms and conditions set forth in the agreement between the Incumbent Union and Tenet, there is no signed document of any kind with USC.[5]

[5] Written or initialed proposals have been found to constitute a contract so as to bar a representation election. *Appalachian Shale Products*, supra. However, in the instant case, the Incumbent Union admitted that there were no proposals – oral or written – exchanged with USC, and that the Agreement proffered as a bar was created solely by the Incumbent Union as an administrative convenience.

Moreover, even if the oral adoption of the terms and conditions of the contract between the Incumbent Union and Tenet were sufficient to constitute a contract bar, the record is unclear as to which agreement was being adopted – the original Master Agreement or the subsequent Agreement specific to USC University Hospital – inasmuch as no particular document was referred to during the meeting between the Incumbent Union and USC.

Even if there were evidence that the parties meant to adopt the terms and conditions of the latter Agreement, it did not contain sufficient substantial terms to serve as a contract bar; specifically, the effective date of the Agreement is unclear. This is evidenced by the Incumbent Union's argument that the adopted Agreement was effective as of the date that USC took over the operation of USC University Hospital, and not as of the effective date stated on the Agreement itself.[6] Generally, the effective dates of an agreement must be apparent from the face of the document, without resort to parole evidence, in order for the contact to serve as a bar to an election. *South Mountain Healthcare & Rehab Center,* 344 NLRB 375 (2005) Such ambiguity regarding the effective date of any contract suggests that there was no meeting of the minds as to the dates the contract was to be in effect, and thus suggests no contract exists. Moreover, in order to serve as a bar to an election, the effective dates of a contract must be ascertainable on its face to enable employees and outside unions to determine the appropriate time to file a petition. *See, i.e., Coca-Cola Enterprises,* 352 NLRB 1044,

[6] The Incumbent Union asserted an effective date later than the date that appears on the face of the Agreement ostensibly to rebut the assertion of the Petitioner and the Employer that the Agreement on its face is a four-year agreement, and no collective-bargaining agreement can bar an election for more than three years. See *Dobbs International Services,* 323 NLRB 1159 (1997). Thus, even assuming the effective dates of the Agreement are consistent with those of the Master Agreement, the Agreement could still not act as a bar.

1045 (2008). In the instant case, the Agreement on its face contains the same dates as the Master Agreement from which its provisions were culled, but the Incumbent Union now asserts a different effective date, thus preventing this Agreement from acting as an effective bar to an election.[7] Where the parties to a contract create a situation in which a petitioner cannot clearly determine the proper time to file a petition, as the parties have done here, the ambiguity cannot benefit the parties and a petition will not be barred thereby. *See, e.g., Cabrillo Lanes*, 202 NLRB 921-23 (1973).

For the foregoing reasons, the cases cited by the Incumbent Union in favor of a contract bar must be rejected. Specifically, there is no evidence that the parties sought an extension of an existing agreement. Incumbent Union cites *Michigan Bell Telephone Co.*, 182 NLRB 632 (1970), as analogous to the instant case. However, in *Michigan Bell*, the parties, during the term of an extant agreement, executed an agreement to include new classifications, which contract had new effective and termination dates rendering the prior contact largely moot and thus not evidencing premature extension. In contrast, the Agreement in the instant case essentially contained the same units recognized in the Master Agreement, and retained the original dates of the Master Agreement as well. More importantly, the Incumbent Union did not cite any evidence that this Agreement – new or not – was ever executed by the Incumbent Union and USC, the parties it now seeks to bind.[8] Thus, this Agreement, which the Incumbent Union conceded was culled from the Master Agreement and whose terms were never negotiated with USC and which

[7] The language of the side agreement reached between the Incumbent Union and predecessor Tenet does not cure this defect, since that language only provides that the Agreement shall be in full force and effect upon the "effective sale of the sale" of the facility, and that language does not provide a specific enough date to allow the Agreement to act as a bar to an election.

[8] Also, the Agreement did not create "new" bargaining units as asserted by the Incumbent Union. Rather, it merely reiterated the two certified units that the Incumbent Union admitted were already recognized by Tenet.

was never executed between the Incumbent Union and USC, cannot serve as a contract bar.

The Incumbent Union argues that should the foregoing *Michigan Bell* exception to the premature extension rule be inapplicable, that the Board consider the rule of *Ideal Chevrolet, Inc.*, 198 NLRB 280 (1972) as dispositive. However, *Ideal Chevrolet* is distinguishable in that successor Ideal Chevrolet actually executed a collective-bargaining agreement with the Union during the term of an agreement with the predecessor. The Board therein found the new contract a bar to a petition filed during the window period of the predecessor's agreement. Unlike Ideal Chevrolet, however, the successor herein never executed a collective-bargaining agreement with the Incumbent Union. As discussed above, an oral commitment to recognize the incumbent union and abide by the terms and conditions of the predecessor's contact is not sufficient to bar a timely petition. Thus, there is simply no evidence that successor USC ever entered into a "new" contract with the Incumbent Union that would serve as a contract bar.

B. <u>The Appropriate Bargaining Units</u>

The parties stipulated that USC University Hospital voluntarily extended recognition to the Incumbent Union in the existing two units described above that were previously certified by the Board, and the Petitioner and the Employer have stipulated that elections be held in these existing units. However, the Incumbent Union now asserts that three distinct units are appropriate.

In determining the appropriateness of a bargaining unit, prior bargaining history is given substantial weight, and the Board is generally reluctant to disturb an established unit. See *Canal Carting, Inc.*, 339 NLRB 969 (2003)

While conceding that that Board has long held that there is a strong presumption that the existing bargaining units are the appropriate units for the purpose of conducting elections, the Incumbent Union submits that other factors need be considered in the circumstance of an acute-care hospital like USC University Hospital. Specifically, the Incumbent Union refers to General Counsel Memo 91-3 (May 9, 1991) adopting rules for appropriate units for such hospitals, while conceding that a union has the option under those rules to petition for combined units. The Incumbent Union further concedes that it agreed to a combination of technical, service, and maintenance employees at the time of the original election resulting in the certification of the two units described above.

However, the Incumbent Union now asserts that such significant changes have occurred in the operation of the facility that separate units consistent with the GC Memo are now appropriate. Specifically, the Incumbent Union refers to the creation of new job classifications which USC University Hospital has included into the existing recognized combined unit. However, the record shows only a few new employee classifications and little evidence as to the job duties actually involved or even where these employees work. As such, the Incumbent Union has failed to meet its burden of rebutting the presumption that the existing units are appropriate units.

C. The Scope of the Units

The Incumbent Union seeks to accrete certain employees of Norris Cancer Hospital, an adjacent facility owned by USC whose employees are not currently represented by the Incumbent Union.

The accretion of employees to an existing bargaining unit can be made "only when the additional employees have little or no separate group identity such that they

cannot be considered to be a separate appropriate unit." These additional employees also must share an "overwhelming community of interest" with the preexisting unit to which they are accreted. *Safeway Stores, Inc.*, 256 NLRB 918 (1981). The test to accrete employees into an existing unit is generally more rigorous than that used to determine the appropriateness of an initial bargaining unit, inasmuch as the newly accreted employees are merged into the established unit without benefit of expressing their preference in an election. *Towne Ford Sales*, 270 NLRB 311, 312 (1984).

Specifically, the Incumbent Union seeks to add to its proposed units approximately 50 employees currently working at the Norris Cancer hospital in the same classifications as employees currently in the established bargaining units at USC University Hospital based on commonality of supervision and interchange between the two facilities.

The Incumbent Union does not dispute that the Board has established a presumption, albeit a rebuttable one, in favor of a single facility where an employer operates a single, geographically isolated facility as well as other facilities nearby. *Manor Healthcare Corp.*, 285 NLRB 224, 226 (1987). The Board traditionally examines a number of factors in determining whether this presumption has been rebutted, the most critical of which are the degree of employee interchange and common day-to-day supervision. *Dean Transportation*, 350 NLRB 48 (2007). There must be systematic and scheduled interchange between the two groups of employees to support accretion. *Safeway Stores*, 256 NLRB 918 (1981).

