

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

COLUMBIA MEMORIAL HOSPITAL

and

**1199 SEIU UNITED HEALTHCARE
WORKERS EAST**

**Cases 03-CA-120636
03-CA-122557
03-CA-124333
03-CA-124803
03-CA-124816**

**GENERAL COUNSEL'S ANSWERING BRIEF
TO RESPONDENT'S EXCEPTIONS TO THE
DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Submitted by

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Pursuant to Section 102.46(d)(1) of the Board's Rules and Regulations, Counsel for the General Counsel hereby submits this Answering Brief in response to Respondent's Exceptions to the Decision of Administrative Law Judge Kenneth W. Chu (ALJ), dated January 12, 2015, in the above-captioned cases. Under separate cover, General Counsel also files with the Board on this date Cross-Exceptions and a brief in support of the Cross-Exceptions. It is respectfully submitted that in all respects, other than what is excepted to in General Counsel's limited Cross-Exceptions, the findings of the ALJ are appropriate, proper and fully supported by the credible record evidence.

I. PRELIMINARY STATEMENT

The ALJ found that Respondent committed numerous unfair labor practices. More specifically, the ALJ concluded that Respondent violated Section 8(a)(1) of the Act by promulgating and maintaining an overly broad work rule that proscribes disclosure of confidential information, including employee information. (ALJD at 30:34-37).¹ The ALJ also found that Respondent violated Section 8(a)(3) and (1) of the Act by disciplining employee Cindy Northrup with a verbal warning and suspension because she engaged in union activity. (ALJD at 30:27-28). Finally, the ALJ found that Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish relevant and necessary information for the fair representation of Cindy Northrup in the grievance process and by unilaterally promulgating an access card policy. (ALJD at 30:30-33; 39-41).

¹ Throughout this brief the following references will be used: ALJD at ___:___ for the Administrative Law Judge's Decision at page(s): line(s); GC Exh. ___ (at ___) for General Counsel's exhibit (at page number); R Exh. ___ (at ___) for Respondent's exhibit (at page number) and Tr. at ___ for transcript page(s).

II. ARGUMENT

A. The ALJ properly concluded that a discriminatory animus motivated Respondent's discipline of employee Northrup.

Respondent excepts to the ALJ's finding that it violated Section 8(a)(3) and (1) of the Act by disciplining Cindy Northrup with a verbal warning and suspension because she engaged in union activity. (ALJD at 30:27-28). In making that finding, the ALJ employed the two-prong standard established in Wright Line, 251 NLRB 1083 (1980) for determining if an employer's explanation for an adverse action is unlawful and in fact discriminatorily motivated. (ALJD at 9:41-43). Under the first prong, the General Counsel must establish a prima facie showing that the employee's protected activity was a motivating factor for the employer's adverse action. The Board has inferred unlawful motive based on an employer's failure to conduct a meaningful investigation into alleged wrongdoing of a discriminatee, by failing to give employees an opportunity to explain actions, or by making only a perfunctory investigation. New Orleans Cold Storage Co., 326 NLRB 1471 (1998). Under the second prong, the burden shifts to the employer to demonstrate it would have taken the same action absent the employee's protected activity. Wright Line, 251 NLRB 1083 (1980).

The first prong in turn consists of four elements that must be demonstrated by the General Counsel; first, the existence of an activity protected by the Act; second, that the employer was aware of such activity by the employee; third, that the employee suffered an adverse employment action; and fourth; that there is a nexus between the protected activity and the adverse employment action. In the decision the ALJ identified each of the four elements and found that the General Counsel had satisfied each, thus establishing a prima facie inference that Northrup's protected conduct of engaging in activity as a union delegate motivated Respondent's decision to discipline her. (ALJD at 10:12-13, 17-18).

On the first three elements there is no dispute. Northrup is an open Union delegate and supporter who was present in the hospital on the night of December 26, 2013 in order to attend the Union's monthly meeting. (Tr. at 213-214). Respondent, including Human Resources Director Kelly Sweeney, knew by the following day, at the latest, that Northrup attended the meeting. (GC Exh. 33). Northrup did in fact suffer adverse action by means of a verbal warning on January 8, 2014² and a suspension on February 11. (GC Exhs. 10, 20). On the fourth element, the ALJ properly found that the timing of Northrup's discipline supported the inference that Respondent's action was motivated by Northrup's protected activity, thus the General Counsel's prima facie case. Regarding this first prong of the Wright Line test, Respondent has made three specific exceptions which are addressed in order.

1. Northrup did not make dishonest statements and thus did not engage in any activity that would cause her to lose the protection of the Act. (Respondent's Exceptions 1, 2, 3, and 11)

Respondent submits that Northrup engaged in conduct that was deliberately deceptive and dishonest and that the Act does not offer protection for such conduct, even where it is linked to an employee's otherwise protected activity. Here, Northrup received two disciplines, a verbal warning on January 8, and a suspension on February 11, ostensibly for allowing Union Vice President Rosa Lomuscio into the building and for dishonesty about her recollection of the events of the night of December 26, 2013. (GC Exhs.10, 20). The ALJ applied a Wright Line analysis to both disciplines and found that Respondent violated Section 8(a)(3) and (1) of the Act in both instances. (ALJD at 9:41-43, 30:27-28).

