

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

SODEXO AMERICA LLC

Case No. 21-CA-39086

and

PATRICIA ORTEGA, an Individual

SODEXO AMERICA LLC; AND  
USC UNIVERSITY 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

**POST-HEARING BRIEF OF RESPONDENT USC UNIVERSITY HOSPITAL**

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Respondent USC University Hospital (the "Hospital") submits this post-hearing brief on the amended consolidated complaint for Cases No. 21-CA-39109, 21-CA-39328 and 21-CA-39403. This brief, and the testimony offered at the hearing, are intended as a supplement to the Hospital's motion for summary judgment, filed on January 31, 2011, and renewed at the time of the hearing.

## I. INTRODUCTION

This action arises from Region 21's challenge to the facial validity of the Hospital's Off-Duty Access Policy (the "Policy").<sup>1</sup> The Region does not dispute that the Hospital may legally maintain a policy which limits access to the interior of the facility for employees who are not on duty. There is also no dispute that the Policy only seeks to control access by off-duty employees to *interior* areas of the Hospital. The Region, moreover, has stipulated that it does not contend that the Policy was not properly disseminated to employees or that the Hospital selectively enforced the Policy against employees engaged in union activities. The Region contends only that the Policy runs afoul of the third prong of Tri-County Medical Center, 222 NLRB 1089 (1976), because it contains two narrow exceptions: 1) off-duty employees who seek medical treatment at the Hospital may enter the Hospital on the same terms as other patients; and 2) off duty employees who wish to visit friends or relatives may enter the Hospital on the same terms as other patient visitors. The Region contends that these exceptions mean that the Policy does not limit access for "all purposes" and it is therefore invalid. However, the General Counsel

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<sup>1</sup> The consolidated complaint also includes allegations regarding discipline imposed on four employees. As more fully set forth in the motion for summary judgment, Michael Torres was suspended and subsequent demoted based partly on his off-duty presence at the Hospital's Brochoscopy Lab and the Environmental Services ("EVS") department, both interior working areas of the Hospital where the public is not allowed. Alex Corea, Noemi Aguirre and Ruben Duran were verbally warned for their off-duty participation in an "impromptu" protest at the CEO's office; also an interior working area not open to the public. Counsel for the Acting General Counsel, Alice Garfield, has admitted that, the Region's sole basis for objecting to the discipline is the alleged facial invalidity of the Policy. (Transcript of Hearing ["Transcript"] 20:22-24.) At the pre-hearing conference on February 23, 2011, she stated that if the policy is lawful any disciplined meted out to these employees that was partly or completely based on a violation of the Policy is also lawful.

rejected such a literal reading of Tri-County in Perpetual American Savings & Loan, 1981 WL 25914, \*2 and explained that the proper inquiry is “whether an employer is discriminating among employees based on union considerations.” The Region admits, in fact, that the Board has never adopted the interpretation of Tri-County that the Region is advancing in this case. (Transcript 21:23-22:4.) Indeed, both this Region and Region 32 have previously attacked this identical policy and have lost. Two administrative law judges have reviewed the very policy at issue here, and consistent with Board policy, applied the third prong of Tri-County with a view to the statutory purpose of protecting the right of employees to engage in union activity and found the Policy lawful. Garfield Medical Center v. NLRB, 2002 WL 31402769; San Ramon Regional Medical Center, Inc., 2003 WL 22763700 (the “Tenet Cases.”)

This administrative law judge followed the same logical approach in Citrus Valley Medical Center, Inc., 2008 WL 4657784, explaining that a judge “should not literally apply Tri-County’s language concerning off-duty employees having access to the facility for ‘any purpose.’” In Townsend Culinary, Inc. and Townsends, Inc., 1998 WL 1985307, another case involving a challenge to an off-duty access policy, this administrative law judge again explained that “in order to establish a violation of the Act there must be an impact on Section 7 rights.” Id., at page 17. Based on the Region’s allegations and stipulations in this case, however, there has been no adverse impact on Section 7 rights in this case. Thus, there is no factual basis to invalidate this policy.

