UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7

In the Matter of:

HOPE NETWORK BEHAVIORAL HEALTH SERVICES, a wholly owned subsidiary of HOPE NETWORK

Case No.: 07-CA-094365

Respondent,

and

LOCAL 459, OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, AFL-CIO

Charging Union.

RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION AND RECOMMENDED ORDER

NOW COMES, the Respondent, Hope Network Behavioral Health Services (hereinafter "Respondent"), by and through its attorneys, Clark Hill PLC, and pursuant to Section 102.46 of the Board's Rules and Regulations, filing the following exceptions, in conjunction with the accompanying Brief, to the Administrative Law Judge Michael J. Rosas's (hereinafter "ALJ") Decision and Recommended Order dated July 11, 2013, subsequently substituted through an Erratum Decision and Recommended Order dated July 12, 2013 (hereinafter "ALJD"):

Respondent's Exceptions to the ALJ'S Findings of Fact

1. Respondent excepts to the ALJ's finding of fact that "[A]t the time, the Company's representative recognized that any changes to employee insurance coverage would require bargaining after the contract expired" as contrary to the record evidence. [ALJD p. 4, lines 28-29].

2. Respondents excepts to the ALJ's finding of fact and credibility determination that "McLincha insisted that it was not the Company, but rather, Priority Health who decided not to renew its health care coverage with the Company. She based this assertion on the belief that Priority Health's quote of a 31-percent premium increase was really a "walkaway" price and that it had no intention of renewing coverage. (Tr. 256-261). I did not credit such testimony, as it was based on alleged uncorroborated hearsay statements by Priority Health representatives and contradicted documentary evidence" as contrary to the record evidence. [ALJD p. 6, fn. 14].

3. Respondent excepts to the ALJ's finding of fact that "[E]ssentially, the Company adopted HUB's recommendation to eliminate Priority Health completely and replace it with a single Blue Care Network plan for all Company employees, or two unit employee plans - " BHS Union Only-All to BCN Design" and "BHS Union"" as contrary to the record evidence. [ALJD p. 6, lines 23-25].

4. Respondent excepts to the ALJ's finding of fact that "there was no mention that all of the BCN the (sic) rates had to be the same for all employees" as contrary to the record evidence. [ALJD p. 6, lines 29-30].

5. Respondent excepts to the ALJ's finding of fact that "At the next bargaining session on August 15, the Union responded with another proposal and inquired as to the status of open enrollment for Unit employees. Reuter explained that insurance coverage options were still under consideration and indicated that the Company's proposal would follow shortly thereafter" as contrary to the record evidence. [ALJD p. 8, lines 20-24].

6. Respondent excepts to the ALJ's finding of fact that "[I]n an August 28 email to employees, the Company (sic) distributing a revised employee benefits guide to all employees. The Union was notified of this action on September 12 and, upon request, the Company provided Fleming with a copy of the employee benefits handbook containing the changes" as contrary to the record evidence. [ALJD p. 9, lines 15-19].

7. Respondent excepts to the ALJ's finding of fact that with regard to the September 18, 2012 proposal, "the Company indicated that its wage scale was based on a marketing study performed by a consulting firm" as contrary to the record evidence. [ALJD p. 9, lines 37- p. 10, line 1].

8. Respondent excepts to the ALJ's credibility determination that "Reuter did not credibly refute his testimony as to whether BCN would provide other health care options and she seemed evasive on the issue of a marketing study" as Witness Reuter and Witness Canum provided uncontroverted evidence that the September 18, 2012 wage proposal was based on an independent calculation performed by Canum and not a marketing study. [ALJD p. 10, fn 39].

