

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

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BETH ISRAEL MEDICAL CENTER, :
Respondent, :
-and- : Case Nos. 02-CA-039486
02-CA-039574
LOCAL 814, INTERNATIONAL :
BROTHERHOOD OF TEAMSTERS, :
Charging Party, :
-and- :
LOUIS GUGLIOTTA, AN INDIVIDUAL, :
Charging Party. :
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NOTICE OF FILING OF FIRST AMENDED ANSWER

On December 22, 2011, Counsel for the Acting General Counsel moved for Summary Judgment and Issuance of a Decision and Order in the above-captioned unfair labor practice case, which is scheduled for hearing before an administrative law judge of the National Labor Relations Board in New York City beginning on February 27, 2012.

On February 6, 2012, Respondent filed a Brief in Opposition to the motion and on February 10, 2012, Counsel for the Acting General Counsel filed a reply. The motion is still pending before the Board.

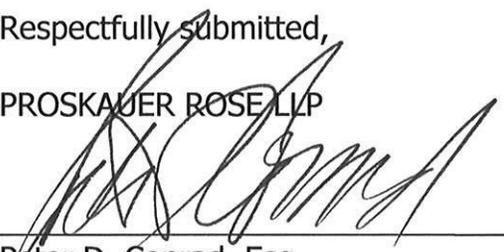
On February 15, 2012, pursuant to Section 102.23 of the Board's Rules and Regulations, Respondent e-filed with the Regional Director a First Amended Answer to the Consolidated Complaint herein, copies of which were served on the same date on all parties to this proceeding. (A copy of Respondent's First Amended Answer is attached.)

Respondent respectfully submits that the Board should make the First Amended Answer part of the record on the pending motion and deny summary judgment for the Acting General Counsel, allowing the February 27, 2012 hearing to proceed.

Dated: February 15, 2012
New York, New York

Respectfully submitted,

PROSKAUER ROSE LLP

By: 

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Respondent, Beth Israel Medical Center, by its attorneys Proskauer Rose LLP, answers the Consolidated Complaint herein as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 1(a) and (b) of the Consolidated Complaint, except admits that the unfair labor practice charges referred to therein were received by Respondent by regular mail after the alleged dates of service.
2. Admits the allegations of paragraph 2(a), (b) and (c) of the Consolidated Complaint.

3. Respondent declines to answer the allegations of paragraph 3 of the Consolidated Complaint, on the grounds that it states a legal conclusion to which no responsive pleading is required.

4. Respondent declines to answer the allegations of paragraph 4 of the Consolidated Complaint, on the grounds that it states a legal conclusion to which no responsive pleading is required, but avers that the Union admits non-guards to membership and, therefore, is not qualified to represent guards as defined in Section 9(b)(3) of the Act, and further avers that by reason of that disqualification the Board may not find any violation of Section 8(a)(5) and 8(d) of the Act based upon the actions alleged in paragraph 6 of the Consolidated Complaint.

5. (a) Respondent declines to plead in response to paragraph 5(a) of the Consolidated Complaint, on the ground that it states a legal conclusion to which no responsive pleading is required, and refers to the collective bargaining agreement between Respondent and the Union that expired on March 15, 2009, for the definition of the bargaining unit formerly represented by the Union.

(b) Denies the allegations of paragraph 5(b) of the Consolidated Complaint, but admits that Respondent and the Union were parties to a series of collective bargaining agreements over the years, the last of which expired on or about March 15, 2009, and that on or about August 30, 2010, the Special and Superior Officers Benevolent Association was certified as the exclusive representative of the employees who had been covered by the agreements between the Union and Respondent.

(c) Respondent declines to answer the allegations of paragraph 5(c) of the Consolidated Complaint, on the ground that it states a legal conclusion to which no responsive pleading is required, but admits, as stated above in paragraph 5(b), that Respondent has been party to a series of collective bargaining agreements with the Union.