In the instant case, it is undisputed that USC University Hospital and Norris Cancer Hospital are both owned and operated by USC and that they also share common

upper management and some common on-site supervision. However, the anecdotal evidence of sporadic interchange was limited to a handful of employees. Moreover, unlike the cases cited by the Incumbent Union, the employees at the respective facilities herein do not have common wage scales and benefits, nor can they transfer freely between facilities without permission and reapplication. Furthermore, there is evidence that the employees at Norris Cancer Hospital possess distinct skills not shared by those at USC Medical Center, since they deal primarily with patients with cancer.

In view of the foregoing, the Incumbent Union has not met its burden of showing that certain employees at another facility owned by USC should be part of an appropriate unit herein.

The Incumbent Union also seeks to expand the scope of the previously-certified and recognized units described above by adding employees in classifications that it asserts have been created since the last collective-bargaining agreement between the Incumbent Union and Tenet. In determining whether a new classification properly belongs in a bargaining unit, the Board examines whether the new classifications perform the basic bargaining-unit functions so as to be viewed as belonging to the unit, rather than being accreted into the unit. *Premcor*, 333 NLRB 1365 (2001). If the respective duties are not the same, then the Board examines whether there is sufficient community of interest between the two groups so as to justify accretion of the new classifications. Id.

The Incumbent Union presented little evidence that these new classifications were either performing the same work as the current bargaining-unit employees, or that they had sufficient community of interest so that they should be part of an appropriate bargaining unit. Anecdotal evidence based on personnel observation of outsiders and

hearsay about employees' duties is not sufficient to meet the Incumbent Union's burden in this regard.

VI. CONCLUSION

The record supports a finding that neither the Master Agreement nor the subsequent Agreement executed between the Incumbent Union and the predecessor Tenet serve to bar the instant petition. There is insufficient evidence of a signed collective-bargaining agreement or other executed documents clearly setting forth the effective dates of any agreement between the Incumbent Union and the successor employer USC.

Based on the foregoing, I conclude that there is no contact bar to the instant petition. I further conclude, based on the evidence and record as a whole, that the petitioned-for two units of employees employed by the Employer at the USC University Hospital are appropriate units, and that the Incumbent Union has not met its burden to rebut the presumption in favor of these units insofar as expanding them to include new employees, additional units, or other facilities.

VII. FINDINGS

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[9]

2. The parties stipulated that USC University Hospital, a California corporation with principal offices and an acute-care hospital located at 1500 San Pablo Street, Los Angeles, California, the only facility involved herein, is engaged in providing healthcare services. During the past 12 months, a representative period, the Employer

[9] The Incumbent Union made a motion at the hearing to continue the hearing and to block the election based upon unfair labor practice charges in Case 21-CA-39515. This issue was administratively addressed by the undersigned by letter February 2010.

derived gross revenues in excess of $250,000 from the operation of its acute-care hospital, and, during the same period of time, purchased and received goods valued in excess of $5,000, which goods were shipped directly to the Employer's Los Angeles, California, facility from points located outside the state of California.

3. National Union of Healthcare Workers, hereinafter called the Petitioner, is a labor organization within the meaning of the Act.

4. Service Employees International Union, United Healthcare Workers West, hereinafter called the Incumbent Union, is a labor organization within the meaning of the Act.

5. I find that the following units are the appropriate units for the purposes of collective-bargaining:

Unit A

COMBINED SERVICE, MAINTENANCE, TECHNICAL, AND SKILLED MAINTENANCE UNIT

Included: All full time, regular part-time and per diem service, maintenance, technical, and skilled maintenance employees employed by the Employer at its facility located at 1500 San Pablo Street, Los Angeles, California;

Excluded: All other employees, managers, supervisors, confidential employees, guards, physicians, residents, central business office employees (whether facility-based or not) who are solely engaged in qualifying of collection activities, employees of outside registries and other agencies supplying labor to the Employer and already-represented employees.

Unit B

PROFESSIONAL EMPLOYEES UNIT

Included: All full-time, part-time and per diem professional employees (except for Registered Nurses and Physicians) employed by the Employer at its facility located at 1500 San Pablo Street, Los Angeles, California;

Excluded: All other employees, managers, supervisors as defined in the Act, office clerical employees, confidential employees, guards, registered nurses, all other professional employees including, without limitation, physicians and residents, Central Business Office employees (whether facility-based or not) who are solely engaged in qualifying or collection activities, employees of outside registries and other agencies supplying labor to the Employer, and already-represented employees.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct secret ballot elections among the employees in the units found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **National Union of Healthcare Workers; Service Employees International Union, United Healthcare Workers-West; or neither.** The dates, times, and places of the elections will be specified in the notices of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the units who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote.

In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office election eligibility lists, containing the full names and addresses of all the eligible voters in each unit. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The lists must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the lists should be alphabetized (overall or by department, etc.). These lists may initially

be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the lists must be received in the Regional Office on or before **May 3, 2010**. No extension of time to file the lists will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file these lists.

Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The lists may be submitted to the Regional Office by electronic filing through the Agency's website, **www.nlrb.gov**,[10] by mail, or by facsimile transmission at (213) 894-2778. The burden of establishing the timely filing and receipt of the lists will continue to be placed on the sending party.

Since the lists will be made available to all parties to the election, please furnish a total of **four** copies of each list, unless the lists are submitted by facsimile or e-mail, in which only **one** copy of each list need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received

---

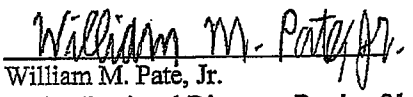
10 To file the eligibility list electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **May 10, 2010.** The request may be filed electronically through E-Gov on the Agency's website, www.nlrb.gov,[11] but may not be filed by facsimile.

DATED at Los Angeles, California, this 26th day of April, 2010.



William M. Pate, Jr.
Acting Regional Director, Region 21
National Labor Relations Board

[11] To file the request for review electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlrb.gov.

Exhibit 9

RECEIVED
NOV 23 2009
By US MAIL 11/20

United States Government
NATIONAL LABOR RELATIONS BOARD
Region 21
888 South Figueroa Street, Ninth Floor
Los Angeles, CA 90017-5449
Telephone: 213.894.5200
Facsimile: 213.894.2778

Resident Office:
555 W Beech Street - Suite 418
San Diego, CA 92101-2939
Telephone: 619.557.6184
Facsimile: 619.557.6358

Writer's Direct Telephone 213.894.3011
Writer's Direct E-mail jean.libby@nlrb.gov

November 20, 2009

VIA FACSIMILE and MAIL
Mark T. Bennett, Esq.
Marks, Golia & Finch, LLP
8620 Spectrum Center Blvd., Suite 900
San Diego, CA 92123
858-737-3101

Linda Van Winkle Deacon, Attorney
Bate, Peterson, Deacon, Zinn & Young LLP
888 S. Figueroa St., 15th Floor
Los Angeles, CA 90017
213-362-1861

Re: USC University Hospital
Case 21-CA-39088
Sodexho Healthcare Services at USC University Hospital
Case 21-CA-39089
Sodexo Healthcare Services/USC University Hospital
Case 21-CA-39109

Dear Mr. Bennett and Ms. Deacon:

This letter is intended to inform you of the specific allegations of the above-captioned cases and to solicit your cooperation.

