UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

GRANE HEALTHCARE CO. and/or EBENSBURG CARE CENTER LLC d/b/a/ CAMBRIA CARE CENTER, and LOCAL UNUIN NO. 1305, PROFESSIONAL AND PUBLIC SERVICE EMPLOYEES OF CAMBRIA COUNTY a/w THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA,	Case No. 6-CA-36791
GRANE HEALTHCARE CO. and/or EBENSBURG CARE CENTER LLC d/b/a/ CAMBRIA CARE CENTER, and SEIU HEALTHCARE PENNSYLVANIA, CTW, CLC.	Case No. 6-CA-36803 6-CA-36915

RESPONDENTS' EXCEPTIONS TO THE
DECISION OF THE ADMINISTRATIVE LAW JUDGE

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January 28, 2011

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Pursuant to Section 102.46 of the Board's Rules and Regulations, Series 8, as Amended, Respondents Grane Healthcare Co. and/or Ebensburg Care Center LLC t/d/b/a Cambria Care Center hereby file the following Exceptions to the Decision and Recommended Order issued by Administrative Law Judge David I. Goldman on December 15, 2010:

NO.	PAGE	LINE	EXCEPTION
1	3	11-13	To the Administrative Law Judge's ("ALJ") finding that Respondents admitted that at "all material times" the Laborers and the SEIU were labor organizations within the meaning of Section 2(5) of the Act.
2	3	17-20	To the ALJ's finding that Grane Healthcare Co. ("Grane") has been a health care institution within the meaning of Section 2(14) of the Act.

8(a)(3) Failure to Bargain Allegations

3	3	31-32	To the ALJ's finding that Respondents violated the Act by refusing to bargain with the Laborer's Union.
4	3	35-39	To the ALJ's finding that Respondents violated Section 8(a)(3) and (1) of Act by failing to hire five employees.
5	3	41-43	To the ALJ's finding that Grane and Cambria Care Center ("Cambria Care") constitute a single employer under the Act.
6	7	47-51	To the ALJ's finding that *Fall River* successorship principles have application to this case.
7	8	1-11	To the ALJ's reiteration that *Fall River* successorship principles have application to this case.
8	8	12-20	To the ALJ's finding that *Burns International Security* successor principles have application to this case.
9	8	21-52	To the ALJ's finding that *Fall River* successorship principles have application to this case.
10	9	2-9	To the ALJ's finding that Cambria Care is a successor to Laurel Crest Rehabilitation and Special Care Center ("Laurel Crest").
11	9	13-14	To the ALJ's characterization of Laurel Crest as a predecessor of Cambria Care.
12	9	26-28	To the ALJ's characterization of Laurel Crest as a predecessor of Cambria Care.
13	10	1-6	To the ALJ's framing of the issue as "whether Cambria Care had a duty on January 1, 2010, to recognize and bargain with the SEIU and/or the Laborers."
14	10	9-11	To the ALJ's failure to recognize and take into consideration Laurel Crest's status as a public employer, and instead focus on whether a presumption of majority support by employees for the unions to serve as collective-bargaining representative is applicable to the union's bargaining demands.

15	10	11	To the ALJ's determination that the presumption of majority support is the issue in the case.
16	10	30-31	To the ALJ's finding that the record is devoid of evidence to rebut the Laborer's presumption of majority support.
17	13	19	To the ALJ's finding that Cambria Care is a successor employer to Laurel Crest.
18	13	22-24	To the ALJ's finding that, in failing to bargain with the Laborers unit, Respondent violated the Act.

