

**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

**ACTING GENERAL COUNSEL'S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE'S DECISION AND ORDER**

On April 8, 2011, Administrative Law Judge William G. Kocol ("ALJ") issued his Decision in the above-captioned cases. Pursuant to Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, Counsel for the Acting General Counsel files the following exceptions:¹

¹ The Board granted the General Counsel's request for an extension of time, to May 20, 2011, in which to file exceptions and a supporting brief.

To the ALJ's findings and conclusions that:²

Exception No.

1. "In other words, this third 'exception' is not really an exception at all and simply amounts to a definition of on-duty employees." (ALJD 3: 32-34).
2. "In sum, I conclude that the rule allows off-duty employees to enter the Hospital only under circumstances that members of the public at large are allowed, and then only under the same restriction and conditions that members of the public are allowed inside." (ALJD 3: 36-38).
3. "The General Counsel's reliance on *Baptist Memorial Hospital*, 229 NLRB 45 (1997), enfd. *Baptist Memorial Hospital v. NLRB*, 568 F.2d 1 (6th Cir. 1977 is misplaced." (ALJD 4: 7-8).
4. "But this statement is nor sufficiently clear, at least to me [referring to quoted language from *Intercommunity Hospital*, 255 NLRB 468 (1981)], that the Board was holding that simply allowing off-duty employees to visit patients in a hospital would taint a no-access (sic). This is especially so in light of the rule at issue in *Southdown Care Center*, 308 NLRB 225, 232 (1992) which allowed off-duty employees to come to a health care facility if they ' . . . [have] family or friends in the home [to] visit . . . but [they] must follow visitor rules.' " (ALJD 4: 23-27).
5. "This evidence is contrary to the narrow allegations of the complaint and the stipulations and thus the Hospital has not been accorded due process by allowing it to mount a defense. Second, even if I consider the evidence it is, at most, *de minimis* abrogation of the application of the rule." (ALJD 5: 3-6).

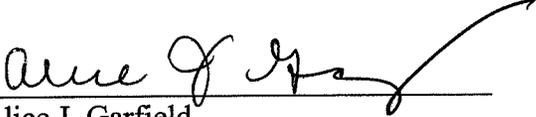
To the ALJ's failure to find and conclude that:

6. Respondent-Sodexo violated § 8(a)(1) of the National Labor Relations Act ("Act") by maintaining and announcing Respondent-Hospital's Off Duty Access Policy ("Rule") to employees.
7. Respondent-Hospital violated § 8(a)(1) of the Act by:
 - (a) maintaining and enforcing the Rule;
 - (b) threatening Michael Torres with arrest if he did not leave the Respondent-Hospital's premises.

² All citations to the Administrative Law Judge's Decision will be referred to as "ALJD" followed by the page number, and then the line number(s).

8. Respondent-Hospital violated § 8(a)(3) and/or 8(a)(1) of the Act by:
- (a) suspending alleged discriminatee Michael Torres for engaging in protected-concerted activities, assisting the National Union of Healthcare Workers ("NUHW"), and/or violating the Rule;
 - (b) demoting alleged discriminatee Michael Torres for engaging in protected-concerted activities, assisting NUHW and/or violating the Rule;
 - (c) issuing warnings to employees Noemi Aguirre, Alex Corea and Ruben Duran for engaging in protected-concerted activities, assisting NUHW and violating the Rule.

Respectfully submitted,



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

Dated: May 18, 2011