

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

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

**GENERAL COUNSEL'S OPPOSITION TO RESPONDENT-USC UNIVERSITY HOSPITAL'S
MOTION FOR SUMMARY JUDGMENT AND RESPONDENT-SODEXO AMERICA'S
JOINDER THEREIN**

Counsel for the Acting General Counsel ("GC") files this Opposition to Respondent-USC University Hospital's Motion for Summary Judgment ("MSJ"), and Respondent-Sodexo America's Joinder therein, pursuant to Section 102.24(b) of the Board's Rules and Regulations.

I. INTRODUCTION AND OVERVIEW

These cases present the issue of whether an access rule, maintained and enforced by Respondent-USC University Hospital ("Respondent-Hospital") and its food service provider, Respondent-Sodexo America ("Respondent-Sodexo"), is unlawful because it does not prohibit access for "any purpose" as required by the third prong of Tri-County Medical Center, 222 NLRB 1089 (1976). Also at issue here is the legality of resultant discipline of four workers who disobeyed that rule.

Respondent-Hospital asserts that these cases present no genuine issues of material fact or law; however, based on the MSJ and the pleadings, it is clear that there are disputed facts, which can be best resolved at a hearing before an ALJ. For example, Respondent-Hospital contends that it has four business justifications for its access rule, each of which presents triable issues of fact. Another example is that Respondent-Hospital contends it disciplined and demoted alleged discriminatee, Michael Torres for "insubordination, failure to cooperate in an investigation, exercising poor judgment and violating the off-duty access policy." (MSJ at. 7-8) (Emphasis supplied.) Moreover, in its Answer, Respondent-Hospital denies that it suspended and demoted Mr. Torres because he violated the access rule; but pleads instead that it had a lawful basis for its adverse action. Thus, the factual issue of causation for Mr. Torres's discipline is in dispute. Yet another example that militates against summary judgment is that, in its Answer, Respondent-Hospital has denied commerce facts, and that Service Workers United and National Union of Healthcare Workers are labor organizations. These examples are by no means exhaustive.

Respondent-Hospital and Respondent-Sodexo (collectively "Respondents") argue that two unpublished ALJDs, to which no exceptions were filed and involved different

respondents and different charging parties, must collaterally estop the GC from pursuing these cases. Respondents' argument is flawed and should be rejected. ALJDs that are adopted by the Board *pro forma* have little, if any, precedential value and are not binding on the Board. Further, in such situations, the GC is not precluded from re-raising an issue for full and complete consideration by the Board.

II. STATEMENT OF THE CASE

On November 4, 2009, Patricia Ortega, an individual, filed a charge in Case 21-CA-39086, alleging that Respondent-Sodexo violated Section 8(a)(1) when it enforced the access rule and told off-duty employees to leave the cafeteria. On November 17, 2009, Service Workers United ("SWU") filed a charge in Case 21-CA-39109, (amended on May 28, 2010), alleging, in pertinent part, that Respondents violated Section 8(a)(1) by implementing, maintaining and enforcing the access rule. On May 7, 2010, the National Union of Healthcare Workers ("NUHW") filed a charge in Case 21-CA-39328, (amended on July 13, 2010 and again on September 27, 2010), alleging that Respondent-Hospital violated Section 8(a)(1) and (3) by threatening Mr. Torres with arrest and disciplining him for alleged violations of the access rule. Finally, on June 3, 2010, NUHW filed a charge in Case 21-CA-39403, (amended on July 14, 2010), alleging that Respondent-Hospital violated Sections 8(a)(1) and (3) by disciplining three employees for violating the access rule.

On November 24, 2010, Consolidated Complaint and Notice of Hearing (Exhibit A) issued, alleging that Respondents had violated the Act as charged. On December 13, 2010, Respondent-Hospital filed its Answer (Exhibit B). On December 10, 2010, Respondent-Sodexo filed its Answer (Exhibit C). On February 1, 2011, GC filed an Amendment to the Consolidated Complaint alleging an 8(a)(1) violation, i.e., threat of arrest, as alleged in

Case 21-CA-39328 (Exhibit D).¹ Respondents' Answer to the Amendment to the Consolidated Complaint is due on February 15, 2011. Hearing is now set for February 28, 2011.²

III. STATEMENT OF THE FACTS

In April 2009, the Respondent-Hospital acquired and began operating the hospital. Previously it had been owned and operated by Tenet. Tenet was signatory to a collective-bargaining agreement with Service Employees International Union-United Healthcare Workers-West ("SEIU"), which by its terms was effective through March 2011. On September 24, 2009, NUHW filed a petition seeking to represent Respondent-Hospital's service, maintenance, and technical employees and, following a Board-conducted election, on June 17, 2010, NUHW was certified as the employees' collective-bargaining representative.

