

**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 BRIEF IN SUPPORT OF EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE'S
DECISION AND ORDER**

I. INTRODUCTION

On April 8, 2011, Administrative Law Judge William G. Kocol ("ALJ") issued his decision ("ALJD") in the captioned cases wherein he dismissed the consolidated complaint, as amended, in its entirety.

These cases present the legal issue of whether an off-duty employee access rule, maintained and enforced by Respondent-USC University Hospital ("Respondent-Hospital"), and its

food service provider, Respondent-Sodexo America ("Respondent-Sodexo")¹, 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). Importantly, also at issue is the legality of resultant discipline of four workers who disobeyed the rule and engaged in peaceful Section 7 activity, during the height of representation campaigns, the outcome of which would have long-term ramifications for the parties, including the workers' currently certified union, the National Union of Healthcare Workers ("NUHW").

Respondents' off-duty employee access rule ("the Rule") provides:

Off-duty employees are not allowed to enter or re-enter the interior of the Hospital or any work area outside the Hospital except to visit a patient, receive medical treatment, or to conduct hospital-related business. . . Hospital-related business is defined as the pursuit of the employee's normal duties or duties as specifically directed by management. (GCX 5).

II. FACTUAL BACKGROUND

The Rule was initially implemented in 1991 by a predecessor employer. (GCX 3).²

Respondent-Hospital purchased the hospital on April 1, 2009, and has continued to maintain and enforce the Rule; its only change to the Rule was the contact information for enforcement purposes. (TR 30:1-13). In turn, Respondent-Sodexo announced the Rule to its employees sometime after May 6, 2009, and within the Section 10(b) period, and displayed the Rule on a bulletin board during the same applicable period. (GCX 2).

On May 5, 2010, Respondent Hospital suspended and threatened to arrest alleged discriminatee Michael Torres for violating the Rule, and demoted him one week later. (GCX 3). On May 6, 2010, the Board conducted a representation election at the hospital. (GCX 4). Thereafter, on

¹ Where applicable, Respondent-Hospital and Respondent-Sodexo are referred to collectively herein as "Respondents."

² Preliminarily, GC notes that the government's case-in-chief was limited to two stipulations of fact, one with Respondent-Sodexo (GCX 2), and another with Respondent-Hospital (GCX 3).

June 25, 2010, Respondent-Hospital disciplined three additional employees, Ruben Duran, Alex Corea and Noemi Aguirre, for violating the Rule. (GCX 3).

At the hearing, pursuant to the ALJ's request, Respondent-Hospital presented a single witness in an effort to establish business justifications for the Rule. The witness, Matthew F. McElrath, has been chief of human resources since August 2009. (TR 28, 53). Mr. McElrath spends only about 50 percent of his time actually in the hospital, largely in conference room meetings or one-on-one meetings with various leaders. (TR 59:1-7). Testifying that the Rule was in place before he started working for Respondent-Hospital, Mr. McElrath nevertheless propounded several reasons for its necessity: first, he addressed the security of the building itself. (TR 31:7). In this regard, the hospital has two primary visitor entrances, adjacent to both of which are staffed desks where patients or visitors sign in. (TR 32:4-9). According to Mr. McElrath, the procedure for an off-duty employee who comes to the hospital for treatment or patient-visits is identical to the procedure for the general population: he or she is expected to sign in at the desk for admittance or to receive a visitor's badge. (TR 37:5-11; 41:10-17). As such, Mr. McElrath testified that an off-duty employee who comes to visit a patient would receive a visitor badge and be expected to stay in *public areas*. (TR 41:23-25) (Emphasis supplied.) But, he did not address how employees would be aware, or that they were aware, of such procedures given the absence of procedural language from the Rule's exceptions.

According to Mr. McElrath, the hospital has multiple entries from the outdoors that are kept locked, but can be opened with an employee-badge at any time. (TR 32:10-25). Mr. McElrath did not know which specific offices or areas, if any, employees could access with their common-area badges. (TR 33:18-24). His main point was that, by using their badges, employees could gain access to the building through the locked outer doors, and there would be no way to differentiate whether they were there to work or not. (TR 33:6-15). Acknowledging that many of the

hospital's inner work areas or offices had specifically coded access controls, Mr. McElrath nonetheless opined that, since respiratory therapists and patient care technicians assist patients in their rooms, they could wander throughout the hospital; and the same could hold true for environmental services employees because they clean the entire hospital. (TR 34; 35:3-5).

