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August 26, 2011

**VIA FEDERAL EXPRESS AND FACSIMILE**

Farah Z. Qureshi  
 Associate Executive Secretary  
 National Labor Relations Board  
 1099 14<sup>th</sup> St. NW  
 Washington DC 20570

Re: Daycon Products Co., Inc.  
Case Nos: 5-CA35687, et al.

Dear Mr. Qureshi:

In response to your letter of today and pursuant to *Reliant Energy* 339 NLRB 66 (2003) we respectfully wish to bring to the Board's attention its recent ruling in Sutter West Bay Hospitals D/B/A California Pacific Center, A Sutter Health Affiliate, 356 NLRB No. 159, 2011 WL 2059840 (May 25, 2011). Briefing in the instant matter closed on April 12, 2011. The Sutter West Bay Hospitals decision was issued by the Board on May 25, 2011.

In Sutter West Bay Hospitals, the Board affirmed the Administrative Law Judge's ("ALJ") finding that the company lawfully declared impasse. After an impasse was declared, but before any proposals were implemented, the parties met again on two separate occasions in November and December. See Sutter West Bay Hospitals, 356 NLRB No. 159 at 1, fn. 1. During each of these meetings the union failed to offer any new proposals on the principal issue of health care. *Id.* Instead, after the declaration of impasse, as noted by the ALJ, "the Union's purported continued flexibility was dependent upon a condition precedent, namely, a demonstration of flexibility by the Respondent." Sutter West Bay Hospitals, 2010 NLRB LEXIS 362 at \*29 (2010). Accordingly, the Board affirmed the company's right to administer the terms of its best offer. See Sutter West Bay Hospitals, 356 NLRB No. 159 at 1, fn. 1.

The Board's rationale in Sutter West Bay Hospitals comports with the arguments Respondent has advanced in this matter. See Res. Brief in Support of Exceptions, at page 35, line 5; and page 36, line 10 (filed March 15, 2011); and Res. Reply Brief in Further Support of Exceptions, at page 5, line 10; and page 7, line 17 (filed April 12, 2011).

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Accordingly, Respondent respectfully requests that the Board in making its decision in the instant case consider the Sutter West Bay Hospitals decision.

Respectfully submitted,



Mark M. Trapp

cc: Sean Marshall, Esq. (Counsel for the General Counsel)  
Daniel Heltzer, Esq. (Counsel for the General Counsel)  
Jack Mooney, Esq. (Counsel for the Charging Party)

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