

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

ALTA BATES SUMMIT MEDICAL CENTER

and

**NATIONAL UNION OF HEALTHCARE
WORKERS**

**Cases 32-CA-24459
32-CA-24469
32-CA-24470**

**EXCEPTIONS BY RESPONDENT ALTA BATES SUMMIT MEDICAL CENTER
TO THE DECISION AND RECOMMENDED ORDER
OF THE ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board (“NLRB” or “Board”), Respondent Alta Bates Summit Medical Center (the “Medical Center” or “Hospital”) excepts to certain findings of fact, rulings and conclusions of law, to the failure to find certain facts and to draw certain legal conclusions, and to the recommended order of Administrative Law Judge (“ALJ”), as set forth in or omitted from his Decision and Order dated June 16, 2010 (referenced herein as the “Decision”). In particular, the Medical Center excepts to:¹

I. FINDINGS OF FACT

1. The finding that employees have historically used the cafeterias for distributing literature, selling various items, solicitations, and for collecting union dues. (Decision, 5:6-7.)
2. The finding that without restriction and with the tacit consent of the Medical Center’s managers, employees have sold church and school raffle tickets, dinner tickets, and food items such as peanuts and egg rolls in the cafeteria by approaching other employees or by walking from table to table, and that, without impediment, employees have regularly solicited

¹ References in these Exceptions to the Decision shall be designated by page and line number as follows: (“Decision, [page]:[line]”). References in these Exceptions to the Respondent’s Exhibits shall be designated by exhibit number as follows: (“R___”).

their coworkers for religious, charitable, or union related purposes and distributed literature to them directly by leaving leaflets on tables or directly in hand. (Decision, 5:6-14.)

3. The finding of a negative inference based on the Medical Center's failure to call Erica McDuffie ("McDuffie") as a witness and failure to explain her absence. (Decision, fn.23, 11:40-41; 30:38-39.)

4. The failure to discredit Griffith's testimony regarding her use of profanity given the ALJ's finding that Griffith's pretrial affidavit, her admissions regarding her March 26th² *Weingarten* interview, and her hearing testimony all differed from each other. (Decision, fn.72, 24:47-51.)

II. LEGAL ANALYSIS

5. The assertion that the ALJ "harbor[s] doubts" regarding the March 23rd security report because the sentence containing Hatten's suspension of Griffith is the last sentence and is introduced by "Bruce also...", and despite clear, undisputed testimony otherwise. (Decision, fn.89, 31:36-42; Tr: 459:22-460:21.)

6. The assertion that the ALJ "harbor[s] doubts" regarding Tito Aquino's ("Aquino") March 24th written statement because the document submitted into evidence was a revised draft, not the original. (Decision, fn.89, 31:36-44; 31:42-44; R-5; Tr. 634:10-635:10.)

7. The finding that Aquino and Carla Biddle's March 24th written statements were "dubious", and that the ALJ suspected that each was a "fabrication, drafted subsequent to Griffith's discharge as a justification for Respondent's action." (Decision, fn.101, 45:44-51.)

8. The finding that Griffith "inadvertently" knocked over a cup filled with water. (Decision, 32:16-19, 34:28-30.)

² All dates are in 2009 unless otherwise indicated.

9. The finding that the Medical Center favored the SEIU UHW and “embarked upon a campaign designed to quell its employees’ suspected growing support for the NUHW.” (Decision, 33:39-43.)

10. The finding that the Medical Center informed two guards (who were hired for the purpose of “engaging in surveillance of its employees’ activities”), that its employees were “attempting to form a new union and directed them to be vigilant for any employee meetings on this subject, soliciting funds on behalf of the new union, or distributing flyers and to immediately report such ‘violations’.” (Decision, 33:43-34:2.)

11. The finding that the Medical Center’s “preference for the SEIU UHW and aversion to NUHW innervated Hatten’s decision, on behalf of [the Hospital], to discipline Griffith...” (Decision, 34:2-4.)

12. The assertion that Hatten “egregiously” ignored “his own normal practice” by issuing a written warning to Griffith without first interviewing her. (Decision, 34:4-7.)

13. The finding that Hatten did not conduct an investigation of the water-spilling incident. (Decision, 34:30-31.)

14. The finding that the Medical Center was unlawfully motivated in disciplining Griffith on February 23rd. (Decision, 34:15-17.)