9. The ALJ failed to give proper weight to the record evidence that it was Respondent's employee Canum, and not a third party market study or database, that produced the information used in the September 18, 2012 wage proposal. [ALJD p. 10, fn 39]. In doing so, the ALJ improperly credited Fleming with testimony that was unsupported by the record evidence, including Fleming's own testimony. *Id.*

10. Respondent excepts to the ALJ's finding of fact that Reuter informed Fleming that "a response would be forthcoming within a week" [ALJD p. 11, line 14] as Reuter's email

clearly states that the Company "should" have a response by the end of the week and is, therefore, not definitive. Furthermore, Respondent excepts to ALJ's finding that Reuter acknowledged the "existence of the requested market study" as Reuter's statements do not affirmatively acknowledge the existence of any market study. [ALJD p. 9, line 15].

11. Respondent excepts to the ALJ's finding of fact that in formulating the September 18, 2012 proposal, Canum accessed the ERI database and the ALJ's credibility determination as erroneous and contrary to the record evidence. [ALJD p. 12, lines 15-16; fn. 49]. Likewise, Respondent excepts to the ALJ's finding that Reuter, McLincha, and/or other Company representatives "knowingly relied on the ERI database when they offered their wage proposals on September 18 and 25" as contrary to the record evidence. [ALJD p. 12, lines 17-19]. Furthermore, Respondent excepts to the ALJ's finding of fact that "[Y]et, they did not propose to provide alternative information or enter into a confidentiality agreement that would permit it to show such information to the Union" as the ALJ's conclusion is contrary to the record evidence establishing that no market study was ever conducted and, therefore, no proposal to access such a market study was required. [ALJD p. 12, lines 19-21].

12. Respondent excepts to the ALJ's finding of fact that McLincha's testimony on the Respondent's ability to access the ERI database was not credible as contrary to the record evidence. [ALJD p. 12, fn. 48].

13. Respondent excepts to the ALJ's finding of fact that the overtime information was "available for production prior to December 7" as a conclusory finding unsupported by the record evidence. [ALJD p. 13, lines 4-5].

Respondent's Exceptions to the ALJ's Legal Analysis and Conclusions of Law

14. Respondent excepts to the ALJ's reliance on *Alan Ritchey, Inc.*, 359 NLRB No. 40, slip op. at 5 (2012) as the analysis and reasoning of that decision is not applicable to the current facts. [ALJD p. 14, lines 30-16].

15. Respondent excepts to the ALJ's legal conclusion that "[T]he Company's recognition of the fact that there is no discretionary status quo is simply inconsistent with the belief that it was entitled to unilaterally exercise its discretion to require unit employees to choose from the same health plans as nonunion employees." [ALJD p. 14, lines 36-38]. This conclusion is not supported by the record evidence or by Board precedent.

16. Respondent excepts to the ALJ's legal conclusion that the "me-too" provision is discretionary and "by its terms, unrelated to the Company's obligation to provide unit employees with the same insurance as non-union employees." [ALJD p. 15, lines 1-5]. This conclusion is not supported by the record evidence or by Board precedent. Furthermore, Respondent excepts to the ALJ's legal conclusion that the "me too" provision was a contractual, and not a statutory, provision. [ALJD p. 15, lines 4-5]. This conclusion is not supported by the record evidence or by Board precedent.

17. Respondent excepts to the ALJ's legal conclusion that the status quo at the expiration of the agreement was the same health care coverage that was in effect at the time of the expiration and not the "me too" provision and that Respondent was not entitled to unilaterally change the health care coverage without bargaining. [ALJD p. 15, lines 4-

10]. This conclusion is not supported by the record evidence or by Board precedent. Respondent further excepts to any legal conclusion that it did not engage in bargaining over health care coverage as contrary to the record evidence and unsupported by Board precedent. [ALJD p. 15, lines 4-10].

18. Respondent excepts to the ALJ's conclusion that Respondent does not contend that there were bargaining delays caused by the Charging Union as it is inconsistent with Respondent's Unfair Labor Practice Charge 07-CB-099279 filed against the Charging Union alleging bad faith bargaining, including dilatory tactics. [ALJD p. 15, line 13].

19. Respondent excepts to the ALJ's legal conclusion that Respondent's decision to unilaterally change health care providers was a discretionary one as it is contrary to the record evidence and unsupported by Board precedent. [ALJD p. 15, lines 27-28].

