

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

HILLS AND DALES GENERAL HOSPITAL

Respondent

and

CASE

07-CA-053556

DANIELLE L. CORLIS, an Individual

Charging Party

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S
CROSS EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S
DECISION**

Pursuant to § 102.46 (e) of the Board's Rules and Regulations, the undersigned excepts to the following aspects of the February 17, 2012 decision of Administrative Law Judge Geoffrey Carter (hereinafter JD) in the above-referenced case.

1. The ALJ's finding that the rule in paragraph 16 of Respondent's Values and Standards of Behavior policy does not prohibit Section 7 activity is not supported by the record evidence and is not in accord with Board law. (JD 7, 8)¹
2. The ALJ's recommendation that the complaint allegation asserting Respondent violated the Act by maintaining the rule in paragraph 16 be dismissed.

¹ References to the Administrative Law Judge's Decision are cited as (JD pg #)

The portions of the record and authority relied upon to support these exceptions are contained in the accompanying supporting brief.

CONCLUSION

Counsel for the Acting General Counsel asks the Board to reverse the foregoing findings, rulings, conclusions, and recommendations made by the ALJ and to hold that the Respondent violated Section 8(a)(1) of the Act by maintaining the rule in paragraph 16 of Respondent's Values and Standards of Behavior policy.



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**COUNSEL FOR THE ACTING GENERAL COUNSEL'S BRIEF IN
SUPPORT OF CROSS EXCEPTIONS TO THE ADMINISTRATIVE LAW
JUDGE'S DECISION**

Counsel for the Acting General Counsel, pursuant to § 102.46(e) of the Board's Rules and regulations, respectfully submits this brief in support of the Counsel for the Acting General Counsel's cross exceptions to the decision of the Administrative Law Judge. (JD)

I. STATEMENT OF THE CASE

On November 15, 2011, the Regional Director of Region 7 of the National Labor Relations Board issued a Complaint and Notice of Hearing based on a charge filed by the Charging Party on March 16, 2011. The operative complaint allegations assert that Respondent violated Section 8(a)(1) of the Act by maintaining the following rules, set forth in Respondent's Values and Standards of Behavior policies:

Teamwork

11. We will not make negative comments about our fellow team members and we will take every opportunity to speak well of each other.

16. We will represent Hills & Dales in the community in a positive and professional manner in every opportunity.

Attitude

21. We will not engage in or listen to negativity or gossip. We will recognize that listening without acting to stop it is the same as participating.

A hearing was held in Saginaw, Michigan on January 9, 2012, in front of ALJ Geoffrey Carter (ALJ). On February 17, 2012, the ALJ issued a written decision, finding that Respondent violated Section 8(a)(1) of the Act by maintaining the rules set forth in paragraphs 11 and 21. The ALJ found that the Acting General Counsel did not meet his burden of proving that the terms set forth in paragraph 16 were unlawful.

Counsel for the Acting General Counsel submits that the ALJ erred in finding that the Acting General Counsel failed to meet his burden regarding paragraph 16 of Respondent's Values and Standards of Behavior policy. The evidence and recent Board law shows that Respondent's maintenance of the rule has a reasonable tendency to infringe on employees' Section 7 activity. Accordingly, the Board should set aside the ALJ's Decision, Conclusions of Law,

and Recommended Order (JD) relating to paragraph 16 of Respondent's Values and Standards of Behavior policy.²

II. ANALYSIS

A. Respondent Violated Section 8(a)(1) of the Act by Maintaining Rule 16 Contained in Respondent's Values and Standards of Behavior.

The ALJ erred in finding that Respondent's employees would not reasonably interpret the rule in paragraph 16 as a rule that prohibits employees' Section 7 activity. Rule 16 states: "We will represent Hills and Dales [Respondent] in the community in a positive and professional manner in every opportunity." In finding such, the ALJ relied, in part, on *Tradesmen International*, 338 NLRB 460 (2002), in which the Board (over Board member Liebman's dissent) found a similar rule to be lawful. (JD 7) Consistent with *Tradesmen*, the ALJ considered the surrounding circumstances in which Respondent promulgated its Values and Standards of Behavior policy. To that end, he noted that Respondent's policy was developed at a time that Respondent was struggling with a poor work environment in which departments were not cooperating and employees were "back-biting and back-stabbing." (JD 2, 7, 8)

