

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
San Francisco Branch Office**

SODEXO AMERICA LLC

Case No. 21-CA-39086

and

PATRICIA ORTEGA, an Individual

SODEXO AMERICA LLC; AND
USC UNIVERISTY 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

**MOTION BY KECK HOSPITAL OF USC, FORMERLY KNOWN AS
USC UNIVERSITY HOSPITAL, REQUEST FOR CONTINUANCE OF PROCEEDINGS.**

LINDA VAN WINKLE DEACON (State Bar No. 60133)
1107 Fair Oaks Avenue #356
South Pasadena, California 90017
Telephone: (213) 248-4806
Facsimile: (818) 952-7402
lindaedeacon@gmail.com
Attorney for Respondent
Keck Hospital of USC, formerly known as
USC UNIVERSITY HOSPITAL

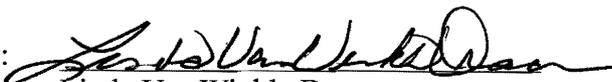
TO THE HONORABLE JUDGE WILLIAM G. KOCOL:

Keck Hospital of USC, formerly known as USC University Hospital requests that the hearing in the above-captioned matter be continued until December 5, 2012, or in the alternative that the hearing in the case be continued until December 18, 19, or 20, 2012. This motion is made on the grounds that the hearing was set on minimal notice, that counsel for the Hospital is not available for the hearing and that counsel is a sole practitioner who has no other colleagues or employees to whom the matter could be assigned.

This motion is based on the Memorandum of Points and Authorities and the attached Declaration of Linda Van Winkle Deacon.

Dated: October 19, 2012

Respectfully submitted,

By: 

Linda Van Winkle Deacon
Attorney for Respondent
Keck Hospital of USC, formerly
known as USC University Hospital
E-mail: lindaedeacon@gmail.com

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE GRANTING OF A CONTINUANCE IS APPROPRIATE IN THIS MATTER

This matter was noticed for hearing after 3:00 p.m. on October 15, 2012, for a hearing to take place on October 25, 2012. (Declaration of Linda Van Winkle Deacon (“Deacon Decl.”) ¶ 3 and Exhibit 2 attached thereto.) There was no prior indication as to what the hearing date might be, and no agreement by the parties that such a date was available. Originally, on October 15, 2012, counsel for the National Union of Healthcare Workers (the Union) requested a continuance. (Deacon Decl. ¶ 5 and Exhibit 3 attached thereto.) Counsel for the Hospital agreed. On October 16, counsel for the Hospital received clarification that the Union was available to proceed. (Deacon Decl. ¶ 6 and Exhibit 4 attached thereto.) However, counsel for the Hospital is not available, and cannot become available. (Deacon Decl. ¶ 4.)

Ms. Deacon was counsel for the Hospital during the entire proceeding in this matter. When she retired from her former firm on July 1, 2012, the Hospital asked that she continue to represent it in this matter until the matter could be concluded. The firm of Bate, Peterson, Deacon, Zinn & Young LLP no longer represents the Hospital in any capacity in connection with this matter. (Deacon Decl. ¶ 2 and Exhibit 1 attached thereto.) Counsel for the Hospital is now a sole practitioner. There is no other individual with whom she is affiliated. Even if it were appropriate to deprive the Hospital of its chosen counsel in this matter, which it is not, the short notice makes it impossible to find new counsel in time for the hearing.

Furthermore, Ms. Deacon has consulted with the other individuals who will participate in this hearing, Alice Garfield for Region 21 of the National Labor Relations Board, Florice Hoffman for the Union, and Mark Bennett for Sodexo. (Deacon Decl. ¶ 6) All have indicated their non-objection to this motion. *Id.* Ms. Garfield and Ms. Hoffman are available on

December 5, 2012, and Ms. Deacon is also available. *Id.* Mr. Bennett is not available on December 5, 2012, but has indicated he has no objection to the hearing being set on December 5, 2012 as long as it is stipulated that Sodexo is not involved and does not need to be present. *Id.* Alternatively, all parties are available on December 18, 19, or 20, 2012. (Deacon Decl. ¶ 7.) Thus, the hearing can be promptly set at a time when all parties can participate. The underlying disputes do not involve any allegation of irreparable harm, there is no termination at issue, and no reason to deprive the Hospital of its chosen representative. Given the short notice of the hearing, and Ms. Deacon's status as a sole practitioner, fairness and due process compel the granting of the continuance.