8(a)(3) Refusal to Hire Allegations

19	21	26-29	The ALJ's finding that Rebecca Nelen ("Nelen") did not endorse "a word of Lengle's story."
20	21	33-34	To the ALJ's finding that Nelen's testimony cannot be reconciled with Beth Lengle's ("Lengle") testimony.
21	23	40-46	To the ALJ's finding that nothing in Nelen's testimony support's Lengle's testimony.
22	23	48-52	To the ALJ's mischaracterization of Nelen's testimony and to his interpretation that Nelen not recalling having certain conversation with Lengle about certain employees meant that said conversations did not take place.
23	24	8-11	To the ALJ's finding that had Lengle sat down with Nelen and reviewed performance, attendance and attitude, Nelen would have remembered it.
24	25	4-5	To the ALJ's finding that had the events occurred the way Lengle had testified they occurred, Nelen would have remembered it.
25	25	6-8	To the ALJ's finding that Nelen's testimony contradicts Lengle's testimony.
26	25	10-12	To the ALJ's finding that Lengle did not undertake the reference process she described.
27	25	19-20	To the ALJ's mischaracterization of Nelen's testimony and finding that Nelen had "no idea" what Lengle was talking about.
28	25	22-23	To the ALJ's failure to give credit to Lengle's explanation for not hiring Mark Mulhearn ("Mulhearn"), Billy Hagerich ("Hagerich"), Joseph Billy ("Billy"), and Roxanne Lamer ("Lamer").
29	25	37-38	To the ALJ's finding that Nelen would have remembered Lengle's reference process, had it occurred.
30	25	40-41	To the ALJ's failure to follow the framework in *Standard Dry Wall Prods. Inc.*, 91 NLRB 544 (1950) enforced, 188 F.2d 362 (3d Cir. 1951), in discrediting Lengle's testimony.
31	25	41-44	To the ALJ's finding that the testimony regarding the reference process went uncorroborated.
32	25	48-51	To the ALJ's finding that Lengle's testimony was less spontaneous, more planned, and more practiced, and thus consistent with a witness adhering to a story invented to explain events.
33	26	2-3	To the ALJ's finding that Lengle did not state what other factors she relied upon in making her decision to not hire Billy.

34	26	7-13	To the ALJ's finding that Lengle would not have made the decision to not hire Billy based upon her own personal observations and comments solicited from Knee.
35	26	13-14	To the ALJ's finding that Lengle's negative personal observations of Billy were uncorroborated.
36	26	19-26	The ALJ's failure to give credence to Lengle's testimony and to attributing the comments of Knee to the comments made by Nelen during the interview process.
37	27	1-5	The ALJ's failure to give credence to Lengle's explanation for not hiring Billy.
38	27	8-10	The ALJ's finding that the reason given for not hiring Billy was "bogus."
39	28	5-16	To the ALJ's finding that Nelen did not make the statements Lengle attributed to her.
40	29	3-1	To the ALJ' finding that Vivian Andrascik's ("Andrascik") clarification of her prior testimony amounted to her changing her testimony.
41	29	10-14	To the ALJ's finding that Andrascik's clarification of her prior testimony because she misunderstood the question was "disingenuous."
42	30	10-15	To the ALJ's finding that Andrascik's testimony consisted of backpedaling, is suspicious, unexplained, and at odds with Respondents' defense.
43	30	35-36	To the ALJ's finding that Andrascik's testimony regarding securing references was not compelling.
44	30	45-46	To the ALJ's finding that Nancy McMahon ("McMahon") did not give Andrascik an assessment of employee work performance.
45	31	33-36	To the ALJ's finding that Andrascik only asked McMahon about Beverly Weber ("Weber") in passing and asked about no one else during that conversation.
46	31	37-38	To the ALJ's finding that Andrascik did not ask McMahon about Weber's attendance.
47	35	34-35	To the ALJ's finding that Respondents knew of the union activities of Billy, Hagerich, Weber, and Mulhearn.
48	35	45-47	To the ALJ's finding that Grane representatives would had to have been indifferent to the labor relations at the facility they were taking over to not notice the posted names of the union representatives.
49	36	1-4	To the ALJ's finding that the postings being removed one day after Grane assumed operations indicated Grane was aware of the posting, and thus, established knowledge of the officers' union activity.
50	36	16-18	To the ALJ's finding that because Mulhearn was copied on correspondence dated September 11, 2009, Grane knew his position within the union.
51	36	20-25	To the ALJ's finding that McDonald terminated a group interview in 2003 because Billy expressed his view that a collective-bargaining agreement should be honored when Grane took over, and as such, Grane knew of his union activities.