At all times relevant, Respondent-Sodexo has operated a public cafeteria³ located on the main floor of Respondent-Hospital's facility, where employees of both Respondents may take their break and meal periods. On September 24, 2010, NUHW filed a petition seeking to represent Respondent-Sodexo's food service employees and, following a Board-conducted election, on May 14, 2010, NUHW was certified as the employees' collective-bargaining representative.

At all times relevant, Respondents have maintained an access rule; however, during the regional investigation, employees provided testimony that the rule had not been firmly enforced prior to the advent of NUHW's campaigns. Moreover, some employees testified that they had not been aware of the access rule before NUHW's campaign. The access rule provides:

¹ Through inadvertence this allegation was omitted from the Consolidated Complaint; however, during the investigation of Case 21-CA-39328, Respondent-Hospital was afforded an opportunity to respond and did respond to this allegation.

² Hearing was originally scheduled for January 31, 2011; however, pursuant to Respondents' joint request, it was re-scheduled.

³ In its MSJ, Respondent-Hospital asserts that the cafeteria is no longer open to the "general public." (MSJ at fn 4). While GC's evidence reflects otherwise, it is undisputed that the cafeteria is open to staff, patients and visitors.

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.

Michael Torres has worked at the hospital as a respiratory therapist since 1992; prior to his May 2010-demotion, he was a lead respiratory therapist during the night shift. In addition to his many years of experience as a respiratory therapist, Mr. Torres has many years of experience as a shop steward, first for SEIU and later for NUHW.

On May 4, 2010, Mr. Torres was not scheduled to work, but he came to the hospital for two reasons: first, to attend an in-service training for new equipment, and second, to talk to his co-workers about the upcoming representation election. Before he could do either, Mr. Torres was ordered to leave the hospital because, according to Respondent-Hospital, its access rule prohibited his presence.⁴ Mr. Torres insisted that he had a right to be in the hospital and went to the cafeteria, where he remained for some time. Respondent-Hospital suspended Mr. Torres. On May 5, 2010, while on suspension, Mr. Torres returned to the hospital grounds, whereupon, in the early afternoon, two officers approached him as he stood *outside* the hospital in the public smoking area, and told him he had to leave. One of the officers threatened to arrest Mr. Torres if he did not leave. Thereafter, the Respondent-Hospital decided to discipline Mr. Torres further by demoting him from lead respiratory therapist, a position he had occupied since

⁴ The Consolidated Complaint also alleges that Respondent-Hospital disciplined three other employees for violation of its access rule. Respondent-Hospital does not deny this allegation.

about 1998, to respiratory therapist, which has resulted in a diminution of his wages and a change in his duties.

IV. ARGUMENT

A. Respondents' Access Rule is Unlawful

In Tri-County Medical Center, 222 NLRB 1089 (1976), the Board held that a rule prohibiting access to off-duty employees would be valid only if it: 1) limits access solely with respect to the interior of the plant and other working areas; 2) is clearly disseminated to all employees; and 3) applies to off-duty employees seeking access to the plant for any purpose and not just those employees engaging in union activity. Here, Respondents' rule does not limit off-duty employee access for any reason and is, thus, invalid under the third prong of Tri-County.

In Baptist Memorial Hospital, 229 NLRB 45 (1977), *enfd.* Baptist Memorial Hospital v. NLRB, 568 F.2d 1 (6th Cir. 1977), the ALJ found that a hospital's rule prohibiting the distribution of union literature during an employee's non-duty hours was unlawful under the third prong of Tri-County because it permitted employees to visit patients or pick up their paychecks. The Board specifically affirmed the ALJ's finding that the rule was unlawful because it permitted off-duty employee access for certain purposes, including visiting patients and picking up paychecks. Subsequently, in Intercommunity Hospital, 255 NLRB 468 (1982), the Board, applying the same rationale, found an employer's no-access rule invalid under Tri-County because it prohibited off-duty employee access except when employees were visiting friends or relatives who were patients or on official business with the hospital. Thus, the rule on its face did not prohibit access for all purposes.