The charge in Case 21-CA-39088 alleges that USC University Hospital violated Section 8(a)(1) and (2) of the National Labor Relations Act (the Act) when it provided assistance to a rival labor organization by providing unequal access to the Sodexho healthcare employees. The charge in Case 21-CA-39089 alleges that Sodexho Healthcare Services at USC University Hospital violated Section 8(a)(1) and (5) of the Act when it unilaterally changed enforcement of the access provisions of its contract. The charge in Case 21-CA-39109 alleges that Sodexo Healthcare Services/USC University Hospital violated Section 8(a)(1), (3) and (5) of the Act when it implemented, maintained and enforced an illegal policy restricting employee access to public areas during non-work time. This charge also alleges that the policy discriminates against employees on account of union and or protected activities and that it is a unilateral change in

policy without bargaining with the union which represents the employees. The investigation thus far discloses that although Sodexo does not permit representatives of Service Workers United, the union that represents the Sodexo employees working in the cafeteria of USC University Hospital, to meet with employees during their work time, on about October 29, 2009 Sodexo supervisor Hermillo Albert permitted representatives and supporters of the National Union of Healthcare Workers to meet with employees during their work time. The investigation further discloses that on November 10 Sodexo Manager Kirk Lamb announced at a staff meeting that, in accordance with USC University Hospital policy, employees were required to leave the facility at the conclusion of their shifts and were not allowed in the facility when off-duty. The investigation also establishes that although Sodexo did not provide the Union with a copy of USC University Hospital's policy with regard to off-duty access before implementation, when asked, Lamb gave Union representative Herminia Trejo a copy of said policy and told her that an employee who came to the cafeteria when not scheduled for work had violated this policy.

In order to allow the Region to fully weigh all of the facts involved in these cases and to allow all parties an opportunity to present their views and evidence, a response setting forth the your positions is strongly encouraged. Region 21 seeks to avoid any unnecessary litigation wherever possible, which can often be achieved when the full facts are available for review. Accordingly, your full and complete cooperation in this investigation is requested. Full and complete cooperation includes the timely providing of all material witnesses under your control to a Board agent, so that the witnesses' evidence can be reduced to affidavit form, and providing all relevant documentary evidence requested. The submission of a position letter or memorandum, or the submission of affidavits or declarations not taken by a Board agent does not constitute full and complete cooperation.

In connection with the foregoing, I am requesting, all supporting evidence, **including but not limited to** the following:

1. I wish to interview **Kirk Lamb and Hermillo Albert** for the purpose of securing sworn affidavits. I will, of course, be willing to interview and secure affidavits from any other witnesses that you might want to make available who have knowledge of the allegations raised by the charges in this matter.
2. The Hospital's complete response to the allegations.
3. All documentary evidence in the Hospital's possession, which rebuts the Charging Party's allegations.
4. All documents, which the Hospital relies on in support of its position.
5. Please provide case law that the Hospital relies upon in support of its position.

Any and all evidence that the Hospital presents, be it in the form of sworn affidavits taken by a Board agent, or a position statement submitted in lieu of or in addition to sworn affidavits, must be received in this office no later than **November 27, 2009**. Absent the timely submission of the foregoing, the Regional Director will make his decision based upon the evidence contained in the case file as of that date.

It is imperative that the Agency establish jurisdiction. Therefore, I am also requesting that a **Commerce Questionnaire** be submitted by Hospital. **A statement that the Hospital is subject to the Board's jurisdiction will NOT suffice.** A statement setting forth the Hospital's

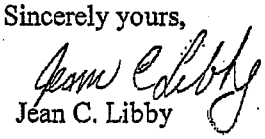
legal name, the nature of the business, state of incorporation and jurisdictional facts may be submitted in lieu of the Commerce Questionnaire. The statement must cover a period of 12 months preceding the filing of these charges. Simply stating that the Hospital is engaged in interstate commerce or that the employer is within the Board's jurisdiction will not suffice.

Please be advised that we cannot accept any limitations on the use of any evidence and/or position statement(s) that are provided to the Agency. Any such limitations **will be disregarded** and any position statement(s) will be considered in the investigation and may be introduced into the record in the event that the above-captioned matter is litigated.

FILING DOCUMENTS WITH REGIONAL OFFICES: The Agency is moving toward a fully electronic records system. To facilitate this important initiative, the Agency strongly urges all parties to submit documents and other materials (except unfair labor practice charges and representation petitions) to Regional Offices through the Agency's E-Filing system on its website: http://www.nlrb.gov (The instructions for using the Agency's E-Filing system are also at the Agency's website). Of course, the Agency will continue to accept timely filed paper documents.

Thank you for your anticipated cooperation. If you have any questions or concerns please contact me at the above phone number.

Sincerely yours,



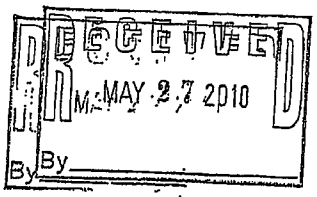
Jean C. Libby

Enclosure (Commerce Questionnaire)

Exhibit 10

United States Government
NATIONAL LABOR RELATIONS BOARD
Region 21
888 South Figueroa Street, Ninth Floor
Los Angeles, CA 90017-5449
Telephone: (213) 894-5204
Facsimile: (213) 894-2778
E-mail: NLRBRegion21@nlrb.gov

75th Anniversary
1935 - 2010



Resident Office:
555 W Beech Street - Suite 418
San Diego, CA 92101-2939
Telephone: (619) 557-6184
Facsimile: (619) 557-6358

May 26, 2010

Bruce A. Harland, Attorney at Law
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-1091

Re: Sodexo Healthcare Services/
USC University Hospital
Case 21-CA-39109

Dear Mr. Harland:

The Region has carefully investigated and considered your charge against Sodexo Healthcare Services/USC University Hospital (the Employers), alleging violations of Section 8 of the National Labor Relations Act ("The Act").

Decision to Partially Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted and I am dismissing portions of your charge for the following reasons:

Your charge alleges, inter alia, that the Employers violated Section 8(a)(1), (3) and (5) of the Act by: (1) implementing, maintaining and enforcing an illegal policy restricting employee access to public areas during their nonwork time; (2) discriminating against employees on account of their union and other protected concerted activity; and (3) unilaterally changing the employee access policy without bargaining with the Union.

With regard to the allegation that the Employers violated Section 8(a)(3) of the Act, the Region concluded that there was no evidence presented or revealed that the Employers selectively enforced their access policy against employees engaged in union activity. With regard to the claim that the Employers violated Section 8(a)(5) of the Act by unilaterally changing the employee access policy without bargaining with the Union, the Region concluded that there was no evidence presented that the policy was recently implemented. Rather, the investigation revealed that the policy was implemented in 1991 and revised in 2008.

This action does not in any way affect the remaining portion of the charge, which alleges that the Employers violated Section 8(a)(1) of the Act by implementing, maintaining and enforcing a policy restricting employee access to the public areas during their nonwork time, which remains in full force and effect.

Your Right to Appeal: The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the GENERAL COUNSEL of the National Labor Relations Board. Use of the Appeal Form (Form NLRB-4767) will satisfy this requirement. However, you are encouraged to submit a complete statement setting forth the facts and reasons why you believe that the decision to dismiss your charge was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **E-GOV**, select **E-Filing**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date and Time: The appeal is due on June 9, 2010. If you file the appeal electronically, it will be considered timely filed if the transmission of the entire document through the Agency's website is accomplished no later than 11:59 p.m. Eastern Time on the due date. If you mail the appeal or send it by a delivery service, it must be received by the General Counsel in Washington, D.C. by the close of business at 5:00 p.m. Eastern Time or be postmarked or given to the delivery service no later than June 8, 2010.

Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to www.nlrb.gov, click on E-Gov, select E-Filing, and follow the detailed instructions. The fax number is (202) 273-4283. A request for an extension of time to file an appeal must be received on or before the original appeal due date. A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to me.

