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HOSPITALS

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

DIGNITY HEALTH d/b/a ST. ROSE  
DOMINICAN HOSPITALS,  
  
Respondent,  
  
vs.  
  
MICHAEL S. DELA PAZ, an Individual,  
  
Charging Party.

CASE 28-CA-094717

**RESPONDENT'S ANSWERING  
BRIEF TO ACTING GENERAL  
COUNSEL'S EXCEPTIONS TO THE  
ADMINISTRATIVE LAW JUDGE'S  
DECISION**

Counsel for General Counsel in his brief noted that he litigated the discharge case on three theories; that Dela Paz's discharge was based on his alleged protected concerted activities, that his discharge was based on his violating an alleged overly broad rule, and that his discharge was based on his union activities. Respondent has addressed the first two theories in its Exceptions and in its brief in support of its Exceptions. Said arguments will not be repeated herein. In this brief Respondent will address the allegation that Dela Paz was discharged for union activity.

It is respectfully submitted that the General Counsel presented an argument that is not only faulty, but is grossly misleading. General Counsel notes in his brief that Brad Duda called Dela Paz on June 5 to inform him that he was being placed on administrative leave pending investigation. (GC Brief, p. 2) General Counsel then states:

Later that day, during a bargaining meeting, Dela Paz spoke with a Union representative about his suspension.

(GC Brief, p. 3). This statement has some support in the record, although Dela Paz was on administrative leave pending investigation, and was not “suspended” at that time. However, General Counsel then followed the above statement by stating, with transcript citations, the following:

The Union filed a grievance and scheduled a meeting on the grievance. (73:16-25, 74:1-15).

(GC Brief, p. 3). There is no evidence to support this statement. The cited transcript pages do not support it and the record as a whole does not support it. The record establishes that there was a grievance addressed almost seven months later, probably after the filing of the charge in this case, on December 11, 2012. (TR p. 112). Furthermore, the belated grievance addressed Dela Paz’s discharge, not his suspension or placement on administrative leave. The only reference to any grievance over the administrative leave was made by Counsel for the General Counsel when he asked Duda under 611(c) interrogation whether the Union had filed a grievance over the imposition of administrative leave, and Duda responded that he had no recollection of any such grievance. (TR p. 26).

The juxtaposition of the statement that the Union filed a grievance and scheduled a meeting gives the clear impression that the Union filed a grievance over the placing of Dela Paz on administrative leave. There is absolutely no evidence to support such.

General Counsel then states that Union Vice President Cherie Mancini gave Dela Paz advice about obtaining witness statements. (GC Brief, p. 3). This, standing by itself, is a true statement, but there is no evidence that this advice was given to Dela Paz in support of a Union

grievance. It was given to him in response to his inquiry so that he could prepare to defend himself in the disciplinary investigation process. (TR p. 112).

In General Counsel's continuation of his facts narrative, he states:

On June 12, Dela Paz and his Union representative Debbie Miller met with Duda and Environmental Services Department Supervisor Pam Bylekie.

(GC Brief p. 4). Again, the juxtaposition of this statement in General Counsel's brief makes it appear that the Union had called a meeting with management to address some grievance of Dela Paz. The record does not support such. The meeting on June 12 was an investigatory interview with Dela Paz conducted by Duda. Miller's presence was consistent with investigatory interviews conducted by employers subject to union collective bargaining agreements. In that regard, the Judge noted that Duda testified that he informed the Union that Dela Paz had been placed on administrative leave. (JD p. 2, lines 23-24). This is supported by the record. Duda testified that after he notified Dela Paz that he was being placed on administrative leave, he notified Debbie Miller and Cherie Mancini of the Union about the altercation incident and that he had placed Dela Paz on administrative leave to investigate the incident. (TR pp. 24-26). The Judge found that Duda was a "generally credible witness." Furthermore, it is uncontradicted that Miller said she agreed with the discipline given on June 12 and that she stated that Dela Paz was fortunate he was only suspended. (TR p. 30). In this regard, Dela Paz could have been terminated because he reached the discharge step of Respondent's progressive disciplinary policy. (TR p. 96). There is simply no evidence that Miller initiated the June 12 meeting, or any other meeting with management, or that she in any way supported the position of Dela Paz.

In the Argument section of General Counsel's brief, he asserts that the "Union advised Dela Paz to acquire documentary support in defense of his position and in support of his grievance." (GC Brief, p. 10, emphasis added herein). There is no evidence to support that the advice was in support of any grievance. General Counsel also states that the "Union instructed Dela Paz to take this action with an eye toward the grievance process and arbitration." (GC Brief, p. 10, emphasis added herein). There is no evidence to support this. Furthermore, the idea that the Union ever had any intention to proceed to arbitration is simply ludicrous.