So, too, the instant access rule does not deny off-duty employees access for all purposes. Here, as in Baptist Memorial and Intercommunity Hospital, off-duty employees may

remain or return to the hospital for several reasons including "to visit a patient"—any patient.⁵ The rule does not mention an off-duty employee's "mother's deathbed" dramatically described in the MSJ at 13. Further, the rule is invalid because it requires employees to obtain authorization from Respondents by permitting access for hospital-related activities that are “specifically directed by management.” See Intercommunity Hospital, 255 NLRB at 474.

Respondents' argument that the Board has recognized the legitimacy of such exceptions is misplaced. In Southdown Care Center, 308 NLRB 225 (1992), the ALJ found, *inter alia*, that the employer unlawfully interrogated employees and created the impression of surveillance, and dismissed allegations that the employer unlawfully threatened and disciplined employees. The Board, in its decision, addressed only these Section 8(a)(1) and 8(a)(3) allegations. The ALJ also dismissed without discussion an allegation that an employer access rule violated Tri-County Medical Center. The rule prohibited off-duty employee access to the interior of the facility, but stated that employees who had friends or family in the facility were permitted to “visit them during their off hours but must follow visitor rules.” The Board, in its decision, never raised or discussed the access rule.⁶

In sum, Respondents' contention that their access rule is valid as a matter of law and that summary judgment is appropriate here must fail.

⁵ Respondents maintain that off-duty employees may not wear their employee-uniform and may not display their employee-badge. (MSJ at 6; Herberger Dec. ¶ 9). GC notes that this purported procedure does not appear on the face of the rule, and presents a triable issue of fact. Additionally, assuming without admitting, that such a procedure exists, it could be consistently applied to an off-duty employee who comes to the hospital to engage in Section 7 activity.

⁶ In Southdown, it is not clear whether the GC excepted to the ALJ's dismissal of that allegation.

B. Collateral Estoppel Does Not Apply

Citing two ALJDs, involving the same access rule that were unfavorable to the government,⁷ Respondents argue that the principle of collateral estoppel precludes the GC from the prosecution of the instant cases.

In United States v. Mendoza, 464 U.S. 154 (1984), and United States v. Stauffer Chemical Co., 464 U.S. 165 (1984), the Supreme Court essentially resolved the debate about the use of collateral estoppel against the federal government. In Mendoza, the Court held that the United States is not collaterally estopped on an issue which was adjudicated *against it* in an earlier lawsuit brought by a *different party*.⁸ The Supreme Court recognized that although the use of collateral estoppel has become increasingly liberal in recent years, that use has involved litigation between private parties. Then in Stauffer Chemical the Supreme Court held that collateral estoppel is applicable against the government where "mutuality" exists, i.e., "in a case where the government is litigating the *same issue* arising under virtually identical facts *against the same party in the second case*. *Id.* at 173. (Emphasis added.)

Here, the principle of collateral estoppel does not bar GC from prosecution because Respondents are different parties from those involved in the prior unfair labor practice hearings. As such, Paramount Transp. Systems v. Chauffeurs, Local 150, 436 F.2d 1064 (9th Cir. 1971), cited by Respondents in their MSJ, does not apply here. In Paramount, the parties involved in the second law suit, an action for damages under the Section 303 of the Labor

⁷ Garfield Medical Center, 2002 WL 31402769 and San Ramon Reg. Medical Center, Inc., 2003 WL 22763700.

⁸ 464 U.S. at 158-164. The Court also distinguished United States v. Montana, 440 U.S. 147 (1979). In both cases, "the party against whom the estoppel is sought is the United States; but here, unlike Montana, the party who seeks to preclude the government from relitigating the issue was not a party to the earlier litigation." Mendoza, 464 U.S. at 159 (citation omitted).

Management Relations Act, were the identical parties involved the earlier unfair labor practice proceeding before an ALJ.

Moving beyond collateral estoppel, GC asserts that the prior ALJDs pertaining to access rules, to which no party filed exceptions, do not and should not constitute binding precedent. Accordingly, if the instant cases are fully litigated and not subject to summary judgment, the Board would be able to adjudicate definitively this meaningful issue involving the parameters of employees' statutory rights.

C. The MSJ and Pleadings Reveal Material Disputed Facts

A motion for summary judgment can only be granted when the Board, after reviewing all the pleadings and submissions by the parties, concludes that there are no material issues of fact or law in dispute to be resolved by a hearing before an ALJ. Lake Charles Memorial Hospital, 240 NLRB 1330, 1331 (1979). Respondents fail to meet the legal and factual standards for summary judgment.