Confidentiality/Privilege: Please be advised that we cannot accept any limitations on the use of any appeal statement or evidence in support thereof provided to the Agency. Thus, any claim of confidentiality or privilege cannot be honored, except as provided by the FOIA, 5 U.S.C. 552, and any appeal statement may be subject to discretionary disclosure to a party upon request during the processing of the appeal. In the event the appeal is sustained, any statement or material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. Because we are required by the Federal Records Act to keep copies of documents used in our case handling for some period of years after a case closes, we may be required by the FOIA to disclose such records upon request, absent some applicable exemption such as those that protect confidential source, commercial/financial information or personal privacy interests (e.g., FOIA Exemptions 4, 6,

7(C) and 7(d), 5 U.S.C. § 552(b)(4), (6), (7)(C), and (7)(D)). Accordingly, we will not honor any requests to place limitations on our use of appeal statements or supporting evidence beyond those prescribed by the foregoing laws, regulations, and policies.

Notice to Other Parties of Appeal: You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is sent to the General Counsel, please complete the enclosed Appeal Form (NLRB-4767) and send one copy of the form to all parties whose names and addresses are set forth in this letter.

Very truly yours,

James F. Small
Regional Director

Enclosures

cc: Andrew G. Gaitan, Business Representative
Service Workers United
275 Seventh Avenue
New York, NY 10001

Sodexo Healthcare Services
1500 San Pablo Street
Los Angeles, CA 90033

Mark T. Bennett, Attorney at Law
Marks, Golia & Finch, LLP
8620 Spectrum Center Boulevard, Suite 900
San Diego, CA 92123

USC University Hospital
1500 San Pablo Street
Los Angeles, CA 90033

Linda Van Winkle Deacon, Attorney at Law
Bate, Peterson, Deacon, Zinn & Young
888 South Figueroa Street, Suite 1500
Los Angeles, CA 90017

General Counsel
Office of Appeals
National Labor Relations Board
Washington, D.C. 20570

JFS/pc

Exhibit 11

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

RECEIVED
JUL 27 2010
By

July 23, 2010

Re: Sodexo Healthcare Services/
USC University Hospital
Case No. 21-CA-39109

Bruce A. Harland, Attorney at Law
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501

Dear Mr. Harland:

Your appeal has been carefully considered. The appeal is denied substantially for the reasons set forth in the Regional Director's partial dismissal letter of May 26, 2010 letter. Contrary to the assertions in the charge, the investigation did not disclose that the Employers violated Section 8(a)(3) or (5) of the National Labor Relations Act, as alleged.

In this regard, the investigation did not establish that the Employers selectively enforced their access policy against employees engaged in union activity. Nor is there evidence that the access policy was recently implemented. Consequently, the burden could not be met that the Employers violated Section 8(a)(3) and (5) of the Act as alleged. Accordingly, further proceedings were not deemed warranted.

Sincerely,

Lafe E. Solomon
Acting General Counsel

By Yvonne T. Dixon
Yvonne T. Dixon, Director
Office of Appeals

cc: James F. Small, Regional Director
National Labor Relations Board
888 South Figueroa Street, 9th Floor
Los Angeles, CA 90017

Sodexo Healthcare Services
1500 San Pablo Street
Los Angeles, CA 90033

Mark T. Bennett, Attorney at Law
Marks, Golia & Finch, LLP
8620 Spectrum Center Blvd., Suite 900
San Diego, CA 92123

Linda Van Winkle Deacon
Attorney at Law
Bate, Peterson, Deacon, Zinn & Young
888 South Figueroa Street, Suite 1500
Los Angeles, CA 90017

USC University Hospital
1500 San Pablo Street
Los Angeles, CA 90033

Andrew G. Gaitan
Business Representative
Service Workers United
275 7th Avenue
New York, NY 10001

mab

Exhibit 12

FORM NLRB-501
(09-07)

FORM EXEMPT UNDER 44 U.S.C. 3512

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
FIRST AMENDED CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
21-CA-39109	5-28-10

INSTRUCTIONS
File an original together with four copies and a copy for each additional charged party in item 1 with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer		b. Number of workers employed
Sodexo Healthcare Services and USC University Hospital		
c. Address (*street, city, state, ZIP code*) 1500 San Pablo Street, Los Angeles, CA 90033	d. Employer Representative Kirk Lamb General Manager	e. Telephone No. (323) 442-8454 Fax No.
f. Type of Establishment (*factory, mine, wholesaler, etc.*) Medical Center	g. Identify principal product or service Healthcare	

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (*list subsections*) 8(a)(3) and 8(a)(5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (*set forth a clear and concise statement of the facts constituting the alleged unfair labor practices*)

Within the last six months immediately preceding the filing of this charge the above-named employer, by and through its agents, violated Sections 8(a)(1), 8(a)(3) and 8(a)(5) the Act, when it implemented, maintained and enforced an illegal policy restricting employee access to public areas during their non-work time. This discriminates against employees on account of union and or protected activities. It is a unilateral change in policy without bargaining with the union which represents the employees. The change was made without bargaining.

The Union requests that this charge block 21-RC-21162.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing charge (*if labor organization, give full name, including local name and number*)
Service Workers United

4a. Address (*street and number, city, state and ZIP code*)	4b. Telephone No.
275 7th Ave., 10th Floor, New York, NY 10001	1-888-SWUnion (798-6466) Fax No.

5. Full name of national or international labor organization of with it is an affiliate or constituent unit (*to be filled in when charge is filed by a labor organization*)
Service Employees International Union and UNITE HERE

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By Bruce A. Harland
Bruce A. Harland, Attorney
(*signature of representative or person making charge*) (*print/type name and title or office, if any*)

Address 1001 Marina Village Pkwy., Ste. 200 Alameda, CA 94501 (Fax) (510) 337-1023
(510) 337-1001 (*Telephone No.*) May 28, 2010 (*Date*)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of this information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Exhibit 13

United States Government
NATIONAL LABOR RELATIONS BOARD
Region 21
888 South Figueroa Street, Ninth Floor
Los Angeles, CA 90017-5449
Telephone: (213) 894-5204
Facsimile: (213) 894-2778
E-mail: NLRBRegion21@nlrb.gov

70th Anniversary
1935 - 2005

Resident Office:
555 W Beech Street - Suite 418
San Diego, CA 92101-2939
Telephone: (619) 557-6184
Facsimile: (619) 557-6358

November 24, 2010

Bruce A. Harland, Attorney at Law
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-1091

Re: Sodexo Healthcare Services and USC University Hospital
Case 21-CA-39109

Dear Mr. Harland:

The Region has carefully investigated and considered your charge against Sodexo Healthcare Services and USC University Hospital alleging violations under Section 8 of the National Labor Relations Act.

Decision to Partially Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted and I am dismissing portions of your charge for the following reasons:

Your charge alleges, *inter alia*, that the Employers violated Section 8(a)(1), (3) and (5) of the Act by: (1) implementing, maintaining and enforcing an illegal policy restricting employee access to public areas during their nonwork time; (2) discriminating against employees on account of their union and other protected concerted activity; and (3) unilaterally changing the employee access policy without bargaining with the Union.

With regard to the allegation that the Employers violated Section 8(a)(3) of the Act, the Region concluded that there was no evidence presented or revealed that the Employers selectively enforced their access policy against employees engaged in union activity. With regard to the claim that the Employers violated Section 8(a)(5) of the Act by unilaterally changing the employees access policy without bargaining with the Union, the Region concluded that there was no evidence presented that the policy was recently implemented. Rather, the investigation revealed that the policy was implemented in 1991 and revised in 2008.

This action does not in any way affect the remaining portion of the charge, which alleges that the Employers violated Section 8(a)(1) of the Act by implementing, maintaining and enforcing a policy restricting employee access to the public areas during their nonwork time, which remains in full force and effect.