52	36	27-34	To the ALJ's finding that because Weber had interaction related to the Union in 2003 with Grane representatives, Grane knew Weber's union activities at the time the decision was made not to hire Weber.
53	36	36-38	To the ALJ's finding that because Hagerich's name was posted on two bulletin boards in the facility, Grane was aware of her union activities and position within the union.
54	36	38-42	To the ALJ's finding that because Hagerich's photograph appeared in an area newspaper and she was on the local news, Grane was aware of her union activities and position within the union.
55	37	3-7	To the ALJ's finding that because Lamer traveled to Pittsburgh to Grane headquarters with an SEIU organizer, Grane knew of Lamer's union activities.
56	37	5-7	To the ALJ's finding that evidence shows that Lamer's name was "probably written down for Oddo."
57	37	13-14	To the ALJ's finding that Grane was aware of the union activities positions of each of the alleged discriminatees.
58	38	26-28	To the ALJ's finding that there was no credible evidence that Local 1305 officers were "below par."
59	37	28-30	To the ALJ's finding that the "disproportionate" number of union officers not hired is evidence that discrimination played a role in the decision not to hire.
60	37	40-42	To the ALJ's finding that the failure to hire an entire corps of the Union satisfies that General Counsel's initial burden.
61	37	45-46	To the ALJ's finding that reasons offered by Respondents for not hiring the alleged discriminatees were pretext, and that Lengle's reference check protocol did not occur.
62	38	1-3	To the ALJ's finding that Lengle's explanation constituted an attempt to manufacture an explanation to the questions being asked by a federal agency.
63	38	3-4	To the ALJ's finding that Lengle tried to "pin it on" Nelen.
64	38	7-8	To the ALJ's finding that there was an unlawful motive in not hiring the alleged discriminatees.
65	38	13-15	To the ALJ's finding that the government met its *Wright Line* burden with regard to the Local 1305 officials.
66	38	32-35	To the ALJ's finding that Andrascik's testimony was suspect and therefore incredible.
67	39	7-10	To the ALJ's finding that Andrascik's observations of Weber were uncorroborated and untrue.
68	39	11-12	To the ALJ's finding that Respondents' reason for not hiring Weber was pretextual.
69	39	17-20	To the ALJ's finding that Respondents failed to show it had a legitimate motive in not hiring Weber.
70	39	22-23	To the ALJ's failure to find that Respondents would have undertaken the same hiring decisions had Weber not been a union officer.

71	39	27-29	To the ALJ's finding that the violation for failing to hire four union officers provides evidence of animus in failing to hire Lamer.
72	39	37-39	To the ALJ's failure to follow the framework set forth in *Standard Dry Wall Prods., Inc.* and discrediting the testimony of Lengle as it related to Lamer.
73	39	45-46	To the ALJ's finding that Respondents offer no rationale for its decision not to hire Lamer, except for a pretextual one that it invented.
74	40	3-4	To the ALJ's finding that Respondents' articulation of a false explanation for refusing to hire Lamer raises an inference of discriminatory motive.
75	40	9-13	To the ALJ's finding the Respondents' reliance on a pretextual explanation for not hiring Lamer leads to the conclusion that Grane is concealing the true motive, which is an unlawful, discriminatory one.
76	40	15	To the ALJ's finding that Respondents' refusal to hire Lamer violated the Act.

Single-Employer Allegations

77	47	31-32	To the ALJ's failure to follow the framework set forth in *Standard Dry Wall Prods., Inc.* and finding that Oddo's testimony was evasive and less than forthcoming.
78	47	40-41	To the ALJ's failure to follow the framework set forth in *Standard Dry Wall Prods., Inc.* and finding that Larkin's ignorance of Grane affiliation was not believable.
79	47	43-44	To the ALJ's finding that Larkin's testimony was self-serving.
80	47	47-51	To the ALJ's finding that despite his testimony, Larkin knows whether a certain company is a Grane affiliate.
81	49	28-29	To the ALJ's finding that Larkin is heavily reliant on the assistance of Grane consultants with regard to staffing and labor relations issues.
82	52	26-27	To the ALJ's finding that Cambria Care and Grane are a single employer.
83	53	9-10	To the ALJ's finding that in the initial months, Cambria Care maintained *no* independence at all.
84	53	22-23	To the ALJ's finding that Grane's control in establishing the <u>initial</u> day to day operations of Cambria Care was total.
85	53	37-40	To the ALJ's finding that the potential control of Cambria Care by Grane is actualized everyday by the ubiquitous presence of Grane personnel in the affairs of Cambria Care.
86	53	42-44	To the ALJ's finding that in some aspects, Grane's ongoing control of the operations of Cambria Care appears to be exclusive and total.
87	54	1-2	To the ALJ's finding that the lack of arms length relationship is emphasized by Larkin's unfamiliarity with Ebensburg Associates.
88	54	11	To the ALJ's finding that Cambria Care's business operations are fully controlled by Grane.
89	54	13-15	To the ALJ's finding that the decisions about running the nursing home are heavily controlled by Grane.