In this regard, Respondents' argument in support of their position that the access rule is lawful is not limited to legal analysis or undisputed facts. Rather, in addition to relying on two ALJDs, Respondents offer several business justifications to support their position that the rule is lawful. Among the justifications that Respondents present as defenses are: the prevention of terrorism as well as workers compensation claims, confidentiality of patients' medical records, and elimination of spurious wage and hour claims by employees. It is obvious that each one of these defenses presents material factual issues; however, for purposes of this Opposition, GC specifically disputes that off-duty employees are more likely to engage in acts of violence.⁹

⁹ Respondents' papers fail to explain how its access rule prevents an unstable employee from committing violent acts while on-duty. Moreover, there has been no showing that Respondent-Hospital's secondary sources were considered when it enacted the access rule. Generally, GC objects to such sources, which should be disregarded by the Board. Specifically, GC objects to

Further, Respondents' exceptions to the access rule go unexplained. Arguably an off-duty employee visiting a patient (permissible under Respondents' access rule) would be more distressed and susceptible to violent out burst than an off-duty employee sitting in the cafeteria with his co-workers, during their lunch break, discussing the upcoming representation election (impermissible under the rule).

In addition, had Respondent-Hospital admitted, plain and simple, that it suspended and demoted Michael Torres because he violated the access rule, perhaps there would be no material issue of fact presented, but it did not. Rather, in its Answer (¶ 12(c)), and in the MSJ (at 7-8), Respondent-Hospital brings to bear the issue of causation, contending that it disciplined Mr. Torres for insubordination, exercising poor judgment, and failing to cooperate in an investigation that it initiated and sponsored. Finally, Respondent-Hospital asserts that its disciplinary decision against Torres was motivated by misconduct, subject to an arbitral award, that occurred more than 4 years ago when Respondent-Hospital was not even his employer.¹⁰ It is impossible for the Board to decide these factual issues without a hearing.

Last, but not least, Respondent-Hospital has denied the foundational basis for commerce jurisdiction (Answer ¶ 2(b)); the Section 2(5) status of both charging party-unions, SWU and NUHW (Answer ¶ 6 and 7); and the Section 2(11)-supervisory and 2(13)-agency status of each individual alleged to possess such status (Answer ¶ 8).

the inclusion of the Wikipedia link pertaining to the tragic Fort Hood rampage. Scholars from all professional disciplines discount the accuracy, and discourage the citing, of Wikipedia as a reliable source.

¹⁰ Traditionally, the Board has viewed reliance on such outdated or stale discipline with suspicion. Moreover, in 2007 when Tenet imposed the discipline, it was signatory to a collective bargaining agreement that required discipline to be excised after 18 months. Finally, here the inclusion of a prior arbitration award to which Respondent-Hospital was not a party is more prejudicial than it is probative. Therefore, GC urges the Board to strike and/or disregard the arbitration award from this record. (Exh. 7 to Herberger's declaration).

V. CONCLUSION

In light of the foregoing, General Counsel submits that genuine issues exist, which require a hearing before an administrative law judge to determine whether Respondents have violated the Act as alleged, and urges the Board to deny Respondent-Hospital's Motion for Summary Judgment as well as Respondent-Sodexo's Joinder therein.

Dated: February 4, 2011

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alice J. Garfield", is written over a horizontal line. The signature is cursive and extends to the right of the line.

Alice J. Garfield
Counsel for the Acting General Counsel
National Labor Relations Board, Region 21
888 South Figueroa Street, 9th Floor
Los Angeles, CA 90017

STATEMENT OF SERVICE

I hereby certify that a copy of Counsel for the Acting General Counsel's Opposition to Respondent-USC University Hospital's Motion for Summary Judgment and Respondent-Sodexo America's Joinder Therein was submitted by E-filing to the Office of the Executive Secretary of the National Labor Relations Board on February 4, 2011. The following parties were served with a copy of the same document by electronic mail.

