

September 29, 2013

BY E-FILE

Farah Z. Qureshi
Associate Executive Secretary
National Labor Relations Board
1099 14th Street NW
Washington DC 20570

Re: DHSC, LLC d/b/a Affinity Medical Center
Case Nos. 8-CA-090083, et al

Dear Mr. Qureshi:

I represent DHSC, LLC d/b/a Affinity Medical Center (hereafter, “Affinity” or the “Hospital”), which is the Respondent in the above-referenced cases. Last Thursday, September 26th, in connection with these cases, Counsel for the Acting General Counsel (hereafter, the “General Counsel”) filed with your office an Objection (hereafter, the “General Counsel’s Objection”) to Affinity’s Reply Brief to the General Counsel’s Amended Answering Brief to Affinity’s Exceptions to the Decision (hereafter, the “Decision”) issued by Administrative Law Judge Arthur Amchan. Evidently in response to the General Counsel’s Objection, at roughly 2 pm last Thursday, I received, by fax, a letter from you in which you advised that the Reply Brief exceeded ten pages, and therefore, did not comply with Section 102.46(h) of the Board’s Rules and Regulations. Shortly thereafter, the Charging Party (hereafter, the “Union”), looking to take advantage of the same opportunity, filed what is essentially the very same Objection (hereafter, the “Union’s Objection”) to Affinity’s Reply Brief to the Union’s Amended Answering Brief to Affinity’s Exceptions to the Decision. As far as I am aware, your office has not yet responded to the Union’s Objection, but insofar as the Reply Briefs are virtually identical in terms of their length, I am presuming the position of your office on the Union’s Objection will be the same as its position on the General Counsel’s Objection.

At the outset, Affinity does acknowledge, as the General Counsel and the Union take great delight in pointing out, that the Hospital’s Brief in Support of the Exceptions to the Decision exceeded the applicable page limit. In the

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desire to address the seemingly never-ending errors in the Decision, the Hospital obviously lost sight of the applicable page limitation. At any rate, once the Hospital received notice from your office of the oversight, the Hospital submitted a Brief that complied with the Board's Rule.

Affinity does not, however, acknowledge any similar failure to comply with the Board's Rules with respect to the Reply Briefs and would respectfully ask that your office reconsider submitting the current Reply Briefs to the Board. The Reply Brief subject to the General Counsel's Objection is comprised of a cover page (i.e., page 1), ten pages of substantive argument (i.e., pages 2-11), a signature page (i.e., page 12), and a certificate of service (i.e., pages 13-14). Similarly, the Reply Brief subject to the Union's Objection is comprised of a cover page (i.e., page 1), ten pages of substantive argument (i.e., pages 2-11), a signature page (i.e., pages 11-12), and a certificate of service (i.e., pages 13-14). In my experience before the Board, the agency's page count has always been focused only upon the body of the brief itself and not any peripheral components, such as a cover page, table of contents, table of authorities, signature page or certificate of service. As noted above, the Reply Briefs subject to the Objections include ten pages of substantive argument. Indeed, submission of "conforming" Reply Briefs would essentially entail removing the cover page and the signature page of the current documents and presenting the Board with the very same substantive argument.

In addition, though the agency's resources would surely be better devoted to matters above the General Counsel and the Union's picayune inspection of the parties' submissions, since they have opened the door to such an examination, I would direct your office's attention to a few points regarding both the Union and the General Counsel's Briefs. To begin with, the deadline for the General Counsel and the Union's Answering Briefs was Friday, September 6, 2013, and to be sure, both parties filed Answering Briefs that day. However, on Monday, September 9, 2013, both parties, without inquiring as to the Hospital's position or seeking leave of the Board, also filed Amended Answering Briefs with your office. The General Counsel's Amended Answering Brief explained that the amendment consisted of the addition of a table of contents and a table of authorities so

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that now the Answering Brief would comply with the Board's Rules. See Section 102.46(j) (requiring a table of contents and table of authorities for any brief in excess of twenty pages). The Union's Answering Brief, on the other hand, did not identify the respect(s) in which the Brief had been amended. Because the Union's Amended Answering Brief left me (and equally so, would leave the Board) in the dark on the nature of the amendments, I requested an explanation from the Union by way of an email on September 17, 2013. My email was ignored.

I also wish to direct your office's attention to pages 44 through 46 of the Union's Amended Answering Brief. There, in an obviously calculated effort to evade the Board's page limitations, the Union elected to set forth its points in six **single spaced** paragraphs on a key point in dispute (i.e., evidence that supposedly supports the Judge's finding of a discriminatory motive on the part of the Hospital in connection with the termination of an employee). Aside from the fact that the single space format directly violates the Board's Rules (see Section 102.114[d]), the Union's use of the single space format was a rather shameless attempt to condense its argument so that its Brief, which takes up the very last line of the 50th page, would not exceed the applicable page limitation.

In conclusion, given the fact that, from a substantive standpoint, the Reply Briefs as re-submitted would be virtually identical to the Reply Briefs as originally submitted, I would respectfully ask that your office reconsider whether the Reply Briefs currently before your office comply with the Board's Rules. In addition, for the reasons set forth above, I would ask your office to evaluate whether the Union's Amended Answering Brief is in compliance with the Board's Rules.

Respectfully submitted,
/s/ _____

Bryan T. Carmody

cc: Sharlee Cendrosky, Esq., Counsel for the General Counsel, by email
Jane Lawhon, Esq., Counsel for the Charging Party, by email