RECEIVED
NOV 29 2010
By

Your Right to Appeal: The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the ACTING GENERAL COUNSEL of the National Labor Relations Board. Use of the Appeal Form (Form NLRB-4767) will satisfy this requirement. However, you are encouraged to submit a complete statement setting forth the facts and reasons why you believe that the decision to dismiss your charge was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **E-GOV**, select **E-Filing**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the Acting General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

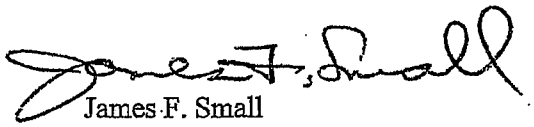
Appeal Due Date and Time: The appeal is due on December 8, 2010. If you file the appeal electronically, it will be considered timely filed if the transmission of the entire document through the Agency's website is accomplished no later than 11:59 p.m. Eastern Time on the due date. If you mail the appeal or send it by a delivery service, it must be received by the General Counsel in Washington, D.C. by the close of business at 5:00 p.m. Eastern Time or be postmarked or given to the delivery service no later than December 7, 2010.

Extension of Time to File Appeal: Upon good cause shown, the Acting General Counsel may grant you an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to www.nlrb.gov, click on E-Gov, select E-Filing, and follow the detailed instructions. The fax number is (202) 273-4283. A request for an extension of time to file an appeal must be received on or before the original appeal due date. A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to me.

Confidentiality/Privilege: Please be advised that we cannot accept any limitations on the use of any appeal statement or evidence in support thereof provided to the Agency. Thus, any claim of confidentiality or privilege cannot be honored, except as provided by the FOIA, 5 U.S.C. 552, and any appeal statement may be subject to discretionary disclosure to a party upon request during the processing of the appeal. In the event the appeal is sustained, any statement or material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. Because we are required by the Federal Records Act to keep copies of documents used in our case handling for some period of years after a case closes, we may be required by the FOIA to disclose such records upon request, absent some applicable exemption such as those that protect confidential source, commercial/financial information or personal privacy interests (e.g., FOIA Exemptions 4, 6, 7(C) and 7(d), 5 U.S.C. § 552(b)(4), (6), (7)(C), and (7)(D)). Accordingly, we will not honor any requests to place limitations on our use of appeal statements or supporting evidence beyond those prescribed by the foregoing laws, regulations, and policies.

Notice to Other Parties of Appeal: You should notify the other parties to the case that an appeal has been filed. Therefore, at the time the appeal is sent to the Acting General Counsel, please complete the enclosed Appeal Form (NLRB-4767) and send one copy of the form to all parties whose names and addresses are set forth in this letter.

Very truly yours,



James F. Small
Regional Director

Enclosures

cc: Andrew G. Gaitan, Business Representative
Service Workers United
275 7th Avenue
New York, NY 10001

Sodexo Healthcare Services
1500 San Pablo Street
Los Angeles, CA 90033

USC University Hospital
1500 San Pablo Street
Los Angeles, CA 90033

Mark T. Bennett, Attorney at Law
Marks, Golia & Finch, LLP
8620 Spectrum Center Boulevard, Ste. 900
San Diego, CA 92123

Linda Van Winkle Deacon, Attorney at Law
Bate, Peterson, Deacon, Zinn & Young
888 South Figueroa Street, Suite 1500
Los Angeles, CA 90017

Acting General Counsel
Office of Appeals
National Labor Relations Board
Washington, D.C. 20570

JFS/js

Exhibit 14

FORM NLRB-501

FORM EXEMPT UNDER 44 U.S.C. § 3512

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 21-CA-39328	Date Filed 5-7-10

INSTRUCTIONS
File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer USC University Medical Center		b. Number of workers employed: 700
c. Address (street, city, state, ZIP code) 1500 San Pablo Ave., Los Angles, CA 90033	d. Employer Representative: Mitch Cream	e. Telephone No.: 323-442-8500 email:
Type of Establishment (factory, mine, wholesaler, etc.): Hospital	g. Identify principal product or service: construction Healthcare	

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the past six (6) months the above-named Employer and its employees and agents enforced an overly broad no solicitation rule no distribution rule against its employees during non work time in non work areas. In addition, the above name Employer has suspended employees Michael Torres and Julio Estrado for alleged violations of its unlawful no solicitation/ no distribution rule. Finally, the employer and its agents the university police have threatened employees with arrest for violations of this unlawful policy. By the Employer's actions it has interfered with its employees' section 7 rights including protected concerted activity for the Charging Party.

The Charging Party requests 10(j) injunctive relief.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
National Union of Healthcare Workers

4a. Address (street and number, city, state and ZIP code) 5801 Christie Ave, Suite 525, Emeryville, CA 94608	4b. Telephone No.: 510-834-2009; fax. 510-834-2019

Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization. -National Union of Healthcare Workers

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

LAW OFFICE OF FLORICE HOFFMAN — Title Attorney

By _____
Signature of representative or person making charge
Typed or printed name: Florice Hoffman

Address 8502 E. Chapman Ave., #353, Orange, CA 92869 — Telephone No. 714-282-1179 — Date: May 7, 2010

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, § 1001)

FORM EXEMPT UNDER 44 U S C 3512

FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

FIRST AMENDED CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 21-CA-39328	Date Filed // 7-13-10

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
USC University Medical Center

b. Tel. No.
(323)442-8500

c. Cell No.
( ) -

f. Fax No.
(323)442-8752

g. e-Mail

d. Address (Street, city, state, and ZIP code)
1500 San Pablo Avenue
Los Angeles CA 90033-

e. Employer Representative
Mitch
Cream

h. Number of workers employed
700

i. Type of Establishment (factory, mine, wholesaler, etc.)
Hospital

j. Identify principal product or service
Healthcare

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) and (3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the past six months, the above-named Employer, its employees and agents maintained and enforced an overly broad no solicitation/no distribution rule against its employees during non work time and in non work areas. In addition, the Employer has maintained and enforced an overly broad off-duty access policy against its employees. It is further alleged that the Employer suspended employees Michael Torres and Julio Estrada for alleged violations of these policies. Additionally, it is alleged that the Employer disciplined and demoted Michael Torres for alleged violations of these policies. Finally, the Employer and its agents, the university police, have threatened employees with arrest for violations of the Employer's policies. By the Employer's actions it has interfered with its employees' Section 7 rights including protected concerted activity for the Charging Party.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
National Union of Healthcare Workers

4a. Tel. No.
(510)834-2009

4b. Cell No.
( ) -

4d. Fax No.
(510)834-2019

4e. e-Mail

4c. Address (Street and number, city, state, and ZIP code)
5801 Christie AvenueSuite 525
Emeryville CA 94608-

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) National Union of Healthcare Workers

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By [signature] (signature of representative or person making charge)

Florice O. Hoffman, Attorney
(Print/type name and title or office, if any)

7 13 2010
(date)

Tel. No.
(714)282-1179

Office, if any, Cell No.
( ) -

Fax No.
(714)282-7918

e-Mail

Address
Florice O. Hoffman
8502 E. Chapman Avenue, #353
Orange CA 92869-

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT 21-2010-2043

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to ass the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB

FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

FORM EXEMPT UNDER 44 U.S.C 3512

SECOND AMENDED CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 21-CA-39328	Date Filed // 9-27-10

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
USC University Medical Center

b. Tel. No.
(323)442-8500

c. Cell No.
( ) -

d. Address (Street, city, state, and ZIP code)
1500 San Pablo Avenue
Los Angeles CA 90033-

e. Employer Representative
Mitch
Cream

f. Fax No.
(323)442-8752

g. e-Mail

h. Number of workers employed
700

i. Type of Establishment (factory, mine, wholesaler, etc.)
Hospital

j. Identify principal product or service
Healthcare

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) and (3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the past six months, the above-named Employer, has maintained and enforced an overly broad off-duty access policy against its employees. It is further alleged that the Employer disciplined, suspended and demoted employee Michael Torres for engaging in union and/or protected concerted activities and for alleged violations of the Employer's off-duty access policy. Finally, the Employer and its agents, the university police, allegedly threatened employees with arrest for engaging in union and/or protected concerted activities and for alleged violations of the Employer's off-duty access policy. By the Employer's actions it has interfered with its employees' Section 7 rights including protected concerted activity for the Charging Party.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
National Union of Healthcare Workers