Lester F. Aponte, Attorney at Law
Bate, Peterson, Deacon, Zinn & Young, LLP
laponte@bpdzylaw.com

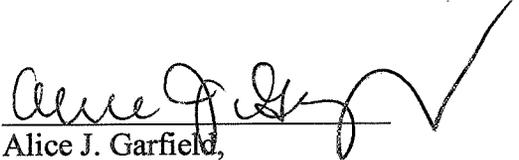
Mark T. Bennett, Attorney at Law
Marks, Golia & Finch, LLP
mbennett@mgflp.com

Florice O. Hoffman, Attorney at Law
Offices of Florice Hoffman
fhoffman@socal.rr.com

Bruce A. Harland, Attorney at Law
Weinberg, Roger & Rosenfeld
BHarland@unioncounsel.net

Ms. Patricia Ortega
opatricia491@gmail.com

Dated at Los Angeles, California,
this 4th day of February 2011



Alice J. Garfield,
Counsel for the Acting General Counsel
National Labor Relations Board
Region 21

EXHIBIT A

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 Sodexo, 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
Sharon Lee
Victor Perez
Susan Farr

Human Resources Manager
Associate Administrator
Manager
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.nlr.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 than 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 B

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

SODEXO AMERICA LLC

Case Nos. 21-CA-39086; 21-CA-39109;
21-CA-39328; 21-CA-39403

and

PATRICIA ORTEGA, an Individual

SODEXHO AMERICA LLC; AND
USC UNIVERISTY HOSPITAL

and

SERVICE WORKERS UNITED

USC UNIVERSITY HOSPITAL

and

NATIONAL UNION OF HEALTHCARE
WORKERS

**ANSWER OF RESPONDENT USC UNIVERSITY HOSPITAL
TO CONSOLIDATED COMPLAINT**

BATE, PETERSON, DEACON, ZINN & YOUNG LLP
LINDA VAN WINKLE DEACON (State Bar No. 60133)
LESTER F. APONTE (State Bar No. 143692)
888 South Figueroa Street, Fifteenth Floor
Los Angeles, California 90017
Telephone: (213) 362-1860
Facsimile: (213) 362-1861

Attorneys for Respondent
USC UNIVERSITY HOSPITAL

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 Sodexo 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 Complaint 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.


Zeida 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
Orange, CA 92869

SEIU-United Healthcare Workers-West
5480 Ferguson Drive
Los Angeles, CA 90022

Antonio Orea
National Union Of Healthcare Workers
8502 East Chapman Avenue, Suite 353
Orange, CA 92869

Ms. Patricia Ortega
25 Westmont Drive, Apt. 16
Alhambra, CA 91801

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

EXHIBIT C

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

SODEXO AMERICA, LLC.'S ANSWER AND
AFFIRMATIVE DEFENSES TO CONSOLIDATED COMPLAINT

Respondent Sodexo America, LLC. files its answer and affirmative defenses with respect to the Consolidated Complaint ("Complaint") in the above-referenced matters.

//////

//////

1. Sodexo denies the allegations contained in paragraph 1 of the Complaint.
2. Sodexo is without knowledge or information sufficient to form a belief as to the matters set forth in paragraph 2 of the Complaint and denies those allegations on that basis.
3. Sodexo admits the allegations contained in paragraph 3 of the Complaint.
4. In answering paragraph 4 of the Complaint, Sodexo admits the allegations of paragraph 4(a) and (b) and admits that it has performed services for the USC University Hospital in excess of \$50,000 during a representative period. Except as specifically admitted, Sodexo denies the allegations contained in paragraph 4 of the Complaint.
5. Sodexo admits the allegations contained in paragraph 5 of the Complaint.
6. Sodexo admits the allegations contained in paragraph 6 of the Complaint.
7. Sodexo admits the allegations contained in paragraph 7 of the Complaint.
8. Sodexo is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint and denies those allegations on that basis.
9. Sodexo admits that in 2009 Kirk Lamb held the position of general manager and was a supervisor within the meaning of section 2(11), 29 U.S.C. § 152(11), of the National Labor Relations Act. Except as specifically admitted, Sodexo denies the allegations contained in paragraph 9 of the Complaint.
10. Sodexo denies the allegations contained in paragraph 10 of the Complaint.
11. Sodexo denies the allegations contained in paragraph 11 of the Complaint.

12. Sodexo is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 12 of the Complaint and denies those allegations on that basis.

13. Sodexo denies the allegations contained in paragraph 13 of the Complaint.

14. Sodexo denies the allegations contained in paragraph 14 of the Complaint.

15. Sodexo denies the allegations contained in paragraph 15 of the Complaint.

16. Sodexo denies the allegations contained in paragraph 16 of the Complaint, and specifically denies that any unfair labor practices were committed.

17. Sodexo denies the allegations contained in paragraph 17 of the Complaint, and specifically denies that any unfair labor practices were committed.

WHEREFORE, having answered the Complaint, Sodexo requests that the Complaint be dismissed with prejudice, that it be awarded its costs and attorneys' fees, and that it be awarded such other and further relief as is deemed just and proper.