Brad Duda placed Dela Paz on administrative leave pending investigation on June 5. He conducted an investigatory interview on June 12 and issued discipline that same day. On July 3, Dela Paz was terminated. Almost 6 months later, on December 11, 2012, Dela Paz filed the unfair labor practice charge in this case. In early 2013 or late 2012 a grievance concerning the termination of Dela Paz was addressed. (TR p. 112). There is no evidence of any grievance filed or discussed prior to the termination grievance that was addressed in early 2013 or late 2012. There is no evidence of any grievance or discussion of any grievance concerning the administrative leave or the suspension of Dela Paz. None.

Counsel for General Counsel asked a few questions of Dela Paz at the hearing concerning the grievance involving his termination, but set forth no time line of such proceeding. (TR p. 87). Through questioning by Respondent, Union Vice President Mancini pinpointed the grievance proceedings involving Dela Paz's termination as occurring in early 2013 or late 2012. (TR p. 112). She was then asked whether she had previously suggested to Dela Paz action he could take to prepare himself during the disciplinary process. She responded that he had come to her concerning the issue about the altercation with another employee and she suggested to Dela Paz that if he had witnesses to the altercation he could get statements from them. (TR p. 112).

She was then asked whether she reviewed, during the grievance process that was held “several months later”, the documents Dela Paz had previously obtained in the disciplinary process, and she responded that she did. (TR pp. 112-113). She was then asked whether the documents were anything like the documents she suggested that he obtain during the disciplinary process, and she responded that they were not. (TR p. 113).

Counsel for General Counsel also stated in his brief that Dela Paz was “reasonably acting on the Union advice” when he was “forming the petition.” (GC Brief, page 10). Yet Mancini stated that she never suggested that he circulate a petition. (TR p. 113).

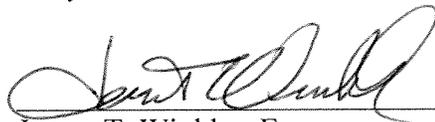
The Judge found that there was no evidence that Respondent had knowledge of Mancini’s advice to Dela Paz. (JD p. 7, lines 35-36). This finding cannot be challenged on the record evidence. Furthermore, the Judge noted that Mancini suggested that Dela Paz obtain statements from people who witnessed the altercation with the other employee, but that the statements and petition obtained by Dela Paz were not responsive to Mancini’s suggestion. (JD p. 7, lines 32-35). The record clearly supports the Judge’s finding in this regard.

One final note should be made. Dela Paz stated that when Duda told him he was on administrative leave, that Duda told him not to talk to other employees or the Union while he was on leave. (TR p. 73). Duda acknowledged telling Dela Paz not to talk to other employees while the altercation incident was under investigation, but specifically denied telling him that he could not talk to the Union. (TR p. 95). As noted, the Judge found Duda to be a generally credible witness and also noted that he discounted certain portions of Dela Paz’s testimony. (JD p. 5, lines 21-23). In the Analysis section of the Judge’s decision he stated: “[Duda] also told Dela Paz not to contact any hospital employees during his leave.” (JD p. 5, lines 38-39). By

adopting Duda's version of the communication with Dela Paz, the Judge *sub silentio* rejected Dela Paz's testimony that Duda told him not to contact the Union.

In conclusion, Duda placed Dela Paz on administrative leave on June 5. He conducted an investigatory interview of Dela Paz on June 12 and issued discipline that same day. Union agent Miller was present at the disciplinary interview and agreed with the discipline. On July 3, Dela Paz was terminated. The Union was present during the termination interview. During this time there was no evidence of any grievance, or any discussion of a possible grievance. There is no evidence of any knowledge by Duda of any communications between Dela Paz and the Union outside of the investigatory interview and the termination meetings. There is simply no evidence to support a Section 8(a)(3) allegation.

Dated in Las Vegas, Nevada, this 18th day of November, 2013.



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**PROOF OF SERVICE**

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 3960 Howard Hughes Parkway, Suite 300, Las Vegas, Nevada 89169. On November 18, 2013, I served the within document(s):

**RESPONDENT'S ANSWERING BRIEF TO ACTING GENERAL COUNSEL'S  
EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

**VIA EMAIL**

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**VIA E-FILING**

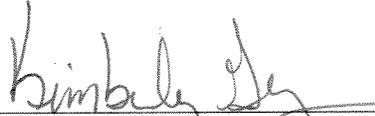
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*Counsel for the Acting General Counsel*

**VIA U.S. MAIL**

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I declare under penalty of perjury that the foregoing is true and correct. Executed on November 18, 2013 at Las Vegas, Nevada.

  
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Kimberly Gregos