90	54	26-27	To the ALJ's finding that hallmarks of entities whose operations are interrelated and controlled by a common master exist.
91	54	29-30	To the ALJ's finding that Grane is deeply entrenched in the operations of the facility through a myriad of consultants.
92	54	34-35	To the ALJ's failure to find that labor relations are conducted wholly by Larkin, without Grane exercising control.
93	55	20-21	To the ALJ's failure to follow the framework set forth in *Standard Dry Wall Prods., Inc.* and finding that Larkin's testimony is not credible.
94	55	27-28	To the ALJ's finding that there exists overall control of critical matters at the policy level.
95	55	36-37	To the ALJ's finding that Larkin's testimony regarding Cambria Care's autonomy is self-serving.
96	55	39-41	To the ALJ's failure to find that the evidence supports that Larkin operates Cambria Care independent of Grane's control.
97	56	10	To the ALJ's failure to give credence to Larkin's testimony regarding his independence in terms of labor relations.
98	57	3-5	To the ALJ's finding that ownership of Cambria Care, commonality of top management, and deep involvement in Cambria Care's affairs constitutes control.
99	57	7-9	To the ALJ's finding that Cambria Care's labor relations, its management, its ownership, and its managerial decision-making is deeply wedded to Grane officials acting on behalf of Grane.
100	57	10	To the ALJ's finding that Grane and Cambria Care are single employers under the Act.

Conclusions of Law

101	58	4-7	To the ALJ's finding that Grane and Cambria Care are single-integrated enterprises and a single employer, engaged in commerce with the meaning of Section 2(2), (6), (7) and (14) of the Act.
102	58	9-12	To the ALJ's finding that Local No. 1305 is a labor organization within the meaning of the Act.
103	58	24-26	To the ALJ's finding that since on or about January 1, 2010, Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing to bargain with Local 1305 as the bargaining representative.
104	58	28-31	To the ALJ's finding that since on or about January 1, 2010 Respondent violated Section 8(a)(1) and (3) of the Act by discriminating against employee-applicants Mark Mulhearn, Sherry Hagerich, Joseph Billy, Beverly Weber, and Roxanne Lamer, by refusing to hire them to discourage employees' union activities.

Remedy

105	58	38-42	To the ALJ's finding that Grane and Ebensburg Care Center, LLC have engaged in unfair labor practices, are jointly and severally liable, and must cease and desist and take affirmative action to effectuate polices of the Act.

106	58	44-48	To the ALJ's decision that Respondent violated 8(a)(5) and (1) by not bargaining with Local 1305, and ordering that Respondent recognize and bargain with Local 1305, as the exclusive representative of the unit employees.
107	59	1-13	To the ALJ's decision that Respondent violated 8(a)(3) and (1) by not hiring Mulhearn, Hagerich, Weber, Billy & Lamer, and ordering Respondent to offer them instatement, make them whole for any lost earnings or benefits, and remove from its files any reference to the refusal to hire.
108	59	16-17	To the ALJ's ordering the Respondents to refrain from any like or related manner abridging any rights guarantees to employees by Section 7 of the Act.
109	59	19-26	To the ALJ ordering the Respondent to post an informational notice in its facility, and distributing the notice electronically.

Order

110	59-60	36-45 1-5	To the ALJ's Order requiring Respondents to cease and desist from refusing to recognize and bargain with Local 1305, refusing to hire employees because of their union activity, and in any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7.
111	60	5-27	To the ALJ's Order requiring Respondents to take necessary steps to: recognize and bargain with Local 1305; offer Mulhearn, Hagerich, Weber, Billy & Lamer instatement and make them whole; and remove from its file any reference to the unlawful refusals to hire.
112	60	29-34	To the ALJ's Order requiring Respondents to preserve and make available all payroll records, timecards, personnel records, and reports, necessary to analyze backpay due.
113	60-61	36-5	To the ALJ's Order requiring Respondents to post the notice marked "Appendix" and distribute it electronically.

WHEREFORE, Respondents respectfully request that the Board reject those portions of the ALJ's Decision excepted to, order that factual findings be made with respect to those findings omitted from the ALJ's Decision as set forth above, and order that Respondents' requested remedy be granted.

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By: /s/ John A. McCreary, Jr.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Respondents' Exceptions to the Decision of the Administrative Law Judge was served on the below-listed this 28th day of January, 2011 via electronic mail:

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