II. CONCLUSION

For the above stated reasons, the Hospital requests that the continuance be granted and that the hearing be set for December 5, 2012, or December 18, 19, or 20, 2012, as appropriate.

Dated: October 19, 2012

Respectfully submitted,

By: 
Linda Van Winkle Deacon
Attorney for Respondent
Keck Hospital of USC, formerly
known as USC University Hospital
E-mail: lindaedeacon@gmail.com

DECLARATION OF LINDA VAN WINKLE DEACON

I, Linda Van Winkle Deacon, hereby make the following statement:

1. I am an attorney at law duly licensed to practice before all state and federal courts in the State of California, and am attorney of record for Respondent Keck Hospital of USC, formerly known as USC University Hospital (the "Hospital"). I am over the age of eighteen (18) years and I am competent to give this statement. This affidavit is based on my personal knowledge of the facts and review of relevant documents.

2. Prior to July 1, 2012, I was a partner in the firm of Bate, Peterson, Deacon, Zinn & Young LLP, from which I am now retired. When I was a partner of the firm, the firm was representing the Hospital. After I retired from the firm, the Hospital asked me to continue to represent it in this matter, and I have done so in a solo capacity. I am not affiliated with any firm and have no employees. Since July 1, 2012, all proceedings in this matter on behalf of the Hospital have been handled by me alone. (See the signature pages to the Hospital's Motion for Reconsideration and Reply Brief, as well as the Proof of Service signed by Alice Garfield, counsel for Region 21 of the Board, true and correct copies of which are attached as Exhibit 1.) My former firm no longer represents the Hospital in this case.

3. Sometime after 3:06 p.m. on the afternoon of October 15, 2012, I received an e-mail noticing this matter for hearing at 9:00 a.m. on October 25, 2012. There was no prior indication as to what the hearing date might be, and no agreement by the parties that such a date was available. A true and correct copy of the October 15, 2012 email is attached as Exhibit 2.

4. I am not available and cannot become available for the hearing on October 25, 2012 due to a six party mediation.

5. Later that afternoon, I also received an e-mail from the attorney for the National Union of Healthcare Workers (the "Union"), Florice Hoffman, asking to stipulate to a continuance of the hearing. I agreed to stipulate. A true and correct copy of Ms. Hoffman's October 15, 2012 email is attached as Exhibit 3.

6. On October 16, 2012, it was clarified that the Union was no longer requesting a continuance of the hearing. (A true and correct copy of the email trail dealing with the Union's withdrawal of its continuance request is attached hereto as Exhibit 4.) I immediately notified everyone that I was also unavailable on October 25, 2012, and I asked for agreement to a continuance. I have been informed by Alice Garfield on behalf of Region 21, Florice Hoffman on behalf of the Union, and Mark Bennett on behalf of Sodexo, that they do not oppose this request. Alice Garfield and Florice Hoffman have informed me that they are available on December 5, 2012 for the hearing. I am also available on December 5, 2012. Mark Bennett has informed me that he is out of the country on December 5, 2012, but he has no objections to the hearing being scheduled for December 5 as long as there is a stipulation that the hearing does not involve Sodexo, and that there is no need for Sodexo to attend. I will so stipulate.

7. If there is no stipulation as to Sodexo, then all parties, including Mark Bennett, have indicated that they are available on December 18, 19 or 20, 2012.

Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing affidavit is true and correct.

Executed this 19th day of October 2012 in South Pasadena, California.

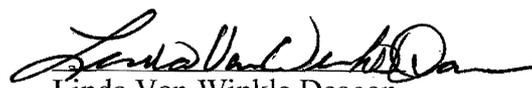

Linda Van Winkle Deacon

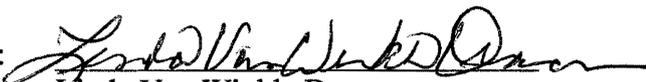
Exhibit 1

VII. CONCLUSION

For all of the above reasons, the Decision should be reconsidered, the Decision of the Administrative Law Judge should be affirmed, and the Complaint should be dismissed.