Furthermore, according to Mr. McElrath, Respondent-Hospital's responsibilities under the Health Insurance Portability and Accountability Act ("HIPAA") lend yet another justification for the Rule, and also have some obscure connection to employee access to, and behavior in, the cafeteria. (TR 43:11-25; 44:1-15; 46:19-25; 47:1).

Julio Estrada has worked at the hospital for 17 years—10 of which he has been a lead respiratory therapist. (TR 70:22-23; 71:6-7). He is not employed by Respondent-Sodexo, but is a member of the bargaining unit presently represented by NUHW. (TR 71:8-24). He works 3 days per week; is paid bi-weekly and does not have direct deposit. (TR 72). So he comes to the hospital to pick up his payroll check often on his off-day using his badge,³ as everyone else does who needs to pick up his payroll check when off-duty. (TR 76:7-20).⁴ In fact, Mr. Estrada testified that his supervisor, Victor Perez, has observed him come to pick up his check while off-duty on more than ten occasions, and never told him that he should not be in the hospital. (TR 81). On such occasions, Mr. Perez clearly knows that Mr. Estrada is off-duty because Perez makes the schedules. (TR 83).

III. ARGUMENT

³ Mr. Estrada testified that about 80 percent of the time he picks up his check while off duty. (TR 79:6-12).

⁴ Page 76 line 21 of the official transcript states that GC objects; however, this is a transcription error that should be corrected: it was Ms. Deacon who objected.

The Board analyzes rules governing the access rights of off-duty employees to an employer's facility under the three-prong test articulated in Tri-County Medical Center, 222 NLRB 1089 (1976). There, 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.

A. The Rule Does Not Limit Off-Duty Employee Access for Any Purpose Therefore It's Invalid under Tri-County

In Baptist Memorial Hospital, 229 NLRB 45 (1977), *enfd.* Baptist Memorial Hospital v. NLRB, 568 F.2d 1 (6th Cir. 1977), the employer maintained a prohibition on the distribution of union literature during non-working hours on or near the hospital's premises. The Board noted the judge's reliance on the Tri-County test and, in support of the his finding of a violation, reiterated the fact that the employer permitted access to employees for certain purposes, including visiting patients and picking up pay checks. *Id.* at 45 fn. 4. Moreover, in Intercommunity Hospital, 255 NLRB 468 (1981), the Board found the 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. The rule on its face did not prohibit access for all purposes. *Id.* at 474.

Here, as in both Baptist Memorial Hospital and Intercommunity Hospital, the Rule allows off-duty employees access to visit patients (any patient not just family and friends). And, almost identical to the rule in Intercommunity Hospital regarding "official business with the hospital," the Rule allows off-duty employees access "to conduct hospital related business." In

addition, as was the case in Baptist Memorial Hospital, record testimony in the instant case establishes that Respondent-Hospital does not prohibit off-duty workers access to pick up their pay checks.

In accord with the above principles, the instant Rule is unlawful because it suffers from either one or both of the above defects. First, the Rule effectively requires employees to obtain authorization from Respondents by permitting access for hospital-related activities that are “specifically directed by management.”⁵ Second, the Rule carves out lists of exceptions to the prohibition against off-duty employee access for employees who are visiting patients or receiving medical treatment.⁶ Thus, as in Baptist Memorial Hospital and Intercommunity Hospital, the instant Rule is invalid because it does not prohibit access for “any purpose.”

The Board’s decision in Southdown Care Center, 308 NLRB 225 (1992) did not reverse the Baptist Memorial Hospital line of cases. In Southdown, the judge 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. There, the judge also dismissed, without discussion, an allegation that an employer access rule violated Tri-County. In Southdown, the rule prohibited off-duty employee access to the interior of the facility, but stated that employees who had friends or family in the home 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, and it is not clear that the General Counsel filed exceptions to the judge’s dismissal of that allegation. Under such circumstances, it would be in error to view Southdown as a reversal of Baptist Memorial Hospital, particularly since there, neither the Board, nor the judge, mentioned Baptist Memorial

⁵ See Intercommunity Hospital, 255 NLRB at 474.

⁶ See Intercommunity Hospital, 255 NLRB at 474; Baptist Memorial Hospital, 229 NLRB at 45, n. 4.