Contrary to the ALJ's analysis, the circumstances in which the Respondent promulgated rule 16—the lack of cooperation, the back-biting and back-stabbing—support a finding that the rule was unlawful. The evidence establishes that employees were concerned about their terms and conditions of employment, and that employee discontent influenced the way the public viewed the hospital. Like the rules found in paragraphs 11 and 21, which the ALJ found unlawful, Respondent promulgated the rule

² The undersigned is not filing exceptions with respect to the Administrative Law Judge's findings of fact, conclusions of law, and recommended Order in any other regard.

in paragraph 16 in response to the poor workplace atmosphere, which included employees' complaints about the workplace and about each other. Thus, the evidence submitted by the Respondent at the hearing demonstrated that each rule at issue in this case, including the rule in paragraph 16, pertains to Section 7 activity and that employees would reasonably interpret them in that manner.

Further, in *Tradesmen International*, the Board upheld the rule based, in part, on the broader context of the rule, which prohibited conflicts of interest and damaging the company's reputation in the business community. Unlike, the rule in *Tradesmen International*, the rule in the instant case is not couched in such a context.

Moreover, the Board found in *Claremont Resort and Spa*, 344 NLRB 832 (2005) a rule that prohibited negative conversations among employees would reasonably be construed to bar employees from discussing with their coworkers complaints about their managers that affect working conditions. Consequently, the rule would discourage employees from engaging in protected concerted activities. *Id.* at 832. More recently, in *The Roomstore*, 357 NLRB No. 143 (December 20, 2011)³ the Board, in adopting the ALJ's finding that the employer's maintenance and enforcement of its handbook rule prohibiting "any type of negative energy or attitudes" violated Section 8(a)(1) of the Act, emphasized that the rule cannot be considered in isolation. In that case, employees employed by a furniture store as salespersons complained to management and each other about customer discounts being deducted from their total commissions. In defense of its rule, the employer argued that the rule was intended to prohibit negativity on the showroom floor and in front of customers. The Board noted that given the employer's warnings to employees linking negativity to employees' protected discussions concerning

³ The Board's decisions in *Claremont Resort and Spa*, *supra*, and *The Roomstore*, *supra* post date the Board's decision in *Tradesmen International*, *supra*.

commissions discounts, the employees would reasonably construe the “negativity” rule as applying to protected concerted activity. Slip op. 2, fn. 3; citing *Claremont Resort and Spa, supra*, and *Lutheran Heritage Village – Livonia*, 343 NLRB 646 (2004),

Such is the case here. As noted above, the Respondent’s promulgation of rule 16 mandating positivity was in reaction to the negative atmosphere created, in large part, from workplace issues. As the ALJ notes, employee relationships were suffering due to the work atmosphere, employee satisfaction was low, and employees were looking for other job opportunities. Respondent developed a set of rules, including rule 16, in reaction to these workplace issues. It follows then, that employees would reasonably believe such rule 16, considered in the context from which it was created, would impinge on their Section 7 rights, and hence violate the Act.

III. CONCLUSION

Based on the above, Counsel for the Acting General Counsel submits that the Board find that Respondent violated Section 8(a)(1) of the Act by maintaining Rule 16 of its Values and Standards of Behavior policy.

Respectfully Submitted,



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CASE NO. 7-CA-053556

CERTIFICATE OF SERVICE OF COUNSEL FOR THE ACTING GENERAL COUNSEL'S ANSWERING BRIEF TO RESPONDENT'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE, COUNSEL FOR THE ACTING GENERAL COUNSEL'S CROSS EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION AND COUNSEL FOR THE ACTING GENERAL COUNSEL'S BREIF IN SUPPORT OF CROSS EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

I, the undersigned employee of the National Labor Relations Board, certify that on the date indicated above I caused the above-entitled document to be served by Certified Mail –OR– Regular Mail, by placing copies into the U.S. Mail, postage paid, addressed to the following persons at the following addresses:

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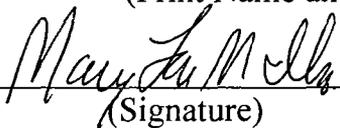
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