Additionally, barring the Hospital from maintaining these two narrow exceptions to the Policy does not advance any purpose that the National Labor Relations Act (“NLRA”) was designed to serve. Certainly, no Section 7 rights are violated nor selective enforcement issues raised merely by virtue of the Hospital allowing off-duty employees to seek medical treatment or to visit their seriously ill friends or relatives on the same terms and conditions as other patients and visitors.

Even more nonsensical is the Region’s version of what it contends would constitute a valid off-duty access policy, i.e., that the Hospital keep the policy as is but also expand the

exceptions so that off duty employees could access the non-public interior Hospital areas; the cafeteria and interior break rooms. (Transcript 21:1-19.) As described in more detail below, and in the Hospital's motion for summary judgment, this purported "solution" is not only unworkable; it is completely contrary to the Region's position, on which it based this charge, that an off-duty access policy is invalid if it has any exceptions at all. Thus, Region 21 contends that Tri-County requires the Hospital to have no exceptions in order to have a valid policy, yet at the same time, contends that as long as more exceptions are added to the Hospital's policy it would be legal. Not only does this make no sense logically, it makes no sense on any level.

The Hospital's Policy says, in essence, off -duty employees stay away from the interior of the Hospital unless they are using the Hospital for its core business purposes – medical treatment or patient visitation. In those cases, "off duty employees" have no special right to enter the facility, (e.g. they cannot use their badges to access all places in the Hospital and they must follow rules generally applicable to other patients and visitors) but they are not deprived of their humanitarian need for medical treatment or social interaction with sick friends or relatives merely because they are employees. This is reasonable and in no way inconsistent with either the Hospital's responsibilities or the employees' Section 7 rights. The Region's position, however, makes no logical sense. Members of the public do not access employee break rooms; off-duty employees have no need to take "breaks"; obtaining medical treatment does not require access to break rooms; sick friends and relatives are not in "employee break rooms." There is neither an employment nor a core business purpose served by the Region's position.

Under Tri-County, an employer is not required to show it has good reason for enacting a policy that restricts access to *interior* working areas of its facility. There are, nonetheless good business, humanitarian and legal reasons for the Hospital's Policy and the narrow exceptions it contains. The Hospital has a legal and ethical obligation to provide a safe workplace for its patients, employees and visitors. It also has a legitimate business interest in not having employees working off the clock – thus driving up costs for overtime compensation and other pay premiums and/or risking workplace injury claims for unsupervised employees outside of

their authorized working hours. Federal law, moreover, requires the Hospital to limit access to confidential patient information. Each of these goals would be severely compromised if, as the Region proposes, the Hospital were to allow off-duty employees to have unsupervised, access to the Hospital on a 24/7 basis. As set forth in detail below, the Region's position serves no valid purpose under the National Labor Relations Act, and compromises the valid business purposes served by the Hospital's Policy.

## **II. STATEMENT OF FACTS**

### **A. The Policy Bars Access To Off- Duty Employees With Two Narrow Exceptions.**

Testimony on the operation and the reasons for an off-duty access policy was offered by Chief Human Resources Officer, Matt McElrath. (Transcript 28:18-29:5.)

Under the Policy, off-duty employees are allowed in the interior of the Hospital under one of two circumstances: first, to receive medical care themselves; and second, to visit a family member or a friend who is receiving medical care. (Transcript 30:14-24.) As worded, the Policy sets forth a third "exception" for "hospital related business." (General Counsel Exhibits 4 and 5). This refers to situations where an employee is called in to work an extra shift or called in to work when he or she is "on call." At those times, the employee is, by definition, not off-duty but rather is coming in to perform his or her specific duties at the specific direction and under the supervision of management. (Transcript 39:8-40:3, 40:14-21.) This is also true of employees who come back to the Hospital for training when they are not scheduled to work. The employee's supervisors or Hospital management make prior arrangements for that employee to come back to the Hospital, check in, and then go to class. (Transcript 67:22-68:6.) The employee is paid for that time. (Transcript 67:24-68:1.) Thus, the third "exception" involves only paid, supervised employee time.

