

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SOUTHCOAST HOSPITALS GROUP, INC.

and

1199 SEIU UNITED HEALTHCARE  
WORKERS EAST

Case 01-CA-067303

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S CROSS EXCEPTION  
AND BRIEF IN SUPPORT**

**I. EXCEPTION**

Counsel for the Acting General Counsel excepts to the Judge's apparent reliance on *FES*, 331 NLRB 9 (2000) (ALJD, p. 18 at fn. 17; p. 20, ll 9-51 and fn. 21), as a framework for analyzing the refusal to consider and refusal to hire allegations in this case.

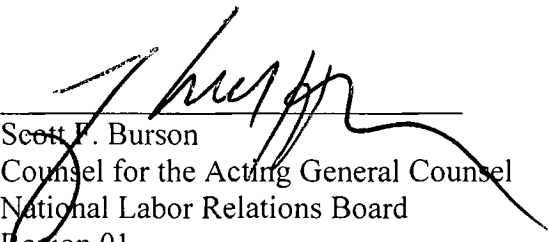
**II. BRIEF IN SUPPORT OF EXCEPTION**

In analyzing the alleged refusal to consider and refusal to hire issues pertaining to employees Souza, Nunes, and as yet unidentified, similarly situated employees, the ALJ apparently relies on the analytical framework established in *FES*, 331 NLRB 9 (2000). This reliance is inappropriate in this particular case because the proper framework to analyze the violation is the one set forth in *Legacy Health Systems*, 354 NLRB No. 45 (2009), *aff'd* 355 NLRB 76 (2010). *FES* is the appropriate framework to use in cases where an employer is motivated by union animus in its refusal to consider and refusal to hire individual employees. This case, however, is properly analyzed under the *Great Dane* "comparatively slight" standard, as the Judge correctly notes. (ALJD, p. 20, ll. 25-33) The gravamen of the refusal to consider and refusal to hire allegations in the

complaint is that employees were adversely affected by the routine application of Respondent's unlawful Policy regarding transfers within the Southcoast system. Attempts to conform this case to the prima facie showing required by *FES* muddles the theory of violation. For the above reasons, the prima facie case applicable to these facts is derived from *Legacy Health* and not *FES*.

Dated: August 9, 2013

Respectfully submitted,



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