15. The failure to find that the Medical Center had reasonable grounds to believe that Griffith had engaged in misconduct on February 23rd. (Decision, 45:30-32.)

16. The finding that Hatten’s conversation with McDuffie was hearsay. (Decision, 34:25-26.)

17. The finding that McDuffie would not have corroborated Hatten's version of the events because the Medical Center failed to call McDuffie as a witness or explain her absence. (Decision, 34:25-28.)

18. The conclusion that the Medical Center "failed to establish that it would have disciplined Griffith on February 23 even absent the existence of union animus" and, therefore, the written warning was in violation of Section 8(a)(1) and (3) of the Act. (Decision, 34:40-43.)

19. The finding that the Medical Center permitted SEIU UHW stewards to conduct day-long meetings in the cafeterias without interference. (Decision, 35:7-8.)

20. The finding that a prohibited meeting was one during which the Medical Center's employees discussed the new union. (Decision, fn.96, 35:49-51.)

21. The finding (and the corresponding failure to credit Ronnie Parks, Hatten and Annie Block's testimony) that at no point during the March 23rd incident in the cafeteria, did Hatten ever inform Griffith that she was suspended. (Decision, 37:13-14, fn.97, 37:43-51.)

22. The failure to consider Griffith's clear admission that she was not wearing her identification badge on March 23rd and, therefore, could not be asked to surrender the same as part of the usual suspension procedure. (Decision, fn. 97, 37:46-47; 44:26-27; Tr. 461:7-10.)

23. The finding that the Medical Center's "real purpose" on March 20th and 23 "was to trammel and stymie its SEIU UHW bargaining unit employees' increasing support of a new bargaining representative – the NUHW." (Decision, 39:6-7.)

24. The finding that the Medical Center "redefined" its solicitation/distribution policies on March 20th and March 23rd specifically in order to hinder employees' actions in support of NUHW and placed no similar restrictions upon SEIU-UHW agents. (Decision, 39:31-35.)

25. The finding that, historically, the Medical Center has permitted its employees to hold union meetings in its cafeterias without restrictions. (Decision, 41:11-12.)

26. The assertion that on March 20th and 23, the Medical Center's actions were not motivated by a fear of disruption to patient care or to the operations of its cafeteria. (Decision, 41:11-14.)

27. The conclusion that the Medical Center discriminated against its employees in violation of Section 8(a)(1) and (3) of the Act by precipitously redefining its solicitation/distribution rules in response to an in order to stifle the SEIU UHW bargaining unit employees' support for the NUHW. (Decision, 41:27-31.)

28. The finding that the Medical Center threatened to suspend Griffith, evicted her from the Alta Bates hospital campus cafeteria, and later suspended her on March 23rd because of her support for the NUHW. (Decision, 42:1-3.)

29. The failure to find that the Medical Center had reasonable grounds to believe that Griffith had engaged in misconduct in the cafeteria on March 23. (Decision, 45:34-38.)

30. The conclusion that the Medical Center violated Section 8(a)(1) and (3) of the Act as it did not establish that it would have demanded that Griffith leave the hospital campus cafeteria, threatened to suspend her, and, subsequently, suspended her notwithstanding her activities in support of the union. (Decision, 42:37-42.)

31. The finding that the Medical Center has permitted, without restriction, "its employees to engage in table hopping while soliciting or selling food items for charities, schools, or religious purposes." (Decision, 44:19-21.)

32. The finding that prior activities in or adjacent to the cafeterias were in any way comparable to the union's advertised "meetings" on Medical Center property. (Decision, 5:6-21; 39:17-19; 44:19-21.)

33. The finding that official union activities (SEIU, CNA) were in any way comparable to NUHW "meetings". (Decision, 5:28-33; 35:5-8; fn.95, 35:31-42; 39:17-19; 39:33-35.)

34. The finding that Griffith never uttered the word "fucking" or any variant thereof while inside the break room immediately after being informed of her suspension. (Decision, 45:6-8.)

35. The failure to credit Aquino's testimony regarding the events that occurred outside and inside the EVS break room on March 24. (Decision, 30:40-31:4; 44:35-45:1.)

36. The failure to find that the Medical Center had reasonable grounds to believe that Griffith had engaged in misconduct on March 24. (Decision, 45:8-11.)

37. The ALJ's decision to determine actual misconduct rather than the reasonableness of the Medical Center's decision-making with respect to the water spilling incident (February 23), the refusal to obey a direct order (March 23), and the use of profanity (March 24). (Decision, 30:21-23.)

