

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

SODEXO AMERICA LLC

and

Case 21-CA-39086

PATRICIA ORTEGA

**SODEXO AMERICA LLC; AND
USC UNIVERSITY HOSPITAL**

and

Cases 21-CA-39109

SERVICE WORKERS UNITED

and

**Cases 21-CA-39328
21-CA-39403**

NATIONAL UNION OF HEALTHCARE WORKERS

ORDER DENYING MOTION¹

On January 31, 2011, Respondent USC University Hospital filed a Motion for Summary Judgment, with attachments, and Respondent Sodexo American LLC filed a joinder in the Motion for Summary Judgment. On February 4, 2011, the Acting General Counsel filed an Opposition to the Respondent's Motion.²

The Respondents have drawn the Board's attention to Administrative Law Judge James Kennedy's decision in *San Ramon Regional Medical Center, Inc.*, Cases 32-CA-19917 (2003) (2003 WL 22763700), and Administrative Law Judge Lana Parke's decision in *Garfield Medical Center*, Case 21-CA-34307 (2002) (2002 WL 31402769).

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² The Acting General Counsel's Motions to Strike the Respondents' reply briefs are denied. See *Baker Electric*, 330 NLRB 521 n. 4 (2000) ("although not expressly provided for in Sec. 102.24, it is the Board's practice to permit the party moving for summary judgment to file a reply brief").

In each these cases, the administrative law judge found that the off-duty employee access policy there, which is the same policy that is at issue in the instant proceeding, was lawful under *Tri-County Medical Center*, 222 NLRB 1089 (1976). No exceptions were filed to these judges' decisions, and they were adopted pro-forma as the final decision of the Board in those cases.

The Respondents argue that these decisions are dispositive of the legal question presented in the instant complaint regarding the facial validity of the Respondents' off-duty employee access policy. The Acting General Counsel argues that it should not be bound by these decisions and, in any event, that there are factual issues warranting a hearing.

In view of the Acting General Counsel's representation to the Board that there are factual issues in dispute, we deny the Respondents' Motion for Summary Judgment without reaching the question of the facial validity of the off-duty employee access policy. This denial is without prejudice to the Respondents raising these issues to the Administrative Law Judge at the outset of the hearing.

Dated, Washington, D.C., February 25, 2011.

WILMA B. LIEBMAN, CHAIRMAN

CRAIG BECKER, MEMBER

Member Hayes, dissenting.

I would grant the Respondent's Motion for Summary Judgment.

Brian E. Hayes, MEMBER