

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

In the Matter of:

AMERICAN BAPTIST HOMES OF  
THE WEST d/b/a PIEDMONT  
GARDENS,

Employer,

and

SERVICE EMPLOYEES  
INTERNATIONAL UNION, UNITED  
HEALTHCARE WORKERS-WEST,

Union.

Case No. 32-CA-35247,  
32-CA-25248, 32-CA-25266,  
32-CA-25271 through 32-CA-25308,  
32-CA-25498

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**RESPONDENT'S LIMITED CROSS-EXCEPTIONS TO  
THE DECISION AND RECOMMENDED ORDER OF THE  
ADMINISTRATIVE LAW JUDGE**

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AMERICAN BAPTIST HOMES OF  
THE WEST d/b/a PIEDMONT  
GARDENS

American Baptist Homes of the West d/b/a Piedmont Gardens ("Respondent")

hereby excepts to the Decision of the Administrative Law Judge as follows:

Exception No. <sup>1</sup>	Location (page:lines)	Exception
1	19:15-18	To the Administrative Law Judge's finding that Respondent was well aware that, at specified times on June 17 and 18, its bargaining unit employees would be voting on whether to authorize their bargaining committee to call a strike.
2	<i>Id.</i>	To the Administrative Law Judge's failure to find that Respondent was not aware that at specified times on June 17 and 18 its bargaining unit employees would be voting on whether to authorize their bargaining committee to call a strike.
3	19:21-22	To the Administrative Law Judge's finding that Reynolds noticed the strike flyer affixed to the bulletin board.
4	<i>Id.</i>	To the Administrative Law Judge's failure to find that Reynolds was unaware of the strike vote or flyer.
5	19:22-23	To the Administrative Law Judge's finding that Pinto entered the break room and engaged in his actions at Respondent's behest.
6	20:11 (n.44)	To the Administrative Law Judge's finding that Reynolds was well aware that the bargaining unit employees were engaged in a strike authorization vote on June 17.
7	<i>Id.</i>	To the Administrative Law Judge's failure to find that Reynolds was unaware prior to entering the break room that unit employees were engaged in a strike authorization vote on June 17.
8	20:26-29	To the Administrative Law Judge's conclusion that it may be more correctly argued that Respondent's actual unlawful acts and conduct involved applying a new work rule to Sheila Nelson and perhaps Geneva Henry.

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<sup>1</sup>While Respondent believes that several of the Administrative Law Judge's factual findings were in error and otherwise not supported by the record, in cases where findings are irrelevant to the underlying lawfulness or unlawfulness of the alleged conduct, no exceptions are being taken. This should not be construed as an agreement with those factual findings.

Exception No.	Location (page:lines)	Exception
9	20:29-30	To the Administrative Law Judge's unsupported observation that Rule 33 does not on its face pertain to access rights of employees on their days off or while off-duty for any other reason.
10	<i>Id.</i>	To the Administrative Law Judge's failure to conclude that Rule 33 does apply to all off-duty employees.
11	20:34-37	To the Administrative Law Judge's conclusion that Reynolds conjured and applied a new work rule to Nelson and that the employer invoked this new rule for the first time to evict Nelson and later Henry from Respondent's facility upon discovering each was assisting with a strike authorization vote.
12	<i>Id.</i>	To the Administrative Law Judge's failure to conclude that this was not a new work rule, but rather an even-handed enforcement of the longstanding work rule.
13	20:38-39	To the Administrative Law Judge's conclusion that the Respondent's actions were violative of Section 8(a)(1) of the Act.
14	<i>Id.</i>	To the Administrative Law Judge's misplaced reliance on the <i>Nashville Plastic Projects</i> case.
15	<i>Id.</i>	To the Administrative Law Judge's failure to conclude that the employer did not violate Section 8(a)(1) of the Act as alleged.
16	21:1-5	To the Administrative Law Judge's apparent reliance upon the irrelevant fact that Respondent permits off-duty employees to enter its facility under certain circumstances including to obtain their pay checks and that off-duty shop stewards are permitted to enter in order to participate in grievance activities and disciplinary meetings.
17	21:9-10	To the Administrative Law Judge's misplaced reliance on the factual issue of whether Rule 33 had previously enforced against an employee being inside the facility while off duty.
18	<i>Id.</i>	To the Administrative Law Judge's finding that there was no record evidence that Respondent previously had enforced Rule 33 against any employee for being inside the facility while off duty.
19	21:10-12	To the Administrative Law Judge's finding that Reynolds was acutely aware of the strike authorization voting in the