6. (a) Denies the allegations of paragraph 6(a) of the Consolidated Complaint, except admits that effective on or about March 15, 2009, the expiration date of Respondent's last collective bargaining agreement with the Union, no further contributions to the Teamsters Local 814 Pension, Welfare and Annuity Funds were remitted by Respondent, and avers that payments of withdrawal liability were made to the Teamsters Local 814 Pension Fund by Respondent beginning on or about January 1, 2010, and continuing to date pursuant to a Notice and Demand for Withdrawal Liability dated November 4, 2009, which was premised on a finding by the Trustees of the Local 814 Pension Fund that Respondent "permanently ceased to have an obligation to contribute to the Fund as of March 15, 2009."

(b) Respondent declines to plead in response to paragraph 6(b) of the Consolidated Complaint on the ground that it states a legal conclusion to which no responsive pleading is required, but avers that based on the Union's lack of qualification to represent guards within the meaning and intent of Section 9(b)(3), there were no mandatory subjects of collective bargaining as between Respondent and the Union for the employees in the unit.

(c) Denies the allegations contained in paragraph 6(c) of the Consolidated Complaint, and avers (i) that Respondent was not under any duty to bargain with the Union effective as of March 15, 2009, (ii) that the Union did not have authority to bargain in good faith with Respondent concerning contributions to the Teamster Local 814 Pension, Welfare and Annuity Funds, (iii) that bargaining with the Union over such terms and conditions of employment (which occurred both before and after expiration of Respondent's last collective bargaining agreement with the Union) was futile because of external contribution requirements imposed on the Union by the Trustees of the Local 814 Funds, (iv) that an impasse arose as a result of the union's inability to negotiate and/or its intransigence with respect to fund contribution rates, and (v) that by reason of all the foregoing, Respondent was privileged to take the action alleged as an unfair labor practice in paragraph 6 of the Complaint.

7. Denies the allegations of paragraph 7 of the Consolidated Complaint.

8. Denies the allegations of paragraph 8 of the Consolidated Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

9. The Consolidated Complaint should be dismissed in whole or part because the Union was and is not qualified to represent a bargaining unit consisting of guards as defined in Section 9(b)(3) of the Act.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

10. The Consolidated Complaint should be dismissed in whole or in part because the Union did not have authority to bargain in good faith with Respondent with

respect to rates of contribution to the Teamsters Local 814 Pension, Welfare and Annuity Funds.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

11. The Consolidated Complaint should be dismissed in whole or in part because it was futile for Respondent to engage in good faith collective bargaining with the Union with respect to rates of contribution to the Teamsters Local 814 Pension, Welfare and Annuity Funds, inasmuch as the Union was unable to agree to rates other than as required by the Trustees of the Funds, thereby creating an impasse in negotiations.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

12. The Consolidated Complaint should be dismissed in whole or in part because the claims asserted therein are time-barred by Section 10(b) of the Act.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

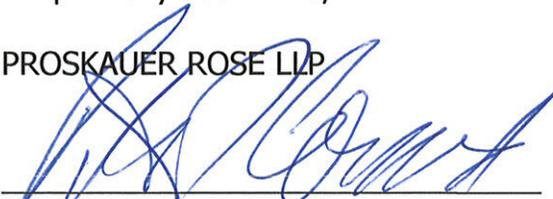
13. The Consolidated Complaint should be dismissed in whole or in part for failure to state a claim for relief under the National Labor Relations Act.

WHEREFORE, the Consolidated Complaint should be dismissed in its entirety, together with such other and further relief as may be just and proper in the circumstances.

Dated: New York, New York
February 15, 2012

Respectfully submitted,

PROSKAUER ROSE LLP

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CERTIFICATE OF SERVICE

This will certify that Respondent's Notice of Filing of First Amended Answer to the Consolidated Complaint in Case Nos. 02-CA-039486 and 02-CA-039574 was served on February 15, 2012, on the following persons by electronic mail or overnight mail, as indicated:

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