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**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 REPLY BRIEF IN
SUPPORT OF RESPONDENT’S
EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE’S
DECISION**

The Alleged Overly Broad Rule

As noted in Respondent’s Brief in Support of Exceptions, the Judge repeatedly noted that Duda told Dela Paz not to contact other employees during Dela Paz’s administrative leave. Accordingly, the prohibition was limited to the duration of the administrative leave. In this regard, Duda informed Dela Paz that he was being placed on administrative leave so that Respondent could investigate the incident involving Dela Paz and Haabibi Araru. Duda also told this to the Union. (TR pp. 23-24). After testifying to such, Counsel for the General Counsel asked: “You said that the suspension was in order to facilitate the investigation, is that correct?” Duda responded: “Correct.” (TR pp. 24-25). Duda again specifically testified that he “told him [Dela Paz] that he was on administrative leave, pending the investigation.” (TR p. 26). Duda also testified that when he issued discipline on June 12 at the conclusion of the investigatory

interview of Dela Paz, such action “closed the investigation.” (TR p. 32, lines 13-14). Accordingly, when Duda issued discipline on June 12, the administrative leave was over, the suspension was over, and the investigation of the incident was over. The admonition not to contact other employees ended as well. There is nothing in the record to dispute this.

In this regard, as noted in Respondent’s Exh. No. 6, Duda informed Dela Paz that he was being placed on administrative leave pending the investigation of the incident with Araru, and that Dela Paz was not to contact any hospital employees during the administrative leave. It is abundantly clear that the prohibition against contacting other employees ended by its terms on June 12. Despite the Judge’s frequent references to the prohibition as being confined to the administrative leave, he nevertheless merged the alleged overly broad rule with the admonition not to retaliate and found that the discharge was apparently in response to both alleged overly broad rules. He never explained how the rules were merged or how the original admonition somehow lived on after June 12. Furthermore, Counsel for the General Counsel has failed to articulate a logical explanation for the merger of the two alleged overly broad rules.

The Written Statement of Dela Paz Given to Brad Wild

General Counsel’s argument that Dela Paz’s written statement that Dela Paz gave to Brad Wild along with other documents was not the reason Dela Paz was terminated is misplaced. Duda stated numerous times that Dela Paz’s going to Wild concerning Haabiba Araru was considered by Duda to be retaliation and was the reason he was discharged. General Counsel asserts that the written statement of Dela Paz was not mentioned by Duda as a reason for the discharge in his initial 611(c) testimony and cites pages 43 and 47 of the transcript. (General Counsel Answering Brief, p. 4). Yet the documents described in said initial testimony do not exclude Dela Paz’s own written statement, and in fact incorporate it. In this regard, the

additional documentation described in the transcript pages cited by General Counsel certainly are not limited to the expanded petition submitted by Dela Paz to Wild. At page 43, Duda described the documents as “the letters or statements from these individuals along with . . . the petition. . .” At page 47 of the transcript, Duda was asked what documents other than the petition had been submitted to Wild by Dela Paz and he stated: “If I recall, he also provided the written statements of, that Mr. Dela Paz had presented to me on June 12.” That included Dela Paz’s own written statement. Dela Paz’s written statement that was presented to Wild had also been given by Dela Paz to Duda on June 12. (TR pp. 92-94, Resp. Exh. 5). Furthermore, Duda clearly referred to Dela Paz’s written statement in later testimony, as conceded by General Counsel.

In any event, it was not the creation of the documents that caused the discharge, it was the act of going to Wild with the documents attacking Araru that caused the discharge. Furthermore, the vitriolic written statement of Dela Paz clearly established that his mission was “personal,” as the Judge found, and was not in furtherance of mutual aid or protection as envisioned by Section 7 of the Act. Finally, the submission of all of the documents to Wild, along with Dela Paz’s *sub silentio* urging to Wild to take action against Araru, would have caused the discharge of Dela Paz even if it is found that his discharge was based in part on protected conduct. Dela Paz was told that there would be ZERO tolerance of any retaliation, and his termination notice noted that Dela Paz approached coworkers and management alike. (GC Exh. 10).

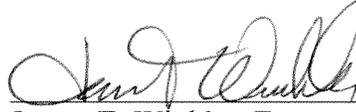
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Based on the above, and the record as a whole, the complaint should be dismissed in its entirety.

Dated in Las Vegas, Nevada, this 4th day of December, 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 December 4, 2013, I served the within document(s):

**RESPONDENT'S REPLY BRIEF IN SUPPORT OF RESPONDENT'S EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

VIA EMAIL

Nathan Higley
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VIA E-FILING

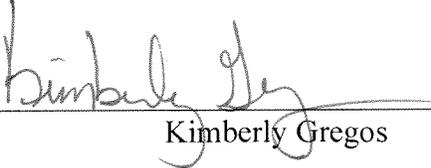
Gary Shinnors
Executive Secretary
National Labor Relations Board
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Washington D.C. 20570-0001

Counsel for the Acting General Counsel

VIA U.S. MAIL

Michael S. Dela Paz
9001 Harbor Wind Avenue
Las Vegas, NV 89178-6277

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 4, 2013 at Las Vegas, Nevada.



Kimberly Gregos