

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.**

**800 River Road Operating Company
LLC d/b/a Woodcrest Health Care
Center**

Employer

and

**1199 SEIU, United Healthcare Workers
East**

Petitioner

NLRB Case No: 22-RC-073078

22-CA-083628

**RESPONDENT'S EXCEPTIONS TO ADMINISTRATIVE
LAW JUDGE'S APRIL 2, 2013 DECISION AND ORDER**

In accordance with the Rules and Regulations of the National Labor Relations Board, Respondent 800 River Road Operating Company LLC d/b/a Woodcrest Health Care Center ("Woodcrest" or "Employer") files the following exceptions to the Administrative Law Judge's April 2, 2013 Decision and Order in the above-captioned case. Specifically, Woodcrest excepts to the findings and conclusions in the Decision and Order set forth below:

1. The ALJ's findings that Judith Dolcine testified truthfully (ALJD 4:19-20), she was a sincere witness attempting to testify truthfully (ALJD 4:20-21), and her testimony deserved to be credited (ALJD 4:21).
2. The ALJ's finding that he should not rely upon Ansel Vijayan's testimony when it contradicted Dolcine's testimony (ALJD 4:21-22).
3. The ALJ's finding that Vijayan was a "high-level manager" (ALJD 4:40; 5:2).

4. The ALJ's finding that Vijayan initiated the private discussion between himself and Dolcine rather than that Dolcine did so (ALJD 4:41-42).

5. The ALJ's finding that Vijayan asked Dolcine whether someone from the Union had visited her at home and telephoned her at home (ALJD 4:43-44).

6. The ALJ's finding that Vijayan asked Dolcine why she needed the Union (ALJD 4:45; 5:3-4) as well as her union activities (ALJD 5:3-4).

7. The ALJ's findings that Dolcine told Vijayan that she needed a Union to protect her if something happened or she was fired and that Vijayan replied that was not going to happen (ALJD 4:46-5:1).

8. The ALJ's conclusion that the encounter between Vijayan and Dolcine related in nos. 1-7 above constituted an unlawful interrogation in violation of Section 8(a)(1) of the Act (ALJD 5:1-2; 5:6-8).

9. The ALJ's finding that Vijayan took Dolcine away from her work duties (ALJD 5:2-3).

10. The ALJ's finding that the encounter between Vijayan and Dolcine took place at about the same time frame as "other unlawful actions by supervisors and agents of the Company" (ALJD 5:4-5).

11. The ALJ's finding that Jeffrey Jimenez could not recall certain statements made by Jim Monica to the extent the ALJ's understanding was that Jimenez was saying that such statements were not made rather than that he did not know one way or the other whether the statements were made (ALJD 6:30-34).

12. The ALJ's crediting of Jimenez' testimony that Monica asked him to identify employees who were not supervisors who had been involved with the Union or passed out Union cards (ALJD 8:1-3).

13. The ALJ's finding that Monica asked Jimenez whether he had signed a card for the Union (ALJD 8:4-5).

14. The ALJ's finding that Monica went beyond permissible bounds and unlawfully interrogated Jimenez in violation of Section 8(a)(1) of the Act (ALJD 8:9-10; 8:12-13).

15. The ALJ's findings that (a) Monica asked Jimenez about his personal union activities as well as the union activities of other election eligible employees and (b) Monica had no valid justification or permissible basis for asking Jimenez such questions as he posed (ALJD 8:10-12).

16. The ALJ's finding that at the second interview (a) Monica told Jimenez that Monica was not satisfied with Jimenez' answers at their first interview and was giving him a second chance and (b) Monica went beyond permissible bounds in posing such questions as he did (ALJD 8:15-20).

17. The ALJ's finding that Jimenez generally was credible (ALJD 10:25).

18. The ALJ's grant of Counsel for Acting General Counsel's motion to amend the Complaint to allege that Janet Lewis unlawfully interrogated employees (ALJD 11:9-11).

19. The ALJ's finding that a company attorney stated that Donna Duggar supported the Union (ALJD 12:14-15).

20. The ALJ's finding that the fact that Lewis and Duggar were friends and may have discussed whether Duggar supported the Union in a friendly way does not "somehow" bear on

the question whether the exchange between Lewis and Duggar was an unlawful interrogation (ALJD 12:19-21).

21. The ALJ's conclusion that Lewis unlawfully interrogated Duggar in violation of Section 8(a)(1) of the Act (ALJD 12:21-23).

22. The ALJ's finding that changes were announced on March 5, 2013 that were "system wide" for Healthbridge Management LLC ("Healthbridge") except with respect to employees who were or had been part of a voting unit for an NLRB-conducted representation election (ALJD 15:5; 15:8-9; 15:12).

23. The ALJ's conclusions that the Employer violated Sections 8(a)(3) and (1) of the Act through (a) the March 5, 2012 announcement of certain health insurance cost reductions to all Woodcrest personnel except those who were eligible voters in the March 9 election and (b) the March 23, 2013 implementation of those health care cost reductions retroactive to January 1, 2012 for all Woodcrest personnel except those who were eligible voters in the March 9 election (ALJD 15:4-9; 16:1-5).

24. The ALJ's conclusion that *Great A&P Tea* and *KMST-T, Channel 46* set forth the legal principles that control disposition of Paragraph 9 of the Complaint (ALJD 15:9-11; 15:21-39).

25. The ALJ's failure to conclude that the Employer's scrupulous adherence to the *status quo* during the critical period rendered the decisions referenced in Paragraph 24 inapt and the Supreme Court's decision in *NLRB v. Exchange Parts Co.*, 375 U.S. 405, 409 (1964), controlling (ALJD 15:13-19).

26. The ALJ's conclusion that the Employer's conduct was not lawful because the Employer was not able to cloak its conduct under the rule set forth in *KMST-TV* (ALJD 15:35-42).

27. The ALJ's conclusion that the Employer's silence regarding its denial of the health insurance cost reductions to election eligible voters has no impact upon the analysis of whether an unfair labor practice was committed (ALJD 15:44-46).

28. The conclusions of law set forth in nos. 3 and 4 under "Conclusions of Law" (ALJD16:15-22).

29. The entire remedy ordered by the ALJ (ALJD 16:26-41).

30. The entire Order set forth by the ALJ (ALJD 17:6-18:6).

Respectfully submitted,

s/Jedd Mendelson

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