Hospital or Intercommunity Hospital, let alone questioned their continued applicability for analyzing the third prong of Tri-County. In any event, GC notes that the rule in Southdown was more akin to an exclusion for all purposes under the third prong, in that it prohibited off-duty employee access, only allowing employees who wished to visit friends or family residing in the home the opportunity to do so subject to the same rules established for access by the general public. Contrariwise, on its face, the instant Rule does not provide for such precise procedures. Inasmuch as this case concerns a facial challenge to the Rule, its lack of precision and clear direction to workers is of utmost importance. McElrath's testimony alone is surely insufficient to transmogrify an otherwise facially invalid rule. In this regard, Respondents offered no evidence to establish that their employees were aware of any unwritten procedures concerning the Rule.

B. Respondents' Business Justifications Do Not Warrant a Different Result

As stated above, and upon the ALJ's request, Respondent-Hospital called Mr. McElrath to testify to several purported business justifications for the Rule, each of which constitutes an inadequate response to the statutory concerns of the instant matter as articulated in Tri-County. Moreover, when considered cumulatively, such justifications constitute a clear stretch and are truly suspect. Just because Respondent-Hospital is in the business of providing healthcare to the public does not make it untouchable, sacrosanct or exempt it from allowing its employees to engage in Section 7 activities. See, Sheet Metal Workers Local 15 v. NLRB (Brandon Regional Medical Center), 491 F.3d 429 (D.C. Cir. 2007).

For example, other than testifying to the obvious—that when employees are on-duty they are subject to supervision—Respondent-Hospital's witness failed to articulate any correlation between its responsibilities under HIPAA and the necessity for the Rule as written. Moreover,

common sense dictates that it would be far easier for an on-duty employee to obtain confidential patient information than for an off-duty employee, already subject to increased scrutiny, to do so.

Similarly, Respondent-Hospital's contention that its Rule prevents workplace violence is without merit, for arguably, an off-duty employee visiting a patient (permissible under the 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).

According to Respondent-Hospital, its HIPAA and workplace violence concerns, as they pertain to off-duty employee access, collide in the cafeteria. In support of this position, Mr. McElrath testified preposterously that on-duty staff is more aware of the need to maintain confidentiality of medical records while in the cafeteria. In addition, he described how a 2010 risk assessment recommendation resulted in the hospital's decision to close its cafeteria to the broader public; however, it remains open to patients, visitors, outside vendors and staff.⁷ The Rule does not state whether off-duty employees who are visiting patients may eat in the cafeteria. It is entirely conceivable that an off-duty employee, who has finished his patient visit and decided to have a cup of coffee in the cafeteria, could be told to leave or risk discipline, which would not be the case for a nonemployee visitor. Obviously there is a ready distinction between members of the public and off-duty employees; equally obvious is that the Rule leaves too much discretion in the hands of Respondent-Hospital and may be subverted to deny employees their Section 7 rights. Respondent-Sodexo takes us deeper into this Alice-in-Wonderland universe by contending that since its employees work in the cafeteria, the entire cafeteria, wall-to-wall, is a working area for Sodexo workers—including the tables at which they take breaks or eat meals.

⁷ This change in Respondents' access policy coincided with the approximate time of the NUHW organizing campaigns and representation elections. (RX 2).

Similar to the circumstances of Baptist Memorial Hospital, here Respondent-Hospital does not prohibit off-duty access for any purpose, or even limit its exceptions to those on the face of the Rule. In this regard, it is uncontested that off-duty employees may return to the hospital to pick up their payroll checks. Such exceptions demonstrate the ad hoc or discretionary nature of the Rule, and how it can be easily manipulated for Respondents' particular purposes, and to stymie Section 7 activity, which of course is contrary to the purposes of the NLRA and public policy. Additionally, the Rule's exception that permits off-duty employee access for "hospital related business," is yet another example of Respondents discretionary ability to finesse unilaterally employees' access rights. For example, a retirement potluck might be considered "hospital related business."

As such, GC maintains that the Rule violates the law as set forth in Tri-County, and public policy because it is imprecise and amenable to abuse when it comes to employees' Section 7 rights. In this regard, the Rule denies access to the Hospital to all off-duty employees, and prohibits workers who are going off-duty from remaining on the premises unless they fall within one of the Rule's exceptions or a supervisor does not object—all of which is subject to Respondents' sole control. In this subtle but unlawful fashion, the Rule thwarts the right of employees to communicate with each other, about self-organization or conditions of employment, while on the Hospital's premises—the mostly likely place for Respondents' workers to engage in such discussions during non-work time. Further, and more important, by defining an off-duty employee "as an employee who has completed his/her assigned shift," the Rule renders it difficult, if not impossible, for any discussion before or after work between employees in a particular shift as the Rule appears to limit the employees' presence at the hospital to the brief time necessary to prepare for or leave work.