38. The failure to find that the Medical Center's decisions were owed any particular deference because of the hospital's patient-care mission. (Decision, 40:27-37.)

39. The failure to credit the undisputed testimony that Griffith has used the word "fuck" and variant thereof, and other profanity, in various hostile interactions with other Medical Center employees / persons on Medical Center property. (Ex. R-15; Tr. 795:3-796:8 [Carlos Hernandez's testimony]; 706:6-9 [Annie Block's testimony].)

40. The failure to admit into evidence the videotape footage of Griffith acting in a hostile manner towards SEIU personnel. (Tr. 230:19-232:13.)

41. The conclusion that the Medical Center discharged Griffith because of her support for the NUHW in violation of Section 8(a)(1) and (3) of the Act. (Decision, 45:8-11.)

42. The finding that the “real purpose” of surveillance on March 20th and March 23rd of 2010 was to “trammel and stymie its SEIU-UHW bargaining unit employees’ increasing support for a new bargaining representative” and that the same represented a violation of Section 8(a)(1) of the Act. (Decision, 39:6-9.)

III. CONCLUSIONS OF LAW

43. The conclusion that: “By engaging in surveillance of its employees, who were engaged in union or other protected concerted activities at its Summit Hospital campus cafeteria on March 20th and at its Alta Bates Hospital campus cafeteria on March 23, Respondent engaged in acts and conduct violative of Section 8(a)(1) of the Act.” (Decision 45:20-24.)

44. The conclusion that: “By redefining its solicitation/distribution policies in order to inhibit and stifle its employees from engaging in activities in support of NUHW at its Summit Hospital campus cafeteria on March 20 and at its Alta Bates Hospital campus cafeteria on March 23, [the Medical Center] engaged in acts violative of Section 8(a)(1) and (3) of the Act. (Decision, 45:25-28.)

45. The conclusion that: “On February 23, by giving a disciplinary warning notice to its employee, Beverly Griffith, because she participated in activities in support of NUHW, [the Medical Center] engaged in acts and conduct violative of Section 8(a)(1) and (3) of the Act. (Decision, 45:30-33.)

46. The conclusion that: “On March 23, by evicting its employee, Beverly Griffith, from its Alta Bates Hospital campus cafeteria and threatening to suspend her because she

engaged in union or other protected activities, including activities in support of the NUHW, and, subsequently, suspending her because she participated in said activities, [the Medical Center] engaged in acts and conduct violative of Section 8(a)(1) and (3) of the Act.: (Decision, 45:34-38.)

47. The conclusion that: “On April 6, by discharging its employee, Beverly Griffith, because she participated in activities in support of the NUHW, [the Medical Center] engaged in acts and conduct in violation of Section 8(a)(1) and (3) of the Act.” (Decision, 45:40-43.)

IV. REMEDY

48. The proposed remedy that is premised on inappropriate findings of violations of Sections 8(a)(1) and(3) of the Act for the reasons set forth in the exceptions set forth herein. (Decision, 46:5-29.)

V. ORDER

49. The recommended Order that in any way conflicts with the exceptions set forth herein. (Decision, 46:35-48:4.)

WHEREFORE, Respondent Alta Bates Summit Medical Center respectfully requests that its exceptions to the Administrative Law Judge’s June 16, 2010 Decision and Recommended Order be sustained and that the Board should issue a different order consistent with the sustaining of such Exceptions.

In addition or in alternative to such order, the Board should remand for further proceedings consistent with the Exceptions that have been sustained. In particular, the Medical Center should be permitted to present evidence explaining Erica McDuffie’s absence from the

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hearing (or in the alternative, to present McDuffie's testimony) and to provide evidence that the contemporaneous statements by Biddle and Aquino were not manufactured after Griffith's discharge.

DATED: July 28, 2010

Respectfully submitted,
JONES DAY



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ATTORNEYS FOR RESPONDENT
ALTA BATES SUMMIT MEDICAL CENTER

CERTIFICATE OF SERVICE

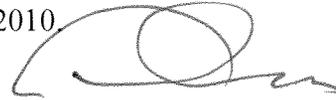
Attorneys for Respondent hereby certify that they caused a true and correct copy of the foregoing to be served upon:

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In the manner referenced above, on this 28 day of July 2010.



Jerry Cordero