Under the Policy, if security, management or other staff becomes aware that an employee has entered the Hospital while he or she is not on duty, and is not within any of the exceptions,

he/she is to be confronted and asked to leave. If employees violate the Policy, their supervisors and managers are responsible for counseling them regarding compliance with the Policy.

(Transcript 48:4-12.)

**B. The Hospital Has Legitimate Business Reasons For Enforcing An Off-Duty Access Policy.**

The Policy is intended to ensure that employees are only on premises at times when they are regularly scheduled to work or arrangements have been made with their supervisor and management to be scheduled to work. (Transcript 31:9-12, 36:23-37:1.) The Policy is necessary for several reasons. First, to provide for the security of the Hospital's employees, and the security of patients and their families. (Transcript 31:2-12.) The Hospital is a very large facility. There are two multi-story towers, connected to each other through the basement, covering more than half a million square feet of space. (Transcript 31:8-9, 31:21-32:1.) There are over 2,500 employees and, additionally, up to 500 physicians have privileges at the Hospital. (Transcript 50:9-23.)

There are two primary visitor entrances on the ground floor of the facility, one at each tower. At both of those entrances, there are staffed desks where patients or visitors can sign in. (Transcript 32:2-13.) There are, however, multiple other doors and a primary tunnel access which can be unlocked with an employee ID card key or "badge." (Transcript 32:10-13.) All staff members, upon hire, are provided this employee badge. It provides them access to all exterior doors and to their assigned working areas. For many employees, such as respiratory therapists and food service workers, their work takes them throughout the Hospital and the employee badge gives them access to every part of the Hospital. The badge is not programmed to allow access to an employee only during his or her scheduled shift. Thus, without off-duty access rules, employees could gain unsupervised access to any part of the Hospital any time of the day or night. (Transcript 31:2-12, 32:14-33:25, 34:3-35:5, 52:1-8.) As discussed in detail in the motion for summary judgment, this presents an unacceptable risk to the security of the

Hospital's patients and their families as well as the Hospital's employees. There, therefore, needs to be control of staff when they are off duty. (Transcript 31:7-12.)

Second, the Policy plays a role in containing off- the-clock work and overtime. If employees who are not scheduled to work still come to the Hospital and conduct business, the Hospital is legally obligated to pay for their time, including any applicable overtime, even though the employees had not received prior authorization to be working. (Transcript 35:6-16.) Not all employees wear uniforms, so an employee in street clothes wearing an employee badge might be on duty or off duty. (Transcript 42:3-11.) Thus, the mere fact that a badged employee was wearing street clothes would not help the Hospital in trying to defend a claim for extra compensation. The Hospital would also be liable if the employee suffered an injury while he claimed to be performing work on behalf of the Hospital, even though the employee was supposed to be off duty. These problems are solved if off duty employees cannot enter the Hospital as employees. Under the Hospital's policy employees simply have no right to be in the Hospital interior, as employees, unless they are on duty, or have been specifically requested, approved and supervised for specific assignments. Concerns about off the clock work, excessive overtime, and workers compensation claims, of course, do not apply to a third-party visitor. (Transcript 35:17-36:1.)

A third important reason for the Policy relates to the Hospital's federally-mandated obligations to limit access to private patient information. Under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Hospital is required to make reasonable efforts to limit access to confidential patient information to persons who are authorized to receive it. In order to comply with HIPAA, the Hospital has promulgated a written policy which limits access to areas, and limits access to records. (Transcript 42:13-53:10, 43:13-24; Hospital Exhibit 1.) The Hospital's ability to maintain these controls would be severely hampered if employees had free, unsupervised access to every part of the Hospital at all times. When an employee is off duty, he or she is not under the control of a supervisor or manager. Off duty employees, using their badges, have access into the building and into any unit. Being unsupervised, there is the

potential for them to have access to private patient information that they may not be authorized to access. (Transcript 65:17-66:10.)