In sum, Respondents' justifications for the Rule do not warrant a different approach from the Board's analysis in Tri-County. Indeed, any suggestion or contention that adherence to the

third prong of Tri-County places Respondents in jeopardy of violating federal laws and public policy must be rejected. Respondents are still free to open the Hospital and its facilities to the extent warranted by public policy or mandated by statute. Tri-County merely requires that, if they do so, they must also open their doors to off-duty employees seeking access to engage in protected Section 7 activity.

C. Respondent-Hospital Violated the Act by Disciplining, Demoting and Threatening to Arrest Michael Torres and Disciplining Aguirre, Corea, and Duran

Respondent-Hospital stipulated that Michael Torres' violation of the Rule was a precipitating event for his suspension and demotion. It further stipulated that Torres was threatened with arrest if he did not leave the Hospital's premises. Finally, Respondent-Hospital stipulated that employees Ruben Duran, Alex Corea and Noemi Aguirre received verbal warnings for violating the Rule. Inasmuch as the Rule is facially invalid, the adverse action taken by Respondent-Hospital against the four discriminatees is unlawful too.

D. General Counsel Respectfully Expects to the ALJ's Findings and Conclusions

The ALJ dismissed the consolidated complaint in its entirety. In sum, he found and concluded that Respondents' Rule was not unlawful; and that the Board did not intend its Tri-County decision to reach the Rule at issue here.⁸ The ALJ noted that the Rule allowed off-duty employees to enter the Hospital only under circumstances granted to members of the public at large, and under the same restrictions and conditions. The ALJ concluded that an interpretation of Tri-County making such rules unlawful was too literal and resulted in consequences that were not intended by that decision. The ALJ also offered a basis for distinguishing both Baptist Memorial Hospital and

⁸ Concomitantly, in upholding the Rule and dismissing the consolidated complaint, the ALJ upheld the Respondent-Hospital's disciplinary actions against four employees for engaging in union activities.

Intercommunity Hospital.⁹ Although the ALJ's decision presents a rationale for finding the Rule to be lawful, Baptist Memorial Hospital and Intercommunity Hospital support the GC's position that the Rule is unlawful.¹⁰

1. The ALJ Erred in Finding that GC's Reliance on Two Seminal Board Cases Involving Off-Duty Access was Misplaced.

In his decision, the ALJ found that GC's reliance on Baptist Memorial Hospital was misplaced because the no-access rule at issue there was not limited to the facility's interior and was not disseminated to workers. However, in Baptist Memorial Hospital, the employer's rule reached from the sidewalks to the interior of the hospital, and was communicated to all employees. Id. at 50. The Board there noted with approval the judge's reliance on the Tri-County test and, in support of his finding of a violation, reiterated the fact that, as in the instant case, the employer permitted access to employees for certain purposes, including visiting patients and picking up paychecks. In the instant case, the ALJ also rejected GC's reliance on Intercommunity Hospital because he found that the Board's holding therein was not sufficiently clear (ALJD 4: 23). In Intercommunity Hospital, the Board found the employer's no-access rule invalid under Tri-County because it prohibited off-duty employee access except when the employees were visiting friends or relatives who were patients or on official business with the hospital. The rule on its face did not prohibit access for all purposes.

Here, as in both Baptist Memorial Hospital and Intercommunity Hospital, the Rule allows off-duty employees access to visit patients. And, almost identical to the rule in Intercommunity Hospital regarding "official business with the hospital," the instant Rule allows off-duty employees access "to conduct hospital-related business." Contrary to the ALJ's findings,

⁹The ALJ also noted two ALJDs pertaining to off-duty employee access rules: Garfield Medical Center, 2002 WL 31402769 and San Ramon Regional Medical Center, Inc., 2003 WL 22763700, which the Board adopted pro forma without exceptions, and should not be controlling here. The ALJ also referred to his earlier decision in Citrus Valley Medical Center, Inc., 2008 WL 4657784, to which no exceptions were filed.

¹⁰GC's exceptions will allow the Board to clarify its intent in Tri-County; specifically, what "for any purpose" means, as well as its application to the instant Rule.