4a. Address (Street and number, city, state, and ZIP code)
5801 Christie AvenueSuite 525
Emeryville CA 94608-

4a. Tel. No.
(510)834-2009

4b. Cell No.
( ) -

4d. Fax No.
(510)834-2019

4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) National Union of Healthcare Workers

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By Florice O. Hoffman
(Signature of representative or person making charge)

Florice O. Hoffman, Attorney
(Print/type name and title or office, if any)

Florice O. Hoffman
8502 E. Chapman Avenue, #353
Address Orange CA 92869-

9 27 2010
(date)

Tel. No.
(714)282-1179

Office, if any, Cell No.
( ) - 626-524-5965

Fax No.
(714)282-7918

e-Mail
fhoffman@socal-rr.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT 21-2010-2043

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Exhibit 15

FORM NLRB-501

FORM EXEMPT UNDER 44 U.S.C. § 3512

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 21-CA-39403	Date Filed 6-30-10

INSTRUCTIONS

File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer USC University Hospital		b. Number of workers employed: 700
c. Address (street, city, state, ZIP code) 1500 San Pablo Ave. , Los Angles, CA 90033	d. Employer Representative: Mitch Cream	e. Telephone No.: 323-442-8500 email:
Type of Establishment (factory, mine, wholesaler, etc.): Hospital	g. Identify principal product or service: construction Healthcare	

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the past six (6) months the above-named Employer disciplined Ruben Duran and Alex Corea for engaging in protected concerted activity. Specifically employees were part of a delegation to administration to protest working conditions. The employer unlawfully disciplined the employees for violating its off duty access policy. By the Employer's actions it has interfered with its employees' section 7 rights including protected concerted activity on behalf of the Charging Party.

3. Full Name of Charging Party National Union of Healthcare Workers

4a. Address (street and number, city, state and ZIP code) 5801 Christie Ave., Suite 525, Emeryville, CA 94608	4b. Telephone No.: 510-834-2009; fax. 510-834-2019

Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization. National Union of Healthcare Workers

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

LAW OFFICE OF FLORICE HOFFMAN Title Attorney

By Florice Hoffman

Signature of representative or person making charge

Typed or printed name: Florice Hoffman

Address 8502 E. Chapman Ave., #353, Orange, CA 92869 Telephone No. 714-282-1179 Date: June 29, 2010

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, § 1001)

Exhibit 16

FORM NLRB-501

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

FIRST AMENDED CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. § 3512

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
21-CA-39403	7-14-10

INSTRUCTIONS

File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer USC University Hospital		b. Number of workers employed: 700
c. Address (street, city, state, ZIP code) 1500 San Pablo Ave. , Los Angles, CA 90033	d. Employer Representative: Mitch Cream	e. Telephone No.: 323-442-8500 email:
Type of Establishment (factory, mine, wholesaler, etc.): Hospital	g. Identify principal product or service: construction Healthcare	

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)
Within the past six (6) months the above-named Employer disciplined Ruben Duran, Alex Corea and Noemi Aguirre for engaging in protected concerted activity. Specifically employees were part of a delegation to administration to protest working conditions. The employer unlawfully disciplined the employees for violating its off duty access policy. By the Employer's actions it has interfered with its employees' section 7 rights including protected concerted activity on behalf of the Charging Party.

3. Full Name of Charging Party National Union of Healthcare Workers

4a. Address (street and number, city, state and ZIP code) 5801 Christie Ave, Suite 525, Emeryville, CA 94608	4b. Telephone No.: 510-834-2009; fax. 510-834-2019

Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization. -National Union of Healthcare Workers

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

LAW OFFICE OF FLORICE HOFFMAN Title Attorney

By [signature]

Signature of representative or person making charge

Typed or printed name: Florice Hoffman

Address 8502 E. Chapman Ave., #353, Orange, CA 92869 *Telephone No. 714-282-1179* *Date: July 14, 2010*

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, § 1001)

Exhibit 17

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

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

ORDER CONSOLIDATING CASES,
CONSOLIDATED COMPLAINT
AND
NOTICE OF HEARING

Patricia Ortega, an individual, in Case 21-CA-39086, has charged that Sodexho, herein described by its correct name, Sodexo America LLC, and called Respondent Sodexo; Service Workers United, herein called SWU, in Case 21-CA-39109, has charged that Sodexo Healthcare Services, herein described by its correct name, Sodexo America LLC, and called Respondent Sodexo, and that USC University Hospital, herein called Respondent Hospital; and the National Union of Healthcare Workers, herein called NUHW, in Cases 21-CA-39328 and 21-CA-39403, has

charged that USC University Medical Center, herein described by its correct name, USC University Hospital, and called Respondent Hospital, have been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., herein called the Act. Based thereon, and in order to avoid unnecessary costs or delay, the Acting General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, ORDERS that these cases are consolidated.

These cases having been consolidated, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Order Consolidating Cases, Consolidated Complaint and Notice of Hearing and alleges as follows:

1. (a) The charge in Case 21-CA-39086 was filed by Patricia Ortega on November 4, 2009, and a copy was served by regular mail on Respondent Sodexo on November 5, 2009.

(b) The original charge in Case 21-CA-39109 was filed by SWU on November 17, 2009, and a copy was served by regular mail on Respondent Sodexo on November 19, 2009.

(c) The first amended charge in Case 21-CA-39109 was filed by SWU on May 28, 2010, and a copy was separately served by regular mail on Respondent Sodexo and Respondent Hospital on June 1, 2010.

(d) The original charge in Case 21-CA-39328 was filed by NUHW on May 7, 2010, and a copy was served by regular mail on Respondent Hospital on the same date.

(e) The first amended charge in Case 21-CA-39328 was filed by NUHW on July 13, 2010, and a copy was served by regular mail on Respondent Hospital on July 15, 2010.

(f) The second amended charge in Case 21-CA-39328 was filed by NUHW on September 27, 2010, and a copy was served by regular mail on Respondent Hospital on September 29, 2010.

(g) The original charge in Case 21-CA-39403 was filed by NUHW on June 30, 2010, and a copy was served by regular mail on Respondent Hospital on July 1, 2010.

(h) The first amended charge in Case 21-CA-39403 was filed by NUHW on July 14, 2010, and a copy was served by regular mail on Respondent Hospital on July 15, 2010.

2. (a) At all material times, Respondent Hospital, a Delaware corporation with a facility located at 1500 San Pablo Street, Los Angeles, California, herein called the Hospital facility, has been engaged in business as a general acute-care hospital.

(b) During the 12-month period ending March 16, 2010, a representative period, Respondent Hospital, in conducting its business operations described above in paragraph 2(a), derived gross revenues in excess of $250,000, and purchased and received at its Los Angeles, California facility goods valued in excess of $50,000 directly from points outside the State of California.

3. At all material times, Respondent Hospital has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a health- care institution within the meaning of Section 2(14) of the Act.

4. (a) At all material times, Respondent Sodexo, a Delaware corporation with its principal place of business in Gaithersburg, Maryland, and with operations at the Hospital facility, has been engaged in the business of providing food and environmental services.

(b) During the 12-month period ending November 30, 2009, a representative period, Respondent Sodexo, in conducting its business operations described above in paragraph 4(a), performed services valued in excess of $50,000 in States other than the State of California.

(c) During the 12-month period ending November 30, 2009, a representative period, Respondent Sodexo, in conducting its business operations described above in paragraph 4(a), performed services for Respondent Hospital valued in excess of $50,000, and during that same period of time Respondent Hospital derived gross revenues in excess of $250,000 and purchased and received at its Los Angeles, California facility goods valued in excess of $50, 000 directly from points outside of the State of California.