Dated: July 27, 2012

Respectfully submitted,

By: 
Linda Van Winkle Deacon
Attorney for Respondent
Keck Hospital of USC, formerly
known as USC University Hospital
E-mail: lindaedeacon@gmail.com

VII. CONCLUSION

Prong 3 of the Hospital's Off Duty Access Policy is a textbook recitation of the strictest possible reading of *Tri-County Medical Center* 222 NLRB 1089 (1976). All off duty employees are forbidden to enter the interior of the facility or other working areas unless they are preparing to come back on duty. It is impossible to write a stricter, less discretionary policy. To declare such a policy ambiguous and overbroad is without foundation in reason, law or the record. The Decision should be reconsidered, the Decision of the Administrative Law Judge should be affirmed, and the Complaint should be dismissed.

Dated: August 7, 2012

Respectfully submitted,

By:



Linda Van Winkle Deacon
Attorney for Respondent
Keck Hospital of USC, formerly
known as USC University Hospital
E-mail: lindaedeacon@gmail.com

STATEMENT OF SERVICE

I hereby certify that a copy of Acting General Counsel's Opposition to Respondents' Motions for Reconsideration were submitted by e-filing to the NLRB's Office of the Executive Secretary on August 2, 2012. The following parties were served with a copy of the same document by electronic mail:

Law Offices of Linda Deacon
Linda Deacon, Attorney at Law
lindaedeacon@gmail.com

Mark T. Bennett, Attorney at Law
Marks, Golia & Finch, LLP
mbennett@mgflp.com

Florice O. Hoffman, Attorney at Law
Offices of Florice Hoffman
fhoffman@socal.rr.com

Bruce A. Harland, Attorney at Law
Weinberg, Roger & Rosenfeld
BHarland@unioncounsel.net

Ms. Patricia Ortega
opatricia491@gmail.com

Dated at Los Angeles, California
this 2nd day of August 2012

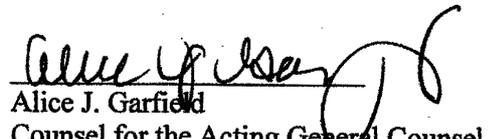

Alice J. Garfield
Counsel for the Acting General Counsel
National Labor Relations Board
Region 21

Exhibit 2



Fwd: Scheduling Order

----- Forwarded message -----

From: **Lee, Vanise J.** <Vanise.Lee@nlrb.gov>

Date: Mon, Oct 15, 2012 at 3:06 PM

Subject: Scheduling Order

To: "Garfield, Alice" <Alice.Garfield@nlrb.gov>, "Mark T. Bennett" <mbennett@mftb.com>, "mbennett@mgflp.com" <mbennett@mgflp.com>, "Ideacon@bpdzylaw.com" <Ideacon@bpdzylaw.com>, florice hoffman <fhoffman@socal.rr.com>

Cc: "Kocol, William G." <William.Kocol@nlrb.gov>, "Lambert, Malissa" <Malissa.Lambert@nlrb.gov>, "gordon@unionlaw.net" <gordon@unionlaw.net>

Vanise J. Lee, Legal Tech

NLRB Division of Judges Son Francisco

415-356-5255 - Tele

415-356-5254 - Fax



Sodexo Order 10-15-12.pdf

23K

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

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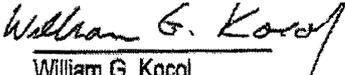
ORDER

IT IS HEREBY ORDERED that the hearing in this matter shall resume at 9:00 a.m., on Thursday, October 25, 2012, at Board's Regional Office, Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California.

Counsel for Acting General Counsel is reminded to notify the Court Reporter.

SO ORDERED.

Dated: October 15, 2012, San Francisco, California.



William G. Koccol
Administrative Law Judge

Served by email and facsimile upon the following:

Alice Garfield, Esq. NLRB R-21
Mark Bennett, Esq. (Sodexo)
Linda Van Winkle Deacon, Esq.
Lester Aponte, Esq. (USC)

Alice.Garfield@nrlb.gov
mbennett@mftb.com
ldeacon@bpdzylaw.com
laponte@bpdzylaw.com

Fax 213-894-2778
Fax 858-737-3101
Fax 213-362-1861
Fax 213-362-1861

Exhibit 3



Fwd: Scheduling Order

----- Forwarded message -----

From: **florice hoffman** <fhoffman@socal.rr.com>

Date: Mon, Oct 15, 2012 at 3:24 PM

Subject: FW: Scheduling Order

To: Linda Deacon <lindaedeacon@gmail.com>, "Garfield, Alice" <Alice.Garfield@nlrb.gov>, "Tovar, Peter" <Peter.Tovar@nlrb.gov>

I have an arbitration on October 25, a court appearance on Oct. 26 and a trial scheduled for Oct. 30-Nov. 1. I don't know what your schedules are but can you let me know if you want to stipulate to a continuance and some proposed dates. Dec 3 -5 work for me.

