UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIGNITY HEALTH d/b/a ST. ROSE DOMINICAN HOSPITALS

and **Case 28-CA-094717**

MICHAEL S. DELA PAZ, an Individual

COUNSEL FOR THE GENERAL COUNSEL'S REPLY BRIEF TO RESPONDENT'S ANSWER TO COUNSEL FOR THE GENERAL COUNSEL'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

Respectfully submitted,

Nathan Higley
Counsel for the General Counsel
National Labor Relations Board, Region 28
600 Las Vegas Boulevard South, Suite 400
Las Vegas, NV 89101-6637
Telephone: (702) 388-6062
Facsimile: (702) 388-6248
Email: nathan.highley@nlrb.gov

I. INTRODUCTION

In its Answer to Counsel for the General Counsel's (CGC) Exceptions, Respondent takes issue with CGC's allegation that Dela Paz was discharged due to his union activities.

II. LEGAL ARGUMENT

A. CGC Erred in Asserting that Dela Paz Filed a Grievance

Respondent correctly claims that the record does not establish that Dela Paz filed a formal grievance over his suspension, which was converted from administrative leave. CGC made this assertion by mistake based on information not contained in the record. GGC does not dispute Respondent's argument in this regard.

B. Respondent Cannot Show that the Union Did Not Engage in Grievance Proceedings

Although the record does not establish that Dela Paz filed a grievance over his suspension, Respondent's claim that the Union did not request a grievance-like meeting to discuss the matter is not supported by the record. The claim that the June 12, 2012[1] meeting was scheduled by Respondent is not supported by the record. The record does not establish definitively whether it was the Union who scheduled meeting in order to address Dela Paz' concerns or if Respondent scheduled the meeting to continue its investigation. There is some indication that Respondent did not schedule the meeting. In response to CGC's question of what comprised its investigation into the incident that led to Dela Paz' suspension, Respondent's witness answered only, "Going over the documentation, looking over his personnel file and getting more information from the Security Department." (Tr. 25:4-5).[2] See also (Tr. 27:11-22, 29:11-18). The record reveals little more than what occurred during the meeting and who attended; it does not set forth who scheduled it.

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[1] All further dates are in 2012.

[2] (Tr. __:__) refers to page and line or lines of the transcript. ALJD __:__ refers to page and line or lines of the ALJ's decision.

C. The Union's Instructions to Dela Paz Were Given with an Eye Toward Grievance Proceedings

Respondent's further claim that the Union did not instruct Dela Paz to gather statements with an eye toward the grievance process is unreasonable. CGC is at a loss as to why else a collective-bargaining representative would instruct a member to gather documents in his defense. Such instructions serve for little else than to be used in the grievance process. Respondent argues further that the idea that the Union intended to arbitrate the matter is ludicrous. Without evidence of a grievance, Respondent argument is rank speculation.

D. The Union Instructed Dela Paz to Gather Statements

Respondent overlooked or ignored crucial testimony of its own witness when it claimed that the Union played no role in Dela Paz' activities. Respondent cites the transcript as support for its assertion that the Union did not instruct Dela Paz to gather the statements he did. (Tr. 112-113:17-5). Respondent overlooked or ignored later testimony in which the same Union witness admitted that Dela Paz' documents did match her instructions to Dela Paz. (Tr. 114:1-12, 17-19; 115:2-13). Dela Paz' actions and the documents he gathered were according to the Union instructions, which were:

> I had told him that if he had any witnesses to the interaction, that he could get a witness statement and he said, "Well, I'm a good employee, everyone likes me." I said, "Well, then you can go and you can get them to write a credit, like a credibility statement to vouch for you and your behavior and how you work in the hospital."

(Tr. 112:19-24). Furthermore, the Union did not specify what the statements should include:

> A ...I advised him to get statements of anyone who had witnessed it.
> Q Okay. Did you tell him what those statements should entail?
> A No, I did not. (Tr. 116:14-18)

Without such specificity, Dela Paz' action was a reasonable interpretation of the Union's instructions.

E. Respondent Violated the Act by Instructing Dela Paz Not to Speak to Employees

Respondent argues that because it only instructed Dela Paz not to communicate with any employees but did not specify that Dela Paz should not communicate with the Union, that it committed no violation. Respondent ignores the fact that the Union vice president is an employee of Respondent. As argued more extensively in CGC's Exceptions, any rule that may reasonably be interpreted as unlawful is unlawful. *Double D. Construction Group*, 339 NLRB 303, 303-04 (2003). The ALJ's order makes it clear that, whatever his basis – whether he adopted Dela Paz' statement or drew the conclusion just asserted by GCG – he found that Respondent violated the Act in forbidding Dela Paz from speaking with the Union. See ALJD 9:5-6, 23-24.

III. CONCLUSION

The record does not show that the Union failed to engage in the grievance process. In fact, its instructions to Dela Paz were given with an eye toward grievance proceedings, and Dela Paz reasonably complied with those instructions by gathering statements and other documents. Respondent violated the Act when it ordered Dela Paz not to speak with any of Respondent's employees because Dela Paz' Union vice president is an employee. CGC respectfully requests that the Board so find.

Dated at Las Vegas, Nevada this 4th day of December, 2013.

Respectfully submitted,

/s/ Nathan A. Higley

Nathan A. Higley
Counsel for the General Counsel
National Labor Relations Board, Region 28
600 Las Vegas Boulevard South, Suite 400
Las Vegas, NV 89101-6637
Telephone: (702) 388-6062
Facsimile: (702) 388-6248
E-Mail: nathan.highley@nlrb.gov

CERTIFICATE OF SERVICE

I hereby certify that the **COUNSEL FOR THE GENERAL COUNSEL'S REPLY BRIEF TO RESPONDENT'S ANSWER TO COUNSEL FOR THE GENERAL COUNSEL'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION** in Case 28-CA-094717 was served via E-Gov, E-Filing, and electronic mail, on this 4th day of December 2013, on the following:

Via E-Gov, E-Filing:
Gary W. Shinners, Executive Secretary
National Labor Relations Board
Office of the Executive Secretary
1099 14th Street NW – Room 11612
Washington, DC 20570

Via Electronic Mail:
Judy S. Coffin, VP & AGC
Dignity Health
185 Berry St Ste 300
San Francisco, CA 94107-1773
E-Mail: judy.coffin@dignityhealth.org

James T. Winkler, Attorney At Law
Littler Mendelson, PC
3960 Howard Hughes Pkwy, Ste 300
Las Vegas, NV 89169-5937
E-Mail: jwinkler@littler.com

Michael S. Dela Paz
9001 Harbor Wind Ave
Las Vegas, NV 89178-6277
E-Mail: mhike070871@yahoo.com

Cheryl Bunch, Director, Healthcare Division
Service Employees International Union, Local 1107
3785 E Sunset Rd
Las Vegas, NV 89120-6259
E-Mail: cbunch@seiunv.org

/s/ Dawn M. Moore

Dawn M. Moore, Election Assistant
National Labor Relations Board
Region 28 - Las Vegas Resident Office
600 Las Vegas Boulevard South, Suite 400
Las Vegas, Nevada 89101-6637
Telephone: (702) 388-6417
E-Mail: dawn.moore@nlrb.gov