5. At all material times, Respondent Sodexo has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

6. At all material times, SWU has been a labor organization within the meaning of Section 2(5) of the Act.

7. At all material times, NUHW has been a labor organization within the meaning of Section 2(5) of the Act.

8. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Hospital within the meaning of Section 2(11) of the Act and agents of Respondent Hospital within the meaning of Section 2(13) of the Act:

Eva Herberger	Human Resources Manager
Sharon Lee	Associate Administrator
Victor Perez	Manager
Susan Farr	Supervisor

9. (a) At all material times, Kirk Lamb has held the position of Respondent Sodexo's General Manager, and has been a supervisor of Respondent Sodexo within the meaning of Section 2(11) of the Act and an agent of Respondent Sodexo within the meaning of Section 2(13) of the Act).

(b) At all material times, Courtney _____ (last name unknown) has held the position of Respondent Sodexo's Dietician, and has been an agent of Respondent Sodexo within the meaning of Section 2(13) of the Act).

10. Since at least on or about December 2, 2009, Respondent Hospital, by issuing an employee rule book and by making oral announcements, has maintained the following rules:

> Off-duty employees are not allowed to enter or re-enter the interior of Respondent Hospital or any other work area outside Respondent Hospital except to visit a patient, receive medical treatment or to conduct hospital-related business.
>
> 1. An off-duty employee is defined as an employee who has completed his/her assigned shift.
>
> 2. Hospital-related business is defined as the pursuit of the employee's normal duties or duties as specifically directed by management.
>
> 3. Any employee who violates this policy will be subject to disciplinary action.

11. Since at least on or about May 6, 2009, Respondent Sodexo, by posting on bulletin boards, and by making oral announcements, has maintained the following rules:

> Off-duty employees are not allowed to enter or re-enter the interior of Respondent Hospital or any other work area outside Respondent Hospital except to visit a patient, receive medical treatment or to conduct hospital-related business.
>
> 1. An off-duty employee is defined as an employee who has completed his/her assigned shift.
>
> 2. Hospital-related business is defined as the pursuit of the employee's normal duties or duties as specifically directed by management.
>
> 3. Any employee who violates this policy will be subject to disciplinary action.

12. (a) On or about the dates set forth opposite their names, Respondent Hospital engaged in the following conduct as to the employees of Respondent Hospital named below:

(Date)	(Conduct)
May 4, 2010	suspended Michael Torres
May 13, 2010	demoted Michael Torres
June 25, 2010	verbally warned Ruben Duran
June 25, 2010	verbally warned Alex Corea
June 25, 2010	verbally warned Noemi Aguirre

(b) Respondent Hospital engaged in the conduct described above in paragraph 12(a) because the named employees of Respondent Hospital assisted the NUHW and engaged in concerted activities, and to discourage employees from engaging in these activities.

(c) Respondent Hospital engaged in the conduct described above in paragraph 12(a) because the named employees of Respondent Hospital were alleged to have violated the rules described above in paragraph 10.

13. By the conduct described above in paragraphs 12(a) and 12(b), Respondent Hospital has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

14. By the conduct described above in paragraph 10 and paragraphs 12(a) and 12(c), Respondent Hospital has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

15. By the conduct described above in paragraph 11, Respondent Sodexo has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

16. The unfair labor practices of Respondent Hospital described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

17. The unfair labor practices of Respondent Sodexo described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 10 and 12, the Acting General Counsel seeks an Order requiring that Respondent Hospital rescind the rules and any discipline issued to employees in the enforcement of that rules, and make the employees whole for any losses they may have suffered. As part of the remedy for the unfair labor practices alleged above in paragraph 11, the Acting General Counsel also seeks an Order requiring that Respondent Sodexo rescind the rules. The Acting General Counsel seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent Hospital and Respondent Sodexo are notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, they must each file answers to the consolidated complaint. The answers must be received by this office on or before December 8, 2010, or postmarked on or before December 7, 2010. Respondent Hospital and Respondent Sodexo should each file an original and four copies of their answers with this office and serve a copy of their answers on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at http://www.nlrb.gov, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click

on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a consolidated complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

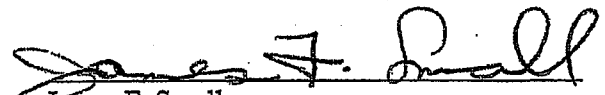
Service of the answer on each of the other parties must still be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint regarding the nonresponding respondent are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT during the calendar call commencing at 1 p.m., PST, on the 31st day of January, 2011 a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board in Hearing Room 902, 888 South Figueroa Street,

Ninth Floor, Los Angeles, California. At the hearing, Respondent Hospital, Respondent Sodexo, and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338. The precise order of all order of cases to be heard on this calendar call will be determined no later that the close of business on the Friday preceding the calendar call.

DATED at Los Angeles, California, this 24th day of November, 2010.



James F. Small
Regional Director, Region 21
National Labor Relations Board
888 South Figueroa Street, Ninth Floor
Los Angeles, CA 90017-5449

Attachments

Exhibit 18

USC University Hospital (hereinafter, the "Hospital"), for itself and for no other respondent, hereby answers the Consolidated Amended Complaint in Case Nos. 21-CA-39086, 21-CA-39109, 21-CA-39328 and 21-CA-39403 as follows:

ANSWERS TO ALLEGATIONS BY PARAGRAPH NUMBER

1(a). The Hospital is without knowledge to specifically admit or deny the allegations in Paragraph 1(a).

1(b). The Hospital is without knowledge to specifically admit or deny the allegations in Paragraph 1(b).

1(c). The Hospital admits that it was served with a copy of the amended charge in Case No. 21-CA-39109 on June 1, 2010. Except as specifically admitted, the Hospital is without knowledge to specifically admit or deny the allegations in Paragraph 1(c).

1(d). The Hospital admits the allegations in Paragraph 1(d).

1(e). The Hospital admits the allegations in Paragraph 1(e).

1(f). The Hospital admits the allegations in Paragraph 1(f).

1(g). The Hospital admits the allegations in Paragraph 1(g).

1(h). The Hospital admits the allegations in Paragraph 1(h).

2(a). The Hospital admits that it provides some acute care hospital services at 1500 San Pablo Street, Los Angeles, California. Except as specifically admitted, the Hospital denies the allegations in Paragraph 2(a).

2(b). The Hospital denies the allegations in Paragraph 2(b).

3. The Hospital admits the allegations in Paragraph 3.

4(a). The Hospital admits that Respondent Sodexho is engaged in the business of providing food services at the Hospital. Except as specifically admitted, the Hospital is without knowledge to specifically admit or deny the allegations in Paragraph 4(a).

4(b). The Hospital is without knowledge to specifically admit or deny the allegations in Paragraph 4(b).

4(c). The Hospital denies the allegations in Paragraph 4(c).

5. The Hospital is without knowledge to specifically admit or deny the allegations in Paragraph 5.

6. The Hospital is without knowledge to specifically admit or deny the allegations in Paragraph 6.

7. The Hospital is without knowledge to specifically admit or deny the allegations in Paragraph 7.

8. In response to paragraph 8, the Hospital admits that Eva Herberger is employed by the Hospital as Human Resources Manager and Sharon Lee is employed as Associate Administrator. The Hospital further states that Victor Perez is employed as a Clinical Coordinator and Susan Farr as Director, Pulmonary Services. Except as specifically admitted, the Hospital denies the allegations in Paragraph 8.

9(a). The Hospital is without knowledge to specifically admit or deny the allegations in Paragraph 9(a).

9(b). The Hospital is without knowledge to specifically admit or deny the allegations in Paragraph 9(b).