**C. Under The Exceptions To The Policy, Off-Duty Employees Can Access The Interior Of The Facility Under The Same Procedures As Members Of The Public.**

When employees come to the Hospital to visit a family member or friend they are required – as would any member of the public – to use the visitor entrance, sign in with Hospital security at one of two visitor desks, and obtain a visitor badge by identifying the patient they are visiting by name. After confirming with the unit that the patient is able to and willing to receive the visitor, security will issue a visitor badge. (Transcript 37:5-37:13, 55:12-24, 56:18-24, 57:12-19, 58:2-3.) This badge is specific to the date and to the unit where the patient is located. (Transcript 37:24-38:8.) Visitors, including off-duty employees, must wear this badge so that security or other personnel know that that individual is a visitor intended to visit a specific unit. (Transcript 37:19-38:8.) If security or management notices that a visitor is in the wrong unit, they will redirect the visitor to the correct unit indicated on the visitor badge. (Transcript 38:9-18.) Off-duty employees who come to visit a patient do not gain access to patients with their employee badge. They are required to obtain a visitor badge. (Transcript 68:7-14.)

When off-duty employees come to the Hospital as patients, they are treated the same way as a member of the public seeking admission. They check in at the visitor desk. Then they are redirected to admissions and go through the admissions process as would any other patient. (Transcript 41:3-42:1.)

**D. The Hospital Cafeteria Is Not Open To The Public.**

The Hospital cafeteria is inside the Hospital and does not have a separate entrance. (Transcript 44:6-11.) The cafeteria is there for the convenience of visitors when they are visiting admitted patients and for on-duty staff. Under a written policy, it is not open to the general

public but only to on-duty employees, physician staff, and visitors who are visiting admitted patients. (Transcript 44:12-13, 45:22-46:14; Hospital Exhibit 2.) This policy was implemented pursuant to a recommendation by the Los Angeles Police Department following a security assessment at the Hospital. (Transcript 47:2-5, 63:2-13.) The cafeteria is closed to the general public so as to provide for the safety and security of patients. (Transcript 46:15-46:18.) A non public cafeteria is also consistent with the Hospital's HIPAA obligations. (Transcript 46:19-47:1.)

The access restrictions apply to employees of Sodexo America, LLC ("Sodexo"), which has been contracted by the Hospital to provide food and nutritional services. (Transcript 48:15-16.) In addition to the cafeteria, Sodexo's food service employees go everywhere in the Hospital delivering food to patient rooms. They are subject to the Policy when they are off duty. (Transcript 52:1-8.)

**E. There Are No Other Exceptions To The Policy.**

The Region introduced testimony by Respiratory Therapist Julio Estrada that he has, on a handful of occasions, come to the Hospital to retrieve his paycheck when he was not scheduled to work on that particular payday and that, on those occasions, he accessed the facility with his employee badge. (Transcript 76:6-16, 79:11-17.) He only does this because he has not signed up for direct deposit. (Transcript 72:7-10, 76:6-7.) Mr. Estrada testified that on approximately ten instances in the past five years, his supervisor, Victor Perez, saw him come up to the department to pick up his paycheck. (Transcript 81:9-82:19.) This is the only evidence the Region offered as to any "exception to the three exceptions." The Region concedes, however, that it is not evidence of selective enforcement, which the Region stipulated is not an issue in these proceedings. (Transcript 73:23-24, 75:2-5.)

Employees who might have potential human resources issues do not need to go into the Hospital in order to resolve those concerns. The Human Resources Department is located in a separate building down the street (the Doheny Eye Institute). There is no access to the Hospital

from that building. (Transcript 47:6-21.) Also, of course, employees who select direct deposit, never have a need to “pick up a pay check.”

