

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

**SAN MIGUEL HOSPITAL CORP. d/b/a  
ALTA VISTA REGIONAL HOSPITAL**

**and**

**Cases 28-CA-21896  
28-RC-6518**

**DISTRICT 1199NM, NATIONAL UNION  
OF HOSPITAL AND HEALTHCARE  
EMPLOYEES**

**ACTING GENERAL COUNSEL'S RESPONSE TO RESPONDENT'S  
OPPOSITION TO ACTING GENERAL COUNSELS' MOTION  
TO SUPPLEMENT MOTION FOR SUMMARY JUDGMENT  
AND CROSS MOTION FOR SUMMARY JUDGMENT**

Counsel for the Acting General Counsel (General Counsel) opposes the Opposition to Acting General Counsel's Motion to Supplement Motion for Summary Judgment and Record (Respondent's Opposition) and Cross Motion for Summary Judgment (Respondent's Motion) filed by San Miguel Hospital Corp. d/b/a Alta Vista Regional Hospital (Respondent) on March 9, 2011. General Counsel urges the Board to dismiss Respondent's Motion because it fails to establish any legal or factual basis for its assertions. Additionally, General Counsel submits Respondent's Opposition should not be considered because it is untimely. Accordingly, it is respectfully submitted that Respondent's Motion should be denied in its entirety and Respondent's Opposition set aside from consideration.

**A. Summary Judgment Standard**

Summary Judgment may be rendered if the pleadings and supporting materials establish that there is not genuine issue requiring a hearing and that the moving party is entitled to judgment as a matter of law. *Lakeview Convalescent Center*, 307 NLRB 563, 564

(1992). The adverse party has no obligation to respond until the moving party has met this burden. *Id.* at n. 3. In a summary judgment proceeding the pleadings and evidence are viewed in the light most favorable to the nonmoving party. *Eldeco, Inc.*, 336 NLRB 899, 900 (2001) (pleadings must be read in the light most favorable to the nonmoving party); *Petrochem Insulation, Inc.*, 330 NLRB 47, 52 n. 20 (1999) (evidence evaluated in the light most favorable to the nonmoving party). It is well settled that, for a matter to be appropriate for summary judgment, it must affirmatively appear in the record that (1) there is no genuine issue as to any material fact, and (2) the moving party is entitled to a judgment as a matter of law. *Stephens College*, 260 NLRB 1049 (1982).

**B. Respondent's Motion should be denied because it has failed to establish any legal or factual basis for issues it raises.**

On March 4, 2011, General Counsel filed a Motion to Supplement Motion for Summary Judgment and Record (General Counsel's Motion). In response, by its Motion, Respondent protests that General Counsel's Motion improperly seeks to supplement its Motion for Summary Judgment with documents reflecting the latest case activity in Case 28-CA-21896 and the current status of bargaining between the parties (since the issuance of the new certification by the Board on September 30, 2010) in Case 28-RC-6518. The documents submitted with General Counsel's Motion are the Amended Complaint and Notice of Hearing (Amended Complaint), Respondent's Answer to the Amended Complaint, and the Union's December 10, 2010, letter requesting that Respondent bargain with the Union pursuant to the new certification.

Respondent's objections to General Counsel's Motion appear to be primarily based on: (a) the fact that it had filed six RM petitions with Region 28 on September 27, 2010; (b) its assertion that the Board has acted improperly by allowing General Counsel to file the

Amended Complaint; and (c) its claim that the Board has prematurely reached a determination on Respondent's request for review regarding the dismissal of the RM petitions. None of what Respondent contends in its Motion establishes that Respondent is entitled to summary judgment as a matter of law.

Respondent specifically notes in its Motion that it filed its RM petition on a date between September 24, 2010 (the date the District of Columbia Circuit Court of Appeals remanded the Board's original Certification of Representation in Case 28-RC-6518 back to the Board), and September 30, 2010 (the date of the Board's issuance of a new Certification of Representation). General Counsel avers the RM petitions referenced by Respondent do not establish that the facts of the captioned case are undisputed or that, as a matter of law, Respondent is entitled to summary judgment as a result of having filed RM petitions. In fact, the RM petitions fail to show that Respondent has *not* failed to bargain with the Union as the exclusive collective-bargaining representative of the unit employees, as alleged in this matter.