AFFIRMATIVE DEFENSES

Without admitting any of the allegations contained in the Complaint, Sodexo asserts the following affirmative defenses:

1. The Complaint is barred by the statute of limitations set forth in National Labor Relations Act §10(b), 29 U.S.C. §160(b).
2. The allegations of the Complaint are subject to deferral.
3. The allegations of the Complaint are barred by waiver or estoppel.
4. The alleged policy was implemented, if at all, for legitimate business and non-discriminatory reasons.

5. Any violations were *de minimis*.
6. The remedies sought are not authorized by the Act.
7. Access to the USC University Hospital's premises is not within Sodexo's control.
8. There is no allegation of anti-union animus.
9. The Complaint is barred by the decisions in *Tenet Healthsystem Hospital, Inc.*, 2002 WL 31402769 (Oct. 16, 2002), and *San Ramon Regional Medical Center, Inc.*, 2003 WL 22763700 (Nov. 12, 2003).

DATED: December 10, 2010

Respectfully submitted,

MARKS, GOLIA & FINCH, LLP

By: 
MARK T. BENNETT
Attorneys for Respondent Sodexo America,
LLC.

860.080/3001394/bdp

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

PROOF OF SERVICE BY MAIL

I, Brandi D. Paape declare that:

I am over the age of eighteen years and not a party to the action; I am employed in the County of San Diego, California; where the mailing occurs; and my business address is 8620 Spectrum Center Boulevard, Suite 900, San Diego, California 92123-1489. I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service pursuant to which practice the correspondence will be deposited with the United States Postal

Service this same day in the ordinary course of business. I caused to be served the following document(s): **SODEXO AMERICA, LLC.'S ANSWER AND AFFIRMATIVE DEFENSES TO CONSOLIDATED COMPLAINT** by placing a copy thereof in a separate envelope for each addressee listed as follows:

Linda Van Winkle Deacon, Esq.
Bate, Peterson, Deacon, Zinn & Young
888 South Figueroa Street, Suite 1500
Los Angeles, California 90017

Ms. Patricia Ortega
25 Westmont Drive, Apt. 16
Alhambra, California 91801

Bruce A. Harland, Esq.
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, California 94501

Florice O. Hoffman, Esq.
Law Offices of Florice Hoffman
8502 East Chapman Avenue, #353
Orange, California 92869

I then sealed the envelope(s) and, with the postage thereon fully prepaid, either deposited it/each in the United States Postal Service or placed it/each for collection and mailing on December 10, 2010, at San Diego, California, following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 10, 2010.

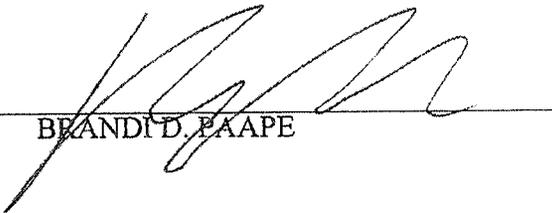

BRANDI D. PAAPE

EXHIBIT D

**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

AMENDMENT TO CONSOLIDATED COMPLAINT

On November 24, 2010, an Order Consolidating Cases, Consolidated Complaint and Notice of hearing issued in the captioned case. Pursuant to Section 102.17 of the Board's Rules and Regulations the Consolidated Complaint is amended to allege:

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/or agents of Respondent Hospital within the meaning of Section 2(13) of the Act:

Eva Herberger
Sharon Lee
Victor Perez
Susan Farr
Officer Fuentes

Human Resources Manager
Associate Administrator
Clinical Coordinator
Director Pulmonary Services
Security Officer

10. (a) Since at least on or about December 2, 2009, Respondent Hospital, by issuing an employee rule book and by making oral and Intranet 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.

(b) On or about May 5, 2010, Respondent Hospital, by Officer Fuentes, at its facility, threatened to arrest an employee if the employee did not leave the Respondent Hospital's facility.

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 this amendment to the consolidated complaint. The answers to this amendment must be received by this office on or before February 15, 2011, or postmarked on or before February 14, 2011.

Respondent Hospital and Respondent Sodexo should each file an original and four copies of their answers to this amendment 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.nlr.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 amendment to the consolidated complaint regarding the non-responding respondent are true.

DATED at Los Angeles, California, this 1st day of February, 2011.

A handwritten signature in black ink, appearing to read "James F. Small". The signature is written in a cursive style with a horizontal line underneath the name.

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

Attachments