Exception No. <sup>1</sup>	Location (page:lines)	Exception
		break room on June 17 and 18.
20	<i>Id.</i>	To the Administrative Law Judge's failure to find that Reynolds was not aware of the strike authorization voting in the break room on June 17 and 18
21	21:12	To the Administrative Law Judge's finding that Reynolds disparately invoked Respondent's chart of infractions Rule 33 by evicting employees Nelson, Henry and Eastman from the facility upon discovering each was assisting with the voting.
22	<i>Id.</i>	To the Administrative Law Judge's failure to find that there was no disparate enforcement of the rule.
23	21:14-16	To the Administrative Law Judge's conclusion that Respondent violated Section 8(a)(1) of the Act.
24	<i>Id.</i>	To the Administrative Law Judge's failure to conclude that no violation of Section 8(a)(1) has occurred.
25	21:15-16	To the Administrative Law Judge's misplaced reliance upon the <i>Benteller Industries</i> , <i>Opryland Hotel</i> and <i>Baptist Memorial Hospital</i> cases.
26	26:24	To the Administrative Law Judge's conclusion that the fact that the replacement employees would work during another work stoppage and demonstrated that they were willing to work during a strike was "I think" an unlawful consideration.
27	26:26-27	To the Administrative Law Judge's misplaced reliance on the <i>Planned Building Services</i> and <i>National Fabricators</i> cases.
28	27:41-42	To the Administrative Law Judge's conclusion that there was no dispute that Respondent has continued to withhold the names and addresses of its permanent replacement employees who were hired from outside sources.
29	27:45-51	To the Administrative Law Judge's misplaced reliance upon the <i>Beverly Health &amp; Rehabilitation Services</i> and <i>Stanford Hospital &amp; Clinics</i> cases.
30	<i>Id.</i>	To the Administrative Law Judge's conclusion that the names and addresses of permanent strike replacement employees is presumptively relevant information which must be supplied to a requesting labor organization upon request.

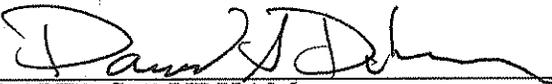
Exception No. <sup>1</sup>	Location (page:lines)	Exception
31	<i>Id.</i>	To the Administrative Law Judge's failure to conclude that the names of permanent strike replacement employees is not presumptively relevant information and that the Union in so requesting is an inherent conflict of interest with the permanent replacement employees.
32	28:1	To the Administrative Law Judge's misplaced reliance upon the <i>Beverly Health &amp; Rehabilitation Services, Metta Electric</i> and <i>Grinnell Fire Protection Systems Co.</i> cases.
33	28:9-11	To the Administrative Law Judge's conclusion that there is no record evidence of acts of violence directed against replacement employees who were hired from outside sources other than a single instance and typical strike argot.
34	<i>Id.</i>	To the Administrative Law Judge's failure to find that permanent replacement employees were subjected significant harassment and intimidation during the strike.
35	28:16-18	To the Administrative Law Judge's conclusion that at the time Respondent failed to give the names and addresses to the Union, any concerns that Respondent may have had were at most subjective in nature and without factual support.
36	<i>Id.</i>	To the Administrative Law Judge's failure to determine that at that time Respondent had legitimate confidentiality concerns that the information would be misused by the Union and/or its supporters.
37	28:24-25	To the Administrative Law Judge's incorrect limitation of the <i>Good Life Beverage</i> case to situations involving requests for financial information.
38	28:27-30	To the Administrative Law Judge's conclusion that the <i>Webster Outdoor Advertising</i> case is distinguishable.
39	<i>Id.</i>	To the Administrative Law Judge's failure to determine that the <i>Good Life Beverage, Webster Outdoor Advertising</i> and <i>Page Litho</i> cases support the Respondent's defenses in this matter.
40	28:45-49	To the Administrative Law Judge's finding that at worst there were minor incidents of picket line misconduct.
41	<i>Id.</i>	To the Administrative Law Judge's failure to find that there were significant and serious incidents of picket line misconduct which, along with the conflict of interest which

