

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

WINDSOR REDDING CARE CENTER, LLC

and

Cases 20-CA-070465
20-CA-070964
20-CA-075426
20-CA-082287

SEIU UNITED HEALTHCARE WORKERS - WEST,
CTW, CLC

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

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Counsel for the Acting General Counsel files the following exceptions to the Decision of Administrative Law Judge Gregory Z. Meyerson, that issued on December 31, 2012.

<u>Exception Number</u>	<u>Page</u>	<u>Line</u>	<u>Exception</u>
1	4	Footnote 5	Failure to cite specific state and federal laws governing elder abuse despite finding Whitmire and Rowland were in violation of such laws.
2	4	35 – 37	Failure to find Respondent provided no evidence to show it enforced its elder abuse policy as strictly as it purported to.
3	7	10 – 13	Finding that federal and state law required Whitmire to furnish the kleenex to management.
4	7	31 – 32	Finding Tootie Oberg told Anne Gilles that Whitmire showed the kleenex to Ron Rich, Frances Marley and Susan Lees.

5	7	39 – 41	Finding Anne Gilles spoke with Ron Rich on February 14 as part of her investigation into the Whitmire incident.
6	8	15 – 16	Finding Anne Gilles spoke with Whitmire on February 14.
7	8	14 – 16	Finding Anne Gilles spoke with Whitmire on February 14 simply because it is a logical step to take, rather than basing a finding of fact on the record evidence.
8	8	27	Finding Anne Gilles reviewed Resident A’s chart on February 14.
9	10	23 – 24	Failure to find Lewis Johnson supported Rowland’s testimony that she attempted to calm Resident B in the van.
10	10	30 – 43	Failure to find Lewis Johnson checked in Resident B at doctor’s office and spoke with medical assistants.
11	20	11 - 14	Finding Rowland could have yelled at Resident B during the 45 minutes Lewis Johnson was not present despite earlier finding Terra Pagnano reported the yelling occurred “as Rowland and Resident B were entering the doctor’s office” (ALJD p. 10, 48)
12	11	28 - 29	Finding the three medical assistants “claimed to be familiar with Resident B’s voice, having heard it on previous office visits.”
13	11	33 - 34	Finding Anne Gilles “indicated that she might have to terminate Rowland” in talking to three medical assistants.
14	12	1 - 2	Failure to find Anne Gilles never asked Johnson directly whether he heard Rowland yelled at Resident B.
15	12	1 - 2	Failure to find Anne Gilles never impressed upon Johnson the importance of the investigation as she did with the medical assistants.

16	12	20 - 23	Finding that Lewis Johnson was “disinterested” in assisting with the investigation because his answers to Gilles were “curt” during their “very brief” conversation.
17	12	27	Finding that Lewis Johnson’s recollection of the incident was less reliable than the three medical assistants because he was gone for 45 minutes after the incident occurred.
18	12	50	Failure to find the continued investigation the day after the screaming incident was an incomplete investigation because it did not include a conversation with Johnson.
19	14	28 - 29; 36 - 39; 44 - 45	Failure to find the investigation was superficial and demonstrated pretext, despite making the factual finding that the bulk of the investigation took place after Rowland’s termination.
20	14 - 15	14:52 – 15:7	Finding Rowland in fact yelled threats of physical harm to Resident B in light of the fact that the State of California, Department of Public Health, investigated the allegation and , as a result, Rowland kept her CNA license.
21	17	48 - 51	Finding that Whitmire’s misconduct “would likely have resulted in similar disciplinary action,” even without engaging in union activity.
22	18	1 – 3	Finding that Respondent met its burden of proof and established by a preponderance of the evidence that it would have taken the same actions of suspending and subsequently terminating Whitmire absent union activity.
23	20	40 - 43	Finding that Rowland did in fact scream a threat of physical harm against Resident B.
24	20	43 - 46	Finding that perhaps Rowland was having a bad day, or lost her temper, or had a moment of weakness and made a mistake.
25	20	46 – 47	Finding that Respondent was reasonable in reaching the conclusion that Rowland yelled at Resident B.

26	20	50 - 51	Finding that Respondent conducted a sufficient investigation into the allegation that Rowland screamed at Resident B.
27	21	10 - 12	Finding that the discipline issued to Rowland was not disproportionate to the infraction.
28	21	11 - 12	Failure to find Respondent's disproportionate discipline of Rowland demonstrated pretext for terminating her for union activity.
29	21	10 - 27	Failure to find Respondent received and recorded two to three complaints of suspected patient abuse per month.
30	21	41 - 42	Finding that such misconduct on the part of any employee would likely have resulted in similar discipline.
31	21	43 - 44	Finding that no disparate treatment on the basis of union activity has been established.
32	21	46 - 48	Finding that Respondent met its burden of proof and established by a preponderance of the evidence that Rowland was suspended and subsequently terminated for cause.
33	26	41 - 43	Finding that Union's requests to engage in bargaining over pre-discipline decisions did not create a specific request to bargain over the terminations of Whitmire and Rowland.
34	27	17 - 20	Finding that the Union's requests to bargain over discipline were insufficient to trigger a duty to engage in pre-disciplinary bargaining.
35	27	22 - 25	Finding that the Union's three requests to bargain over discipline were not sufficiently specific in terms of type of discipline.
36	27	25 - 26	Finding that the Union failed to request bargaining over the terminations of Whitmire and Rowland.

37	27	29 - 30	Finding that the Union failed to raise the specific cause of the suspensions and terminations of Whitmire and Rowland as the type of discipline over which it was requesting before-the-fact bargaining.
38	27	43 - 48	Finding that Board law requires such a high degree of specificity to trigger before-the-fact bargaining.
39	28	35 - 38	Finding that the documents in evidence, as well as testimony, are insufficient to serve as the foundation to establish Respondent violated the Act by failing to engage in pre-discipline bargaining.
40	28	38 - 40	Failure to find Respondent violated Section 8(a)(5) of the Act by refusing to engage in pre-discipline bargaining over the suspensions and terminations of Whitmire and Rowland.
41	31	50	Failure to find Respondent violated Section 8(a)(3) of the Act by suspending and subsequently terminating Denise Whitmire and failure to order a traditional reinstatement and make-whole remedy.
42	31	50	Failure to find Respondent violated Section 8(a)(3) of the Act by suspending and subsequently terminating Angelia Rowland and failure to order a traditional reinstatement and make-whole remedy.

DATED at San Francisco, California, this 25th day of February, 2013.



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