20. Respondent excepts to the ALJ's legal conclusion that Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act as it is contrary to the record evidence and unsupported by Board precedent. [ALJD p. 15, lines 30-31].

21. Respondent excepts to the legal conclusion that the General Counsel demonstrated its burden that the information requested was relevant. [ALJD p. 16, lines 45- p. 17, lines 1-2].

22. Respondent excepts to the ALJ's finding of fact that Respondent accessed the ERI database as contrary to the record evidence. [ALJD p. 16, lines 17-25].

23. Respondent excepts to the ALJ's finding of fact that the ERI database "could be accessed by simply entering into another license agreement with ERI" as it ignores the record

evidence that Respondent never accessed the ERI database for purposes of formulating a wage proposal and, therefore, the Union was not entitled to such access. [ALJD p. 16, lines 33-35].

24. The ALJ failed to give proper weight to the record evidence that the September 18, 2012 wage proposal was subsequently withdrawn by Respondent. [ALJD p. 16, lines 37-38]. Accordingly, Respondent excepts to the ALJ's conclusion of law that the wage proposal remained relevant, at the time of its request. [ALJD p. 16, lines 37-38].

25. Respondent excepts to the ALJ's finding of fact that the market study exists as contrary to the record evidence that no such market study was ever conducted nor was one used in formulating the wage proposal of September 18, 2012. [ALJD p. 16, lines 44-45].

26. Respondent excepts to the ALJ's legal conclusion that Respondent, by failing to provide the requested information, violated Section 8(a)(5) and (1) of the National Labor Relations Act as it is contrary to the record evidence and unsupported by Board precedent. [ALJD p. 15, lines 30-31].

27. Respondent excepts to the ALJ's legal conclusion that Respondent's response time to the information request was unlawfully delayed given the totality of the circumstances. [ALJD p. 17, lines 22-27]. Respondent further excepts to the ALJ's reliance on cases cited within the ALJD in support of its conclusion as distinguishable from this case. *Id.*

28. Respondent excepts to the ALJ's legal conclusion that the Charging Union met its burden of proving that the information requested was relevant. [ALJD p. 18, lines 6-9].

29. Respondent excepts to the ALJ's legal conclusion that Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act by unilaterally changing employee's health insurance coverage without providing the Charging Union an opportunity to bargain as contrary to the record evidence and unsupported by Board precedent. [ALJD p. 18, lines 2-4].

30. Respondent excepts to the ALJ's legal conclusion that Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act by failing and refusing to provide, and then unreasonably delaying in providing, information requested on October 23, 2012, which was relevant to the Charging Union's obligations as contrary to the record evidence and unsupported by Board precedent [ALJD p. 18, lines 6-9].

Respondent's Exceptions to the ALJ's Recommended Remedy

31. Respondent excepts to the ALJ's proposed Remedy in its entirety as the ALJ's findings of facts and conclusions of law are not supported by the record evidence or Board precedent. [ALJD p. 18, lines 16-33].

Respondent's Exceptions to the ALJ's Recommended Order

32. Respondent excepts the ALJ's proposed Order in its entirety as it is not supported by the record evidence or Board precedent. [ALJD p. 18, lines 36-39; p. 19-20].

Conclusion

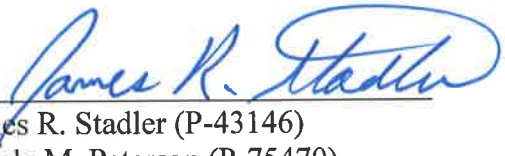
WHEREFORE, based on the aforementioned reasoning and analysis as set forth in the Respondent's Exceptions and accompanying Brief in Support of its Exceptions, the Respondent

denies that the General Counsel is entitled to the relief sought and, therefore, requests that the Decision and Order of the Administrative Law Judge be set aside.

Respectfully submitted,

Clark Hill
Attorneys for the Respondent

Dated: August 8, 2013

By: 
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