

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

In the Matter of

OLEAN GENERAL HOSPITAL,

Respondent,

-and-

NEW YORK STATE NURSES ASSOCIATION,

Charging Party.

**RESPONDENT'S EXCEPTIONS
TO THE DECISION
OF THE ADMINISTRATIVE
LAW JUDGE**

**Case Nos. 03-CA-097918
03-CA-104444
03-CA-104462**

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Respondent, **OLEAN GENERAL HOSPITAL** (the "Hospital"), by its attorneys, **JAECKLE FLEISCHMANN & MUGEL, LLP** (James N. Schmit, Esq. and Michael E. Hickey, Esq., Of Counsel), hereby sets forth its exceptions to the Decision of the Administrative Law Judge, The Honorable Arthur J. Amchan ("ALJ"), in the above referenced matter dated September 24, 2013, which was transferred to the Board by order dated September 24, 2013, as follows:

1. The ALJ erred in finding that the Hospital violated the Act by failing to engage in decisional bargaining with respect to the at-issue Dedicated Education Unit Program ("DEU Program") (ALJ Decision¹ *passim*).

¹ Citations in the form "ALJ Decision" refer to the Decision of the Administrative Law Judge, The Honorable Arthur J. Amchan ("ALJ"), in the above referenced matter dated September 24, 2013.

2. The ALJ erred in failing to even consider the threshold issue of whether the Hospital had a duty to bargain over the DEU Program; upon consideration of this issue, the ALJ should have concluded that no such duty to bargain existed (ALJ Decision *passim*).
3. The ALJ improperly concluded that Section 10.13 of the relevant Collective Bargaining Agreement did not cover this situation (ALJ Decision at 4).
4. The ALJ's decision to distinguish the past practice between the Hospital and the Union is not supported by the record (ALJ Decision at 4).
5. The ALJ erred in finding that the DEU program "differed materially from prior programs and what is contemplated by the parties' collective bargaining agreement." (ALJ Decision at 6).
6. The ALJ's finding that, with respect to the DEU Program, "unlike the other training programs for student nurses, no clinical instructor from Alfred State was present during the on-site training of the student nurses" is not supported by the record. (ALJ Decision at 3-4).
7. The ALJ improperly concluded that a stipend provided by a third party constituted a "unilateral wage increase" by the Hospital (ALJ Decision at 4).
8. The ALJ erred in finding that the Hospital was obligated to provide information with respect to the DEU Program (ALJ Decision at 6).
9. The ALJ erred in finding that the Hospital was obligated to engage in effects bargaining with respect to the DEU Program (ALJ Decision at 6).
10. The ALJ's finding that the Hospital failed to provide information and engage in effects bargaining with respect to the DEU Program is not supported by the record (ALJ Decision at 6).