### III. ARGUMENT

#### A. The Region Is Challenging Only The Facial Validity of The Policy.

In opposing the Hospital’s motion for summary judgment, the Region argued that there were disputed issues of fact which needed to be resolved. Two of the three NLRB Commissioners who reviewed the papers accepted this representation and denied the motion without prejudice to the Hospital renewing it at the time of the hearing. The third Commissioner indicated he would grant the motion without the need for a hearing. The parties thereafter stipulated to the “disputed” facts that the Region contended prevented summary judgment. Prior to the hearing, the following factual stipulations were included in the record:

11. The Hospital’s Off-Duty Access Policy was initially implemented in 1991 by a predecessor employer.
12. The Acting General Counsel has challenged the Hospital’s Off-Duty Access Policy as facially unlawful.
13. This case does not involve issues of selective enforcement of the Off-Duty Access Policy or the dissemination of that policy.

(General Counsel Exhibit 3.)

Thus, the Region admits that the Policy meets the first prong of Tri-County, i.e., it “limits access solely with respect to the interior of the plant and other working areas.” The Region further admits that there are no issues of selective enforcement or the proper dissemination of the Policy in this case and no evidence that the Policy was enacted or operates as a bar to union activities. The only remaining issue is the Region’s contention that the Policy does not meet the third prong of the Tri-County because it is not an absolute prohibition for off-duty employees to enter the Hospital. This contention rests on an erroneous reading of Tri-County and its progeny and is flatly contradicted by the Region’s own statement as to what a legal policy could be.

**B. A Mechanical Reading Of Tri-County Is Not Supported By The Applicable Authorities.**

The Region contends that the Policy “is unlawful on its face” because “it allows access for employees visiting patients,” employees “receiving medical treatment,” and for “hospital-related activities that are, quote, specifically directed by management.” (Transcript 19:15-20:14.) In making this argument, the Region appears to be reading only part of Tri-County’s language, i.e., that the policy must “appl[y] to off-duty employees seeking access to the plant for any purpose” and leaving out the rest of the sentence: “and not just to those employees engaging in union activity.” Tri-County, 222 NLRB at 1089. The omission is significant because the third prong of Tri-County only makes sense in the context of the NLRA’s stated purpose of protecting the right of employees to engage in union activity. 29 U.S.C. § 157.

The Region’s argument is not supported by the relevant authorities. The Hospital has fully explained in its summary judgment motion and reply how the two cases the Region relies on, Baptist Memorial Hospital, 229 NLRB 45 (1977) and Inter-Community Hospital, 255 NLRB 468 (1981), are distinguishable on the facts and were not necessarily decided on the issue for which the Region cites them.

Administrative law judges have upheld this very policy in two separate cases. See Garfield Medical Center v. NLRB, 2002 WL 31402769, at page 13 (“The rules apply to all off-duty employees except those visiting a patient, receiving medical treatment, or conducting hospital-related business and are thus not protected activity exclusive.”); San Ramon Regional Medical Center, Inc., 2003 WL 22763700, at pages 2-3 (“The limited exceptions allowed by the rule ‘visiting a patient, receiving medical treatment, or conducting hospital-related business’ are the types of exceptions which the Board has permitted and which do not render it unlawful through an uneven-handedness theory.”).

