UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON D.C.

In a Matter Between:	)	
	)	
MARINA DEL REY HOSPITAL	)	Cases 31-CA-029929
	)	
Respondent,	)	
and	)	
	)	31-CA-029927
CALIFORNIA NURSES ASSOCIATION,	)	31-CA-029930
	)	31-CA-030027
and	)	31-CA-030143
	)	31-CA-030161
SERVICE EMPLOYEES INTERNATIONAL	)	31-CA-030191
UNION, UNITED HEALTHCARE	)	31-CA-030200
WORKERS-WEST,	)	31-CA-030214
	)	31-CA-065298
Charging Parties.	)	31-CA-066063
	)	31-CA-066064
	)	31-CA-069336
	)	31-CA-071809
	)	31-CA-077075
	)	

CALIFORNIA NURSES ASSOCIATION'S REPLY BRIEF TO HOSPITAL'S ANSWERING BRIEF TO CROSS-EXCEPTIONS

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Pursuant to NLRB Rules and Regulations §102.46, Charging Party, California Nurses Association ("CNA" or the "Union"), submits this reply brief to Marina Del Rey Hospital's (the "Employer") Answering Brief to Cross-Exceptions to the Decision of the Administrative Law Judge.

I. ARGUMENT

The "No Access" Policy at issue is unlawful notwithstanding the ALJ's erroneous conclusion "that employees clearly understand that if the Hospital specifically directs them to perform duties they will be paid for the performance of those duties."

The controlling law in this matter is clear: under *Sodexo America LLC*, 358 NLRB No. 79, slip op. at 2 (2012), the Respondent's "No Access" Policy is unlawful because it gives the Employer free rein to set the terms of off-duty employee access. Applying this precedent, the Administrative Law Judge correctly concluded that the "No Access" Policy violated Section 8(a)(1). However, for reasons that are entirely unclear, he erroneously concluded that employees would understand that "duties as specifically directed by management" would require the Hospital to pay the employee for the time spent performing those duties. (ALJD, p. 11.) Neither the record evidence nor logic supports this conclusion.

In its Answering Brief, the Employer wrongly asserts that the testimony of its Director of Human Resources, Margaret Morgan, supports the Administrative Law Judge's conclusion, claiming that Morgan "clearly testified that if management specifically assigns an employee to perform a duty, the employee will be paid for it." (Answering Brief, p. 3.) In truth, the benighted Morgan had no idea what the Policy meant with respect to other mysterious "duties" that management might specifically direct an off-duty employee to perform, and her testimony on this point was hardly illuminating. For instance, when asked what sorts of other duties the Employer assigned to its off-duty employees, i.e. those to whom the "No Access" Policy actually applied, Morgan was befuddled and admitted that the question mystified her: "I can't think of

any [such duties.] I can only say this is the handbook we inherited from Tenet, we haven't changed it and I don't know when they wrote it what they were thinking." (Tr. 605:8-14.) In other words, since the record evidence provides no support for the Administrative Law Judge's gratuitous interpretation of the "No Access" Policy, the Union's exceptions on this point must be granted.

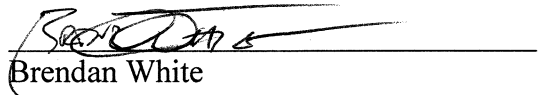
In its Answering Brief, the Employer also wrongly asserts that the Union does not contest Morgan's credibility. In fact, everyone including the Administrative Law Judge found Morgan's credibility to be lacking. (See, e.g., ALJD, p. 4 at n. 5: "I completely discredit Morgan's explanation as to why the Hospital did not indicate it had revised that policy. Rather, I agree with the General Counsel's observation in his brief that this 'suggests at best [that the Hospital] acted misleadingly, and at worst, dishonestly.'") But ultimately, Morgan's lack of candor is irrelevant because the Act is not concerned with an Employer's disingenuous and self-serving interpretations of its own policies. The only relevant question is whether the "No Access" policy as drafted interferes with, coerces, or restrains employees in the exercise of rights protected by the Act. The Administrative Law Judge answered that question correctly—it does.

II. CONCLUSION

Since there is no evidentiary support for the Administrative Law Judge's erroneous interpretation of the "No Access" Policy, and since the Employer's Answering Brief fails to cure this unfortunate defect in an otherwise important and thoughtful decision, the Union's exceptions should be granted.

DATED: May 24, 2013

Respectfully submitted,



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PROOF OF SERVICE

The undersigned hereby declares under penalty of perjury that I am a citizen of the United States, over the age of eighteen years, not a party to the within action and that my business address is 2000 Franklin Street, Oakland, California 94612.

On the date below, in addition to e-filing these papers with the NLRB, I served the following documents:

CALIFORNIA NURSES ASSOCIATION'S REPLY BRIEF TO HOSPITAL'S ANSWERING BRIEF TO CROSS-EXCEPTIONS

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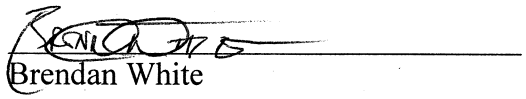
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 24, 2013, at Oakland, California.



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