Thanks,

Florice Hoffman

Exhibit 4



Fwd: Scheduling Order

----- Forwarded message -----

From: **florice** <fhoffman@socal.rr.com>
Date: Mon, Oct 15, 2012 at 5:34 PM
Subject: Re: FW: Scheduling Order
To: Linda Deacon <lindaedeacon@gmail.com>

I just spoke with Alice Garfield and she is ok with the trial date. So I don't need to ask for a continuance at this time.

Florice

Sent via BlackBerry by AT&T



Fwd: Scheduling Order

1

----- Forwarded message -----

From: **Linda Deacon** <lindaedeacon@gmail.com>
Date: Tue, Oct 16, 2012 at 12:17 PM
Subject: Re: FW: Scheduling Order
To: fhoffman@socal.rr.com

Are you saying that the trial date is being moved to Dec. 3-5?



Linda Deacon <lindaedeacon@gmail.com>

Scheduling Order

florice hoffman <fhoffman@socal.rr.com>

Tue, Oct 16, 2012 at 12:49 PM

To: "Mark T. Bennett" <mbennett@mftb.com>, Linda Deacon <lindaedeacon@gmail.com>, Alice Garfield <Alice.Garfield@nlrb.gov>

I rescheduled my arbitration on October 25, 2012. I am available on this date.

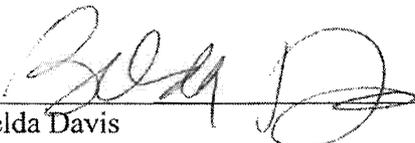
Thanks,

Florice Hoffman

CERTIFICATE OF SERVICE

21-CA-39086 - 21-CA-39109 - 21-CA-39328 - 21-CA-39403

I, hereby certify that on October 19, 2012, I electronically filed the foregoing document with the National Labor Relations Board using its e-filing system and served a copy of the foregoing document by electronic service as indicated below or by next day delivery to the following the persons as in below.


Zelda Davis

VIA ELECTRONIC MAIL

Ms. Patricia Ortega
2107 Common Wealth Avenue,
Apt. D-369
Alhambra, CA 91803

e-mail: opatricia491@gmail.com

Via Electronic Mail

Mark T. Bennett, Esq.
Marks, Finch, Thornton & Baird, LLP
4747 Executive Dr., Suite 700
San Diego, California 92121-3107

E-mail: mbennett@mftb.com

VIA ELECTRONIC MAIL

Alice Garfield, Region 21
National Labor Relations Board
888 South Figueroa Street, Ninth Floor
Los Angeles, CA 90017-5449
T: 213-894-3011
F: 213-894-2778
E-mail: alice.garfield@nlrb.gov

VIA OVERNIGHT MAIL

SEIU-United Healthcare Workers-West
5480 Ferguson Drive
Los Angeles, CA 90022

VIA OVERNIGHT MAIL

Service Workers United
275 Seventh Avenue, 10th Floor
New York, NY 10001

VIA ELECTRONIC MAIL

Florice O. Hoffman, Esq.
Law Offices of Florice Hoffman
8502 East Chapman Avenue, #353
Orange, California 92869
T: 714-282-1179
F: 714-282-7918
E-mail: fhoffman@socal.rr.com

VIA OVERNIGHT MAIL

Antonio Orea
National Union of Healthcare Workers
8502 East Chapman Avenue, Suite 353
Orange, CA 92869

VIA ELECTRONIC MAIL

Bruce A. Harland, Esq.
Weinberg, Roger, & Rosenfeld
1001 Marina Village Parkway,
Suite 200
Alameda, CA 94501
T: 510-337-1001
E-mail: bharland@unioncounsel.net