Southdown Care Center, 308 NLRB 225 (1992) does not nor elucidate the Baptist Memorial Hospital and Intercommunity Hospital line of cases. As previously mentioned, in Southdown, the judge found, inter alia, that the employer unlawfully interrogated employees and created the impression of surveillance, and dismissed allegations the employer unlawfully threatened and disciplined employees. The Board, in its decision, addressed only these Section 8(a)(1) and 8(a)(3) allegations. There, the judge also dismissed without discussion an allegation that an employer access rule violated Tri-County. That rule prohibited off-duty employee access to the facility's interior, but stated that employees who had friends or family in the home 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 and it is not clear the General Counsel excepted to the judge's dismissal of that allegation. Under these circumstances, Southdown neither reverses nor should it supplement Baptist Memorial Hospital and Intercommunity Hospital. In any event, GC notes that the rule in Southdown was more akin to an exclusion for all purposes under the third prong of Tri-County, since it prohibited off-duty employee access, only allowing employees, who wished to visit friends or family residing in the home, the opportunity to subject themselves to the same rules established for access by the general public.

Here, based on oral testimony alone, the ALJ finds that the Respondent-Hospital has *applied* its Rule similarly to the Southdown rule. However, this case involves *a facial challenge to the Rule*, which on its face does *not* state that off-duty employees will be allowed to enter the Hospital only under circumstances that members of the public are allowed to enter.¹¹ As such, the instant Rule is defective: when employees' Section 7 rights are restricted, it is imperative to eschew

¹¹ In his decision, the ALJ analogizes the Rule's exceptions to the right of off-duty employees to return to shop at retail stores. See, ALJD 4: 1. The ALJ's analogy, however, does not apply fully to retail establishments located in California where off-duty employees, as well as union representatives, are permitted to engage in various forms of non-commercial speech on-site. Fashion Valley Mall, LLC v. NLRB, 524 F.3d 1378 (DC Cir. 2008).

imprecision and adequately inform employees, who are not trained in the law, when and whether they might violate a restrictive policy. Baptist Memorial Hospital at 49.

2. The ALJ Erred in Finding that the Rule's Hospital-Related Business Exception is Permissible under Tri-County

The Rule allows off-duty employees to enter the facility to conduct hospital-related business. The Rule defines hospital related business as "the pursuit of the employee's normal duties *or* duties specifically directed by management." (Emphasis supplied). In his decision, the ALJ finds that this exception to the Rule is not really an exception at all because such off-duty employees are really on-duty employees. This analysis ignores the plain language of the Rule which, on its face, carves out another exception to Respondent-Hospital's off-duty employee access prohibition, and permits off-duty access to be subject to management's discretion. The ambiguity and elasticity of this exception fails under the third prong of Tri-County. Indeed, in Intercommunity Hospital, the Board concluded that the employer's off-duty access exception for "official business with the hospital," did not meet the Tri-County standard because it did not prohibit access for any purpose. Id. at 474.

3. The ALJ Erred by Not Considering Evidence of Off-Duty Employees Picking-up Pay Checks and/or Finding Such Evidence was Di Minimis

GC presented an employee-witness, Julio Estrada, who credibly testified that he has entered the Hospital while off-duty to collect his paycheck; and that his supervisor saw him and did not object. Contrary to the ALJ's finding, such evidence is not outside GC's facial challenge to the Rule or contrary to the parties' stipulations. Therefore, the ALJ erred when he found that the

paycheck evidence was contrary to the narrow allegations of the complaint or implicated Respondent-Hospital's due process rights.

Respondent-Hospital's witness, Mr. McElrath, testified at length about the procedures pertaining to the Rule, none of which appear on the face of the Rule. Thus, the GC was entitled, through rebuttal, to challenge such evidence and offer a contrary view. Accordingly, Mr. Estrada testified that when he was off-duty and came to the Hospital to collect his paycheck, he would *not* enter as a member of the public, but would swipe his employee badge and go directly to his department. Mr. Estrada's testimony directly contradicted McGrath's testimony that off-duty employees who come to the Hospital must enter through the visitors' door and check in at the visitors' desk. In addition, the GC elicited such testimony to establish the imprecise nature of the Rule. Finally, in Baptist Memorial Hospital, the Board found that allowing off-duty employees to come on the premises to collect their paychecks was unlawful, and did not consider it di minimis.

IV. CONCLUSION

The record evidence and current Board law establish that Respondents violated the Act. Accordingly, Counsel for the Acting General Counsel requests that the Board grant these exceptions.