Exception No. <sup>1</sup>	Location (page:lines)	Exception
		existed between the Union and the replacement employees, caused the Respondent to have a legitimate and substantial confidentiality concerns that the requested information might be misused.
42	28:49-29:2	To the Administrative Law Judge's determination that Respondent's refusal to transmit the names and addresses of certain of its permanent replacement employees was violative of Sections 8(a)(1) and (5) of the Act.
43	<i>Id.</i>	To the Administrative Law Judge's finding that Respondent in fact refused to transmit the names and addresses of these employees to the Union when in fact Respondent only expressed concerns over presenting this information and invited the Union to participate in discussions to address those concerns.
44	<i>Id.</i>	To the Administrative Law Judge's failure to determine that Respondent was not in violation of Section 8(a)(1) and (5) of the Act as alleged.
45	<i>Id.</i>	To the Administrative Law Judge's misplaced reliance upon the <i>Beverly Health &amp; Rehabilitation</i> and <i>Page Litho</i> cases.
46	29:12-15	To the Administrative Law Judge's Conclusion of Law that Respondent enforced Rule 33 in a disparate manner.
47	<i>Id.</i>	To the Administrative Law Judge's alternative conclusion that Respondent implemented a new work rule in order deter said employees from assisting the Union with a strike authorization vote.
48	<i>Id.</i>	To the Administrative Law Judge's conclusion that Respondent violated Section 8(a)(1) of the Act.
49	<i>Id.</i>	To the Administrative Law Judge's failure to conclude that Respondent did not violate Section 8(a)(1) of the Act.
50	29:22-25	To the Administrative Law Judge's Conclusion of Law that Respondent failed and refused to furnish the Union with names and addresses of permanent strike replacement employees.
51	<i>Id.</i>	To the Administrative Law Judge's Conclusion Of Law that such information was presumptively relevant.
52	<i>Id.</i>	To the Administrative Law Judge's Conclusion Of Law that Respondent engaged in conduct violative of Sections 8(a)(1) and (5) of the Act.

<b>Exception No.<sup>1</sup></b>	<b>Location (page:lines)</b>	<b>Exception</b>
53	<i>Id.</i>	To the Administrative Law Judge's failure to conclude that Respondent did not engage in acts or conduct violative of Sections 8(a)(1) and (5) of the Act as alleged.
54	29:27-28	To the Administrative Law Judge's conclusion that Respondent engaged in unfair labor practices.
55	<i>Id.</i>	To the Administrative Law Judge's conclusion that said alleged unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.
56	29:35-38	To the Administrative Law Judge's characterization of the alleged unfair labor practices as "serious."
57	29:35-43	To the Administrative Law Judge's remedy in its entirety.
58	30:9-11	To the Administrative Law Judge's recommended Order set forth in Section 1(a).
59	30:16-18	To the Administrative Law Judge's recommended Order that Respondent be ordered to cease and desist from the conduct alleged in Paragraph 1(c).
60	30:25-26	To the Administrative Law Judge's recommendation that the Respondent be ordered to provide the Union with the names and addresses of its permanent replacement employees who are hired from outside sources.
61	Appendix	To the first and third "We Will Not" paragraphs of the proposed Notice to Employees.
62	Appendix	To the "We Will" paragraph in the proposed Notice to Employees.

DATED: October 18, 2011.

Respectfully submitted,

By:   
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