

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5**

**WASHINGTON HOSPITAL CENTER CORPORATION  
d/b/a MEDSTAR WASHINGTON HOSPITAL CENTER**

**and**

**Cases 05-CA-095883  
05-CA-099390**

**NATIONAL NURSES UNITED**

**GENERAL COUNSEL'S EXCEPTIONS TO  
THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, Counsel for the General Counsel submits the following exceptions to the Decision and Order of Administrative Law Judge Arthur J. Amchan (JD-62-13) in the above-captioned Cases.

**Exception No. 1**

(ALJD at 1, ln. 43; 2-3, lns. 44-14; 4, lns. 11-25; 5, lns. 11-12 and 32-38; 6, lns. 11-21)

The Administrative Law Judge Decision (“ALJD”) is ambiguous because, by its factual recitation, findings, and conclusions of law, it does not clearly resolve an allegation from the Consolidated Complaint that was central to the hearing, namely whether MedStar Washington Hospital Center (“Respondent”) violated the Act by failing to provide National Nurses United (“the Union”) with the following information that the Union requested on

October 9, 2012: Respondent's current staffing matrices; tracking tools and data Respondent uses to monitor its compliance with its staffing matrices; Respondent's acuity measuring tools; and spreadsheets showing when and where Patient Care Technicians have been utilized as sitters in the past 12 months (collectively referred to as "staffing data"). At the hearing, Respondent admitted the relevance of the staffing data, but argued that, with the exception of the staffing matrices, the information is confidential (Tr. 123). A Union representative testified that the Union is no longer seeking the staffing matrices themselves, but is seeking the remaining items of its request, which Respondent has refused to provide (Tr. 176-177). The General Counsel presented evidence, and argued in brief, that the requested staffing data is not confidential.

In his Decision, the Judge found that Respondent violated Section 8(a)(1) and (5) of the Act by refusing and failing to furnish the information to the Union. ALJD at 6, Ins. 19-21. However, as opposed to referencing each item of the requested staffing data, the Judge generally referenced "staffing matrices" or "staffing matrix." See ALJD at 4, Ins. 25-30; Ins. 25-35; 6, Ins. 5-15. Therefore, the General Counsel excepts to the narrow language of the Decision as an inadvertent omission by the Judge, as the record evidence, post-hearing briefs, and the ALJD all suggest that the ALJD encompasses all of the staffing data in dispute. (Tr. 60-65, 70-72, 83-89, 95-96, 123, 174-176, 227-236; GC Exh. 22; R Exhs. 3 and 4). Yet even if the Board chooses to not construe the ALJD as an inadvertent omission, the record evidence supports a conclusion that Respondent violated the Act, as alleged. Accordingly, the General Counsel seeks clarification of the ALJD to avoid narrow interpretation and unnecessary confusion of the parties involved.

Exception No. 2

(ALJD at 7, lns. 5-6 and 12-13)

The Judge inadvertently omitted language from his Order that would cure Respondent's violation of the Act as it pertains to its failure to provide the Union with the disputed staffing data. As discussed in the foregoing paragraph, the Judge found that Respondent violated Section 8(a)(1) and (5) of the Act by refusing and failing to provide the Union with the requested information. See ALJD at 6, lns. 19-21. However, the Judge's Order is silent as to the staffing data. Id. at 7, lns. 12-13. The General Counsel seeks to modify the Order accordingly.

Exception No. 3

(ALJD at 7, lns 15-16 and Appendix)

The Judge's Order requires posting of a Notice to Employees that contains narrow language that inadvertently omits all of the staffing data at issue in the case. The Judge found that Respondent violated the Act by refusing and failing to provide the Union with the information it requested on October 9. However, the Judge's recommended Notice generally references "staffing matrices," which constitutes only a portion of the staffing data that the Union requested and specified in the allegations of the Consolidated Complaint. See ALJD Appendix. Therefore, the General Counsel seeks clarification of the Notice to specify that Respondent will furnish the Union with all of the staffing data (staffing matrices excluded) the Union requested on October 9.

Respectfully Submitted on this 25th day of October 2013,

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