10. The Hospital admits that it has promulgated and maintained an off-duty access policy which includes the language set forth in Paragraph 10. The original version of this policy

was first implemented in 1991 by prior owners of the Hospital, before any of the Hospital employees were represented by a union. The Hospital further admits that the policy is contained in written materials, and the Hospital alleges that it is available on the Intranet and posted in a bulletin board. The Hospital denies the remaining allegations of paragraph 10.

11. The Hospital is without knowledge to specifically admit or deny the allegations in Paragraph 11.

12 (a). The Hospital admits that Michael Torres was suspended on May 4, 2010 and demoted on May 13, 2010. The Hospital further admits that Ruben Duran, Alex Correa and Noemi Aguirre received warnings on or about June 25, 2010. Except as specifically admitted, the Hospital denies the allegations in Paragraph 12(a).

12(b). The Hospital denies the allegations in Paragraph 12(b).

12(c). In response to paragraph 12(c), the Hospital states that Michael Torres was suspended because of his insubordinate conduct towards several supervisors and demoted based on the findings of an independent investigation. That investigation revealed that Mr. Torres, among other things, was not forthcoming with the investigator, told inconsistent, not credible, stories to management and the investigator, was rude and insubordinate to management, disobeyed direct orders, and deliberately provoked disputes and created confrontations. The decision to demote was further based on Mr. Torres' previous disciplinary record. The Hospital admits that Ruben Duran, Alex Correa and Noemi Aguirre were warned about a violation of the Hospital's off duty access policy. Except as specifically admitted, the Hospital denies the allegations in Paragraph 12(c).

13. The Hospital denies the allegations in Paragraph 13.

14. The Hospital denies the allegations in Paragraph 14.

15. Hospital is without knowledge to specifically admit or deny the allegations in Paragraph 15.

16. The Hospital denies the allegations in Paragraph 16.

17. The Hospital is without knowledge to specifically admit or deny the allegations in Paragraph 17.

AFFIRMATIVES DEFENSES

1. The Complaint fails to state facts sufficient to establish a violation of the National Labor Relations Act (the "Act").

2. The Complaint is barred, in whole or in part, by the statute of limitations in Section 10(b) of the Act, to the extent it challenges a policy which was adopted in and has been continuously in effect since 1991.

3. The Complaint is barred, in whole or in part, by the Regional Director's previous findings that there is no evidence that the Hospital selectively enforced the off duty access policy against employees engaged in union activity and that the policy was enacted in 1991, i.e., before there was any union activity.

4. The Complaint is barred, in whole or in part, by the decisions in Tenet Healthsystem Hospitals, Inc., 2002 WL 31402769 (October 16, 2002) and San Ramon Regional Medical Center, Inc., 2003 WL 22763700 (November 12, 2003), in which the identical policy enforced by the Hospital's previous owner was found not to violate the Act.

5. The charging parties have waived the right, if they ever had any, to pursue the claims in the Complaint by reason of their own actions and course of conduct.

6. The charging parties and the General Counsel are estopped from pursuing the claims in the Complaint, in whole or in part, by reason of their own actions, statements and course of conduct.

7. The General Counsel does not allege and cannot meet his burden of proving that the Hospital's actions alleged in the Compliant were in any way motivated by union animus.

8. The Complaint is barred because each of the Hospital's actions alleged in the Complaint were based on legitimate and substantial business justifications and the Hospital would have taken such actions regardless of any purported union activity.

9. The remedies sought are not authorized by the Act.

10. The charging parties and the General Counsel have acted in bad faith, without substantial justification or belief as to the validity of the claims, and for vexatious reasons in pursuing this litigation and the Hospital is, therefore, entitled to recover its litigation costs and attorneys' fees.

WHEREFORE, the Hospital requests the following relief:

1. That the Complaint be dismissed in its entirety;

2. That the charging parties and the General Counsel take nothing by way of the Complaint;

3. That the Hospital be awarded its attorneys' fees and costs herein;

4. For such other and further relief as the Administrative Law Judge and/or Board deem just and proper.

DATED: December 13, 2010

BATE, PETERSON, DEACON, ZINN & YOUNG LLP

By: _____
Lester F. Aponte

Attorneys for Respondent
USC UNIVERSITY HOSPITAL

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 888 S. Figueroa Street, 15th Floor, Los Angeles, California 90017.

On December 13, 2010, I caused to be served the foregoing documents described as ANSWER OF RESPONDENT USE UNIVERSITY HOSPITAL TO CONSOLIDATED COMPLAINT on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed per the service list below.

By MAIL as follows: I am "readily familiar" with Bate, Peterson, Deacon, Zinn & Young LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of party served, service shall be presumed invalid if postal cancellation date or postage meter is more than one (1) day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the state of California that the above is true and correct.

Executed on December 13, 2010, at Los Angeles, California.

Zelda Davis

Mark T. Bennett, Esq.
Mark, Golia & Finch, LLP
8620 Spectrum Center Boulevard, Suite 900
San Diego, CA 92123

Florice O. Hoffman, Esq.
Law Offices of Florice Hoffman
8502 East Chapman Avenue, #353
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5480 Ferguson Drive
Los Angeles, CA 90022

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Ms. Patricia Ortega
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Service Workers United
275 Fifth Avenue, 10th Floor
New York, NY 10001

Bruce A. Harland, Attorney at Law
Weinberg, Roger, & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501

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Confirmation information

Confirmation Number: 200540

Date Submitted: 12/13/2010 3:51:50 PM (GMT-08:00) Pacific Time (US & Canada)

Office: Region 21, Los Angeles, California

Case Information
Case Number: 21-CA-039086
Case Name: Sodexho
Role: Charged Party / Respondent

Contact Information
Linda Van Winkle Deacon
ldeacon@bpdzylaw.com
888 South Figueroa Street
15th Floor
Los Angeles, CA 90017
(213)362-1860
Ext: 423
Fax: (213)362-1861

Attached E-File(s)

Answer to Complaint Answer of Respondent USC University Hospital to Consolidated Complaint.pdf

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Ask A Question

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NLRB
E-Filing System

CASE INFO | UPLOAD DOCUMENTS | REVIEW | CONFIRMATION

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Confirmation information

Confirmation Number: 200547

Date Submitted: 12/13/2010 3:55:47 PM (GMT-08:00) Pacific Time (US & Canada)

Office: Region 21, Los Angeles, California

Case Information
Case Number: 21-CA-039109
Case Name: Sodexo Healthcare Services and USC University Hospital
Role: Charged Party / Respondent

Contact Information
Linda Van Winkle Deacon
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Los Angeles, CA 90017
(213)362-1860
Ext: 423
Fax: (213)362-1861

Attached E-File(s)

Answer to Complaint Answer of Respondent USC University Hospital to Consolidated Complaint.pdf

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Confirmation information

Confirmation Number: 200548

Date Submitted: 12/13/2010 3:58:38 PM (GMT-08:00) Pacific Time (US & Canada)

Office: Region 21, Los Angeles, California

Case Information
Case Number: 21-CA-039328
Case Name: USC University Medical Center
Role: Charged Party / Respondent

Contact Information
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(213)362-1860
Ext: 423
Fax: (213)362-1861

Attached E-File(s)

Answer to Complaint Answer of Respondent USC University Hospital to Consolidated Complaint.pdf

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NLRB

E-Filing System

CASE INFO UPLOAD DOCUMENTS REVIEW CONFIRMATION

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Confirmation information

Confirmation Number: 200549

Date Submitted: 12/13/2010 4:00:50 PM (GMT-08:00) Pacific Time (US & Canada)

Office: Region 21, Los Angeles, California

Case Information
Case Number: 21-CA-039403
Case Name: USC University Hospital
Role: Charged Party / Respondent

Contact Information
Linda Van Winkle Deacon
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Answer to Complaint Answer of Respondent USC University Hospital to Consolidated Complaint.pdf

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