V. REMEDY

A. Recommended Order I

That Respondent-Hospital, USC University Hospital, its officers, agents, successors, and assigns be ordered to:

1. Cease and desist from:
 - (a) Prohibiting off-duty employees from entering the Hospital in the absence of a valid rule.
 - (b) Threatening off-duty employees with arrest for entering the Hospital in the absence of a valid rule.
 - (c) Disciplining off-duty employees who enter the Hospital for purposes of engaging in activity protected by Section 7 in the absence of a valid rule.

- (d) Demoting off-duty employees who enter the Hospital for purposes of engaging in activity protected by Section 7 in the absence of a valid rule.
- (e) in any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

- (a) Rescind the final written warning and demotion issued to Michael Torres on May 13, 2010, and offer him full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights or privileges.
- (b) Make Michael Torres whole for any loss of earning and other benefits resulting from his suspension and demotion.
- (c) Rescind the warnings issued to Naomi Aguirre, Alex Corea and Ruben Duran in June 2010 for entering the Hospital for purposes of engaging in activity protected by Section 7 while off-duty.
- (d) Within 14 days after service by the Region, post manually and electronically at its facility, appropriate Notices to employees in both English and Spanish.¹²
- (e) Preserve and within 14 days of a request or such additional time as the regional director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all books and records necessary to analyze the amount of backpay due under the terms of this order.
- (f) Notify the regional director for Region 21, in writing, within 20 days from the date of the Board's Order, what steps the Respondent-Hospital has taken to comply with the Order.

B. Recommended Order II

That Respondent-Sodexo, Sodexo America LLC, its officers, agents, successors, and assigns be ordered to:

- 1. Cease and desist from:
 - (a) Announcing and/or displaying an invalid rule prohibiting off-duty employees from entering USC University Hospital or its cafeteria.
 - (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

¹² A proposed notice is attached as Appendix "A".

2. Take the following affirmative action necessary to effectuate the policies of the Act:
- (a) Within 14 days after service by the Region, post manually and electronically at its facility, appropriate Notices to employees in both English and Spanish.¹³
 - (b) Notify the regional director for Region 21, in writing, within 20 days from the date of the Board's Order, what steps the Respondent-Sodexo has taken to comply with the Order.

Dated: May 18, 2011

Respectfully submitted,



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

¹³ A proposed notice is attached as Appendix "B".

APPENDIX "A" (PROPOSED NOTICE)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join or assist a union
- Choose representatives to bargain on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

In recognition of these rights, we hereby notify employees that:

WE WILL NOT do anything that interferes with these rights. More particularly,

WE WILL NOT prohibit off-duty employees from entering the Hospital in the absence of a valid rule.

WE WILL NOT threaten off-duty employees with arrest for entering the Hospital in the absence of a valid rule

WE WILL NOT discipline off-duty employees who enter the Hospital for purposes of engaging in activity protected by Section 7 in the absence of a valid rule.

WE WILL NOT demote off-duty employees who enter the Hospital for purposes of engaging in activity protected by Section 7 in the absence of a valid rule.

WE WILL NOT in any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL rescind the final written warning and demotion issued to Michael Torres on May 13, 2010, and offer him full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights or privileges.

WE WILL make Michael Torres whole for any loss of earning and other benefits resulting from his suspension and demotion.

WE WILL rescind the warnings issued to Naomi Aguirre, Alex Corea and Ruben Duran in June 2010 for entering the Hospital for purposes of engaging in activity protected by Section 7 while off-duty.

USC UNIVERSITY HOSPITAL
(Employer)

Date: _____

By: _____
(Representative) (Title)

APPENDIX "B" (PROPOSED NOTICE)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join or assist a union
- Choose representatives to bargain on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

In recognition of these rights, we hereby notify employees that:

WE WILL NOT do anything that interferes with these rights. More particularly,

WE WILL NOT announce and/or displaying an invalid rule prohibiting off-duty employees from entering USC University Hospital or its cafeteria.

WE WILL NOT in any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

SODEXO AMERICA LLC

(Employer)

Date: _____

By: _____
(Representative) (Title)

STATEMENT OF SERVICE

I hereby certify that a copy of Acting General Counsel's Exceptions and Brief in Support of Exceptions were submitted by e-filing to the NLRB's Office of the Executive Secretary on May 18, 2011. The following parties were served with a copy of the same document by electronic mail:

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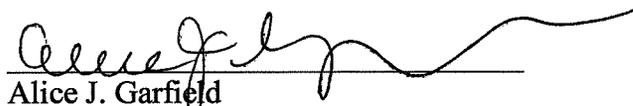
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Dated at Los Angeles, California
this 18th day of May 2011



Alice J. Garfield
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