**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**REGION 13**

| | | |
|---|---|---|
| ST. BERNARD HOSPITAL AND HEALTH CARE CENTER, | ) | |
| and | ) | Case No. 13-CA-074311 |
| EARL LIGGINS, an Individual, | ) | |

## EXCEPTIONS OF ST. BERNARD HOSPITAL AND HEALTH CARE CENTER

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, St. Bernard Hospital and Health Care Center (hereinafter referred to as "St. Bernard" or "Employer"), by and through its counsel, makes the following exceptions to the April 30, 2013 decision of Administrative Law Judge Melissa M. Olivero:

## EXCEPTIONS

1. Employer excepts the finding that Liggins' testimony that Chew told Liggins "I hear you are trying to get me fired stands unrebutted. (ALJD[1] 7:10-12). Chew denied the occurrence of the entire interaction in which this statement was allegedly made. (TR.[2] at 230; ALJD 7:7:24-25).

2. Employer excepts the finding that Dr. Carre told Chew of Liggins' claim that CT Technicians were banding together. (ALJD 12:25-29). Chew testified that Dr. Carre did not speak with her on this issue. (TR. at p. 241). Dr. Carre testified that he did not speak with Chew regarding this issue. (TR. at p. 203-204, 219). Liggins admitted that he had no evidence that Dr. Carre had spoken with Chew about this issue. (TR. at p. 70).

---

[1] References to the Administrative Law Judge's April 30, 2013 opinion are formatted as "(ALJD page:line)."
[2] References to the Hearing Trasncript are formatted as "(TR. at page)."

3. Employer excepts the reliance on Chew's affidavit as inadmissible hearsay. (ALJD 12:31-33).

4. Employer excepts that Chew provided contradictory testimony regarding what was on Liggins' head when Chew found Liggins sleeping. (ALJD 13:6-12). Liggins testified that when Chew found him in the Control Room she asked him why he had a sheet on this head. (TR. at p. 43-44). Worthy testified that on the date Chew found Liggins sleeping in the control room, Chew told Worthy that Liggins had a sheet and a pillowcase on his head. (TR. at p. 296, 298, 300).

5. Employer excepts the reliance on Chew's affidavit as inadmissible hearsay. (ALJD 13:9-10).

6. Employer excepts the finding that Worthy was not credible because she used modifiers "I believe," "I guess" and "basically." (ALJD 13:32-34).

7. Employer excepts the finding that Dr. Carre's testimony contradicted his prior affidavit testimony. (ALJD 15:10-12; 15:33-36). Dr. Carre's testimony as to whether he ever spoke with Chew regarding CT Technicians banding together is consistent. (TR. at 209).

8. Employer excepts the implied finding that Dr. Carre relayed complaints made by CT Technicians to Chew in September, 2011. (ALJD 15:19-21). Liggins had no knowledge that Dr. Carre relayed any information to Chew on that topic, and Dr. Carre denied doing so. (TR. at p. 69-70, 203-204).

9. Employer excepts the finding that Liggins' false assertion that he had been working on the letters contained in Respondent's Exhibit 6 "for months" was a minor discrepancy. (ALJD 16:n.24).

10. Employer excepts the implied finding that the content of Liggins' letters could establish knowledge of protected activity prior to the decision to discharge him. (ALJD 17:40-42). It is undisputed that the first time these letters were provided to anyone was after Chew had reported finding Liggins sleeping, and their content could not have motivated that report. (TR. at p. 52).

11. Employer excepts the finding the Liggins' testimony regarding Chew's alleged assertion that Chew heard Liggins was going to have her fired was unrefutted. (ALJD 17:49-51). Chew denied that the meeting at issue even occurred. (TR. at p. 230; ALJD 7:7:24-25).

12. Employer excepts the finding that Liggins and Dr. Carre discussed the issue of CT Technicians banding together to get rid of Chew. (ALJD 18:11-13). Dr. Carre denied any such conversation, and Liggins testified that if such a conversation occurred, it would have been a passing comment to Dr. Carre that produced no response from Dr. Carre. (TR. at p. 69-70, 203-204).

13. Employer excepts the finding that Liggins' termination in September, 2011, after he raised concerns regarding the location of a window and a sink in the CT Suite is suspicious. (ALJD 18:28-29).

14. Employer excepts the finding that the Acting General Counsel established by a preponderance of the evidence that Liggins was not asleep at work on September 13, 2011. (ALJD 18:35-37).

15. Employer excepts the finding that the Employer's proffered basis for Liggins' termination was pretextual. (ALJD 18:43-48).

16. Employer excepts the finding that Liggins' termination constituted a violation of §8(a)(1) of the National Labor Relations Act. (ALJD 19:7-10).

17. Based on the exceptions set forth above, Employer excepts the ALJ's Remedy and Order. (ALJD 19:15 – 21:7).

Respectfully submitted,
St. Bernard Hospital and Health Care Center

By: s/ Scott M. Gilbert

Tom H. Luetkemeyer
Scott M. Gilbert
Hinshaw & Culbertson LLP
222 N. LaSalle, Suite 300
Chicago, IL 60601
312-704-3258

## CERTIFICATE OF SERVICE

The undersigned, on behalf of the Employer, St. Bernard Hospital and Health Care Center, hereby certifies that on the 28th day of May 2013, I served Employer's Exceptions of St. Bernard Hospital and Health Care Center electronically to the NLRB Office of the Executive Secretary and by U.S. Mail to the individuals and entities set forth below:

Jeanette Schrand
NLRB Regional Office
209 South LaSalle, Street, Suite 9000
Chicago, IL 60604

Earl Liggins, Charging Party
7022 South Normal Boulevard
Chicago, IL 60621-3023

NLRB Office of the Executive Secretary
1099 14th Street, N.W.,
Washington, DC 20570

_/s/Scott M. Gilbert _____