In an Advice Memorandum dated September 30, 1981, the General Counsel specifically rejected a mechanical interpretation of the third prong of Tri-County:

A literal reading of the third criterion of Tri-County Medical Center might suggest that the rule here is invalid, since the Employer's rule does not apply to off-duty employees seeking access to the bank for any purpose but, rather, specifically allows access to off-duty employees for personal banking purposes alone. However, it was concluded that ***the focus of the third criterion of Tri-County Medical Center is on whether an employer is discriminating among employees based on union considerations when they returned to the facility during a non-working time.***

Perpetual American Savings & Loan, 1981 WL 25914, \*2 (emphasis added). As set forth above, in this case it has been specifically stipulated that there is no evidence or claim in this case that the Hospital is discriminating among employees based on union activity. As in Perpetual American Savings, the only exceptions to the written Policy (to obtain medical treatment or visit patients) are based on the Hospital's own core business purposes and off-duty employees who come to the Hospital to access these core business purposes must do so in their capacity as members of the general public. (Transcript 41:18-42:1.)<sup>2</sup>

Similarly, in Citrus Valley, a case out of Region 21, the Judge held an off-duty access policy which allowed off-duty employees access "for business purposes" was "facially valid" "as written." The Judge specifically rejected the mechanical application of the third prong of Tri-County the General Counsel is arguing here:

In applying Tri-County I believe I should not literally apply its language concerning off-duty employees having access to a facility for "any purpose."

Citrus Valley, at pages 8-9 (emphasis added).

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<sup>2</sup> At the hearing, the Region stipulated that, as far as it is concerned, it does not matter what reasons the Hospital advances for the policy, the Policy is unlawful on its face. (Transcript 17:9-13).

In Townsend Culinary, the Judge made clear that, in order to show that an off-duty access policy is unlawful, there must be evidence that the employees' collective bargaining rights are being violated:

**in order to establish a violation of the Act there must be an impact on Section 7 rights.** Here, the General Counsel does not make a case that [the employer] disparately enforced any rule, nor has he shown that the employees were engaged in union activity at the time they were told to leave the [employer's] property. The General Counsel, in his brief, does not articulate an argument to support this allegation in the complaint.

Townsend Culinary, at page 17 (emphasis added.) Here, it has been stipulated that no evidence of disparate enforcement exists.

In opposition to the evidence presented by the Hospital at the hearing, the Region appeared to argue that the policy allows off-duty employees to visit not just friends or relatives but any patient. It is not clear why the Region believes that this distinction is significant. Any visitor is required, when signing in, to identify the patient being visited. Security then checks with the unit as to whether the patient is allowed and is willing to receive the visitor. (Transcript 55:12-24, 56:18-24.) The Region seems to be suggesting that a sufficiently motivated employee may attempt to circumvent the Policy and the Hospital's security procedures with his or her knowledge of the identity of the Hospital's patients. This argument goes nowhere. First, there is no evidence this has occurred. Second, the visitor's badge documents the place the employee said he was going to visit. If he wanders to an unauthorized locale, he is still subject to being corrected by Hospital supervision and security and sent to the patient he is authorized to see. Upon arrival, the patient would undoubtedly point out to the charge nurse that this "visitor" is unwanted and suitable discipline would follow.

In any event, that suggested level of gamesmanship is an argument for stricter enforcement of the Policy, not that it is unlawful. In fact, that very argument cuts against the Region's assertion that off-duty employees should be able to enter non-public areas, because then there would be no identification of or limitation on where they claimed to be going and no

way to control their access. Off-duty employees intent on harassing patients or accessing confidential information or causing harm to other employees could simply claim to be “going to a break room.” This would allow them to walk the Hospital halls, giving them greater ability to engage in their contemplated harmful behaviors. Danger to patients and employees is increased under the Region’s proposed policy. That is not a good result and not a reason to adopt the Region’s position.

