



United States Government
NATIONAL LABOR RELATIONS BOARD
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January 17, 2013
by efileing

Hank S. Breiteneicher
Office of the Executive Secretary
National Labor Relations Board
1099 14th St., NW
Washington, DC 20570

Re: *Sprain Brook Manor Nursing Home, LLC*
Case Nos. 2-CA-40231, 40385, and 72458

Dear Mr. Breiteneicher:

Administrative Law Judge Mindy E. Landow issued her Decision in this case on November 18, 2012. After an extension of time granted by the Board, Respondent filed Exceptions and what it titles a Brief in Support thereof on December 21, 2012. In lieu of filing a Brief in Answer to Respondent's Exceptions, Counsel for the Acting General Counsel (General Counsel) hereby moves to strike Respondent's Exceptions and the brief filed with them as noncompliant with Rule 102.46. The Exceptions filed by Respondent amount to a series of assertions that the ALJ's findings and conclusions are incorrect. The Brief filed with Respondent's exceptions contains no citations to the ALJD and no reference to the exceptions whatsoever – indeed with the exception two sentences on page one and two sentences on page two of the Respondent's brief, it is an identical

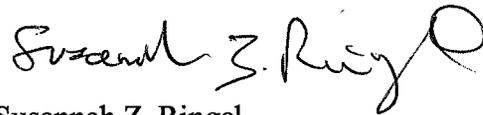
document to the brief Respondent submitted to the ALJ.¹ As such it is not in compliance with Rule 102.46(c)(2), which requires that, “ any brief in support of exceptions... shall contain... [a] specification of the questions involved and to be argued, together with a reference to the specific exceptions to which they relate.” Thus the brief filed by Respondent does not amount to a Brief in Support of Exceptions as required by the Rules and should be stricken.

The Exceptions themselves amount to general objections to essentially all the findings and conclusions of the Administrative Law Judge’s Decision. As such they are not in compliance with Rule 102.46(b)(1)(iv) which requires that if no supporting brief is filed the exceptions shall include, “the citation of authorities and argument in support of the exceptions.” Since neither Respondent’s Exceptions nor its purported brief in support thereof include argument with reference to any particular exception, both documents should be rejected. *Hunter Metal Industries, Inc.* 155 NLRB 430 (1965)(Board rejects and strikes “Exceptions” where they are just summary assertion that Trial Examiner erred and no supporting brief was filed); *American Federation of Union s Local 102*, 205 NLRB 1174 (1973)(Board rejects and strikes exceptions where they were mere assertions that the ALJ’s Decision was contrary to law and evidence of the case); *Carbona Mining Corp.*, 198 NLRB 293 (1972)(same); *JHP & Associates, LLC d/b/a Metta Electric*, 338 NLRB 1059 (2003)(Board considers and finds no merit to non-compliant exceptions; Board notes it “would be justified” in disregarding them but chooses to consider them in the interest of judicial economy).

¹ General Counsel notes that a Motion to Strike portions of this same brief was made before the ALJ and, while the ALJ did not grant the motion, she did reject assertions in the brief (now repeated in this essentially identical submission to the Board) which were not substantiated in the record. See ALJD p. 2, footnote 3.

General Counsel submits that the documents Respondent filed as Exceptions and a Brief in Support, which brief lacks any reference whatsoever to the exceptions themselves, appear to have been filed solely for the purpose of delaying a final resolution to this case. General Counsel urges that should the Board nonetheless choose to consider Respondent's submissions, that consideration should result in affirmation of the well-reasoned Decision of the Administrative Law Judge and the adoption of the recommended Order in its entirety.

Respectfully Submitted,



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