

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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

RESPONDENT KECK HOSPITAL OF USC, FORMERLY KNOWN AS USC  
UNIVERSITY HOSPITAL, REPLY BRIEF REGARDING ITS REQUEST FOR  
SPECIAL PERMISSION TO APPEAL AND APPEAL  
FROM THE NOVEMBER 30, 2012 ORDER  
OF THE ADMINISTRATIVE LAW JUDGE SETTING THE CASE FOR HEARING

## REPLY BRIEF

Keck Hospital of USC, formerly known as USC UNIVERSITY HOSPITAL (“Hospital”) hereby files its reply brief in support of its Request Special Permission to Appeal and Appeal.

Counsel for the General Counsel (“Counsel”)’s Opposition is based on circumstances that are simply not relevant to the situation presently pending in these above referenced cases. The Hospital conceded at the start of its papers that the mere filing of a petition for review or a petition for enforcement was not an event that automatically deprived the National Labor Relations Board “(Board”) of jurisdiction over a matter. Furthermore, as long as the Board has jurisdiction over a matter, there is no question that it can proceed, and that affirmative action by the respondent, such as obtaining a stay order from the court of appeals, would be required to halt the processes. Thus, Counsel’s discussion of the effect of the filing of the petitions in this case is of no significance, and is not disputed by the Hospital.

The issue in this case is that the Board no longer has jurisdiction. Neither the case cited by Counsel, nor the statutory references relied upon address the effects, as noted in the Hospital’s moving papers, of the application of Section 10 (e) which specifically provides that once the record is filed with the appellate court, the Board loses jurisdiction to proceed. Counsel accuses the Hospital of failing to cite a case to that effect. However, case law is not the issue – the loss of jurisdiction is provided by the very statute that created the Board. The statute sets forth what the Board can and cannot do. As cited in the Hospital’s opening brief, that statute, 29 U.S.C § 10 (e), specifically decrees that the

Board loses jurisdiction over the matter, and the appellate court obtains exclusive jurisdiction, upon the filing of the record.

As noted in Counsel's brief, the Board is bound by Supreme Court rules, and, as the Hospital noted in its opening papers, the Supreme Court has made it clear that once a matter has been removed from the jurisdiction of one body and placed exclusively in the jurisdiction of another body, only the body retaining jurisdiction has the power to act. (Griggs. v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982), cited in Hospital's opening brief)

Furthermore, Counsel's brief misapprehends the nature of the proceedings in this case. The Board is trying to take additional evidence, add to the record, and proceed with a new hearing, at a time when the entire matter is, by the Board's own filings, pending exclusively with the Court of Appeals.<sup>1</sup>

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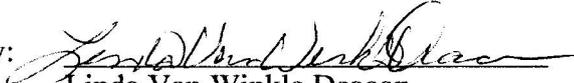
<sup>1</sup> Indeed the Board has, on other occasions, represented that it is its practice to delay transferring jurisdiction to the Court of Appeals, by delaying the filing of the record, or asking to hold appellate proceedings in abeyance, in circumstances where it has additional issues that it wants to process before the appeal becomes perfected. (See, e.g. UFCW Locals 770 & 1036 v. NLRB, No. 10-73478 (9<sup>th</sup> Cir.), (granting the Board's motion to hold proceedings in abeyance pending resolution of a motion for reconsideration.)

When the Board has no jurisdiction, it is up to the Board to obtain some special permission to continue to act, not up to the respondents to stop it from acting. If jurisdiction means anything, at a minimum, it means who controls what goes on in a case. Here, that jurisdiction rests exclusively with the Court of Appeals.<sup>2</sup>

As long as jurisdiction over this matter resides exclusively in the Court of Appeals, it is up to the Board to obtain permission to act. Failing to do so means that it cannot go forward. The Hospital's request for special permission to appeal and its appeal should be granted.

Dated: December 3, 2012

Respectfully submitted,

By:   
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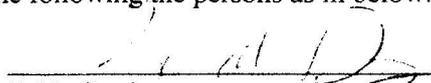
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<sup>2</sup> This argument does not address the Hospital's contention, raised on appeal in this matter, that the Board had no jurisdiction to act in any case. The issue raised in this motion is simply that the transfer of jurisdiction divested the Board of any power it might have had over the pending matter.

**CERTIFICATE OF SERVICE**

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

I, hereby certify that on December 3, 2012, I electronically filed RESPONDENT KECK HOSPITAL OF USC, FORMERLY KNOWN AS USC UNIVERSITY HOSPITAL, REPLY BRIEF REGARDING ITS REQUEST FOR SPECIAL PERMISSION TO APPEAL AND APPEAL FROM THE NOVEMBER 30, 2012 ORDER OF THE ADMINISTRATIVE LAW JUDGE SETTING THE CASE FOR HEARING with the National Labor Relations Board using its e-filing system and served a copy of the RESPONDENT KECK HOSPITAL OF USC, FORMERLY KNOWN AS USC UNIVERSITY HOSPITAL, REPLY BRIEF REGARDING ITS REQUEST FOR SPECIAL PERMISSION TO APPEAL AND APPEAL FROM THE NOVEMBER 30, 2012 ORDER OF THE ADMINISTRATIVE LAW JUDGE SETTING THE CASE FOR HEARING by electronic service to the following the persons as in below.

  
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