The Region then argues that there is an “exception to the exceptions” because at least one employee has, occasionally, come to the Hospital on a date he was not scheduled to work and picked up his paycheck because he has not signed up for direct deposit. He testified his manager was aware that he was doing that but did nothing to stop him approximately ten times in five years. (Transcript 76:6-16, 79:11-17, 81:9-82:19.) The fact that one employee, who elects not to use direct deposit, has occasionally gotten away with violating the policy is not evidence that the Policy is invalid on its face. First of all, even if the policy allowed for off duty employees to pick up pay checks, it would not make the policy invalid. See Citrus Valley, at pages 8-9 (“Certainly employers could allow off-duty employees access to pick up paychecks, resolve benefit issues and the like without tainting an otherwise valid no access rule.”) Secondly, since the Hospital has the Human Resources office in a completely different building, it does not provide a policy exception for off duty employees to access the Hospital for human resource issues. These matters are taken care of at another facility. (Transcript 47:6-21.) Third, the Region had stipulated that there is no “differential enforcement” of the policy. Thus, the Region simply has no evidence of any “exception to the exceptions” that could remotely be said to invalidate the policy.

Finally, the Region’s challenge, if upheld, would have cruel and unintended consequences. If it were to be determined that the Policy must regularly exclude all exceptions, the Hospital would still maintain an off-duty access policy, but the exceptions would be eliminated. Thus, Hospital employees would be unable to receive medical care or visit friends or relatives who are receiving medical treatment because the Hospital would be forced to

completely restrict access to only those employees who are on duty. (Transcript 48:20-49:7.) This would be an inequitable result. The Hospital should not be required to choose between ignoring its legal and ethical obligations to provide a safe workplace for its employees and visitors and protect its patients' privacy rights, or adopting a policy that denies its employees the opportunity to obtain medical care or visit seriously ill relatives. Nothing in the history of the NLRA or the cases examining the validity of off-duty access policies require this result, and the Region has not offered any evidence to suggest how such a result is consistent with protecting Section 7 rights.

The absurdity of the Region's position is further demonstrated by its proposed solution. Having brought this proceeding to challenge the Policy for the *third* time because it supposedly has *too many* exceptions, the Region then suggests that the Hospital modify it by adding *more* exceptions. The Hospital's Policy would be "acceptable," to the Region, if off-duty employees were permitted access to "non-working areas," such as the cafeteria and interior break rooms throughout the facility for any purpose whatsoever. (Transcript 21:1-19.) This solution is patently absurd. It destroys the purpose of the Policy by allowing unsupervised, off duty employees to roam without restriction throughout the Hospital. Thus, the Hospital's efforts to protect against workers' compensation and excessive pay claims is defeated, the effort to protect patient safety and confidentiality by having only supervised employees accessing vast areas of the Hospital is destroyed, and off duty employees would have access to patients of the Hospital that they have no need to access. Furthermore, the Region's proposal is completely unenforceable. Any badged employee, even if outside his work area, and even if caught by supervision, could just claim to be going to a different break area. Since the Region's policy allows the employee into any break area, Security would just have to let the employee walk away. Security and supervisors certainly cannot follow off duty employees around over 500,000 square feet of floor space to ensure that they only wander from break area to break area. Any employee intent on mischief would have free reign to do so.

The Region's proposal does nothing to promote the use of the Hospital for its own core business purposes, has no basis whatsoever in the protection of Section 7 rights and creates an unnecessarily unsafe environment. It is an attack on the Policy for no reason other than to attack the Policy. The Region's arguments are not supported either by law or logic.

**IV. CONCLUSION**

Based on the foregoing, as well as the evidence and argument submitted by the parties in conjunction with the summary judgment motion, the Hospital is entitled to judgment as a matter of law on the allegations raised in the Consolidated Amended Complaint and said complaint must be dismissed.

DATED: March 28, 2011

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**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 March 28, 2011, I caused to be served the foregoing documents described as **REPLY POST-HEARING BRIEF OF RESPONDENT USC UNIVERSITY HOSPITAL** 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 **OVERNIGHT COURIER SERVICE** as follows: I caused such envelope to be delivered by overnight courier service to the offices of the addressee(s). The envelope was deposited in or with a facility regularly maintained by the overnight courier service with delivery fees paid or provided for.

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**BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the addressee(s) designated.

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

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

Executed on March 28, 2011, at Los Angeles, California.

  
Zelda Davis