Moreover, Respondent erroneously relies on the lack of certification by the Board at the time Respondent filed its RM petition as controlling as to the issue of whether the Union is the exclusive collective-bargaining representative of unit employees. Respondent does not dispute that at the underlying representation election conducted during the period from June 21 through 23, 2007, a majority of unit employees voting selected the Union as their collective-bargaining representative. To this end, once the Union won the election, and in the absence of valid objections to the election, the Union attained the status of exclusive collective-bargaining representative. *Ramada Plaza Hotel*, 310, 315 (2004). While the Board certification that arises from an election serves to provide the Union a protective cover for a year without fear of having their representational status being subject to challenge (see *Brooks*

*v. NLRB*, 348 U.S. 96, 100 (1954)), an employer's obligation to bargain accrues and attaches at the time a union wins the representation election, absent valid objections to that election, not the date of the certification. See *Bloomfield Health Care Center*, 352 NLRB 252, 255 (2008); *Ramada Plaza Hotel*, 341 NLRB at 315-316; *Sprain Brook Manor Nursing Home, LLC*, 351 NLRB 1190, 1198 (2007); *Mike O'Conner Chevrolet*, 209 NLRB 701, 704 (1973). As such, having prevailed in the election, the Union is the exclusive bargaining representative of the unit employees of Respondent.

Even more so, aside from copies of the RM petitions, Respondent has failed to present any evidence in support of the assertions and arguments it makes in its Motion. Respondent also fails to cite to any Board authority regarding summary judgment standards or any authority supporting summary judgment in this matter. Respondent's Motion is supported by nothing more than RM petitions that have been dismissed and its baseless assertion that these petitions present questions regarding the Union's status as executive collective-bargaining representative. No such question exists as a matter of law or otherwise and on that basis Respondent's Motion should fail.

Lastly, Respondent's assertions that the Board has prejudged any motion or request for review at issue in any matter involving the parties are baseless and unfounded. Respondent's suggestion that the Board will not fully give consideration to the issues presented in Cases 28-CA-21896 or 28-RC-6518 and/or any of the filings associated with these matters is nothing more than unjustified speculation without merit. Therefore, Respondent's Motion should be denied.

**C. Respondent's Opposition is Untimely**

Respondent references in its Opposition that on December 14, 2010, the General Counsel filed a Motion Requesting Special Permission to Amend Complaint To Reflect the Board's Recent Certification and Charging Party's Renewed Request for Bargaining Pursuant to the New Certification. On February 7, 2011, the Board issued an Order granting General Counsel's motion, setting a deadline for General Counsel to issue an amended complaint no later than February 14, 2011. On February 11, 2011, the Board issued a Revised Order adding to its previous order that any further responses to the Notice to Show Cause were due by March 7, 2011.

Respondent filed the instant Opposition on March 9, 2011, two days after the deadline set by the Board. Respondent's failure to file its Opposition by March 7, 2011, clearly contravenes the deadline set by the Board. Respondent presents no excuse for the late filing of its Opposition, and did not move for leave to file a late response. Instead, Respondent drops a footnote in its Opposition stating it never received a copy of the Board's Revised Order of February 11, 2011, that set March 7, 2011 as the deadline date for any further responses to the Notice to Show Cause.

This bare assertion, without more, is not sufficient reason to excuse Respondent from deadlines set down by the Board in its orders. Respondent offered no supporting evidence with its Opposition to establish or show that it did not receive a copy of the Board's Revised Order. Respondent did not even bother to articulate an argument or cite supporting case law along with its footnote as a means to excuse its failure to meet the deadline set by the Board. Additionally, Respondent should not be allowed to piggyback its Opposition by submitting it with its Motion, in an effort to evade the deadlines set by the Board. General Counsel

respectfully submits that Respondent should not be allowed to benefit from its failure to adhere to the deadline set by the Board. As such, Respondent's Opposition should be set aside as a matter of course.

**D. Conclusion**

Respondent has failed to present sufficient facts, supporting evidence or supporting authority to warrant a summary judgment finding as a matter of law. In addition, Respondent's Opposition is untimely. Based upon the foregoing, it is respectfully submitted that Respondent's Motion should be denied in its entirety and the Opposition set aside as being untimely filed.

Dated at Albuquerque, New Mexico, this 15<sup>th</sup> day of March 2011.

Respectfully submitted,

/s/ David T. Garza

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of ACTING GENERAL COUNSEL'S RESPONSE TO RESPONDENT'S OPPOSITION TO ACING GENERAL COUNSEL'S MOTION TO SUPPLEMENT MOTION FOR SUMMARY JUDGMENT AND CROSS MOTION FOR SUMMARY JUDGMENT in SAN MIGUEL HOSPITAL CORP. d/b/a ALTA VISTA REGIONAL HOSPITAL in Cases 28-CA-21896 et al., was served via E-Gov, E-filing, e-mail and overnight delivery via United Parcel Service on this 15<sup>th</sup> day of March 2011, on the following:

***Via E-Gov, E-Filing:***

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