Northrup's act of using her swipe card to grant Lomuscio access to the building, which resulted in her verbal warning, is not an activity containing elements of honesty or dishonesty.

² All dates are 2014 unless otherwise noted.

Whether or not Northrup later attempted to conceal such action can be subject of an inquiry on honesty, but not the act itself. Thus, nothing that occurred on December 26, 2013 removed Northrup from the protection of the Act by means of ‘deliberate dishonesty.’ Respondent appears to conflate the two disciplines and mistakenly reasons that Northrup lost the protection of the Act on the night of December 26, 2013 because of alleged dishonest statements on January 2, 3 and 28, 2014. Instead, the issue of dishonesty has no bearing on Respondent’s first discipline of Northrup, the verbal warning.

Turning to Northrup’s second discipline, the five-day suspension, Respondent claims that it was issued due to Northrup’s dishonesty at the interviews with her supervisor Shanda Steenburn on January 2 and 3 and at the grievance meeting on January 28. At the January 2 interview, Steenburn questioned Northrup about whether she had returned to the hospital after work on December 26, 2013 and if she had let anyone into the building. Northrup truthfully confirmed that she had in fact been in the building, that she often let people in through the Prospect Avenue entrance, and that she did not recall if anyone entered with her on that particular occasion. (Tr. at 228-229). Steenburn even prefaced her own questions by saying she would not be surprised if Northrup could not remember the specific date. (Tr. at 227).

At the January 3 interview, Steenburn specifically asked if Northrup had let Lomuscio into the hospital on December 26, 2013 to which Northrup answered that she could not recall. (Tr. at 234-235). While Northrup did in fact allow Lomuscio into the building that evening, the fact that she could not recall on those particular occasions is not tantamount to deliberately deceptive or maliciously false behavior as Respondent suggests. Northrup made numerous admissions to Steenburn in both interviews including that she had in fact been in the building on the night of December 26, 2013, had entered through the Prospect Avenue door, and that she

does frequently hold it open for others. Northrup's answer that she 'did not recall' left open the possibility that she had in fact let Lomuscio into the building on the night of December 26, 2013 and was likely prudent to not commit herself to any particular version of events when she did not recall.

In essence, by stating she did not recall, Northrup took no position on whether or not she opened the door for Lomuscio on the day in question. Northrup did not make a blanket denial about granting Lomuscio access to the building. As the ALJ properly found, taking no position on a matter does not amount to engaging in deliberately deceptive or maliciously false behavior and therefore Northrup did not lose the protection of the Act by her conduct in the January 2 or 3 interviews. (ALJD at 6:42; 7:1-3, 11:43).

Respondent further claims that it strains credibility that Northrup would not have spoken to Lomuscio between the January 2 and 3 interviews and thus had her memory refreshed. This claim is unreasonable. The interviews were conducted on two consecutive days and there is no presumption that the two would even have had time to speak or that Northrup normally reports to Lomuscio on a daily or even weekly basis.

Respondent submits that Northrup's deceptive and false conduct was most egregious during the grievance meeting on January 28. Respondent erroneously represents the events of the meeting and alleged statements by Northrup as undisputed fact. According to Respondent, Sweeney asked Northrup about the events of December 26, 2013 and Northrup again repeated that she 'did not recall' if she let Lomuscio into the building or not. (Tr. at 481-482). However, there is contradictory testimony regarding what occurred at the grievance meeting. Lomuscio, Northrup, and Union administrative organizer Tim Rodgers testified that at the grievance meeting, Northrup at most stated her agreement with Lomuscio that Sweeney's investigatory

questions were irrelevant after discipline had been issued. (Tr. at 96-97, 241-242, 318-319). Conversely, Sweeney testified that Northrup again repeated that she did not recall letting Lomuscio in the building. (Tr. at 481-482). However, the ALJ's finding that "it is also understandable and reasonable for an employee not to self-incriminate him or herself," recognizes Northrup's choice to remain silent at the grievance meeting and to allow the Union to conduct the meeting. (ALJD at 11:39-41, 45-46). Assuming Northrup did voice that Sweeney's questions were irrelevant such a statement is not a reaffirmation that she 'did not recall.' Instead it represents Northrup's proper understanding of the purpose of a grievance meeting. A grievance meeting is not a forum for Respondent to continue its investigation into whether or not it should issue discipline. A grievance meeting occurs after an employer has already issued discipline and is held for the purpose of the union and employer determining if the discipline was supported by just cause. For all the reasons herein, Northrup did not engage in deliberately dishonest behavior, did not remove herself from the protection of the Act, and the ALJ correctly concluded the same.

2. The record establishes multiple links, in addition to timing, between the protected activity and adverse action. (Respondent's Exceptions 2, 3, and 9)

Respondent submits that the ALJ erred in finding the fourth element of the Wright Line analysis, nexus between the protected activity and the adverse action, because the ALJ allegedly relied on timing alone. The General Counsel disputes Respondent's assertion that the ALJ relied solely on the timing between Northrup's delegate activities on December 26, 2013 and the discipline issued to her on January 8.

The record as a whole establishes several links between Northrup's protected activity and the disciplines. As even Respondent indicated, these links can be established by inconsistencies between the proffered reasons for the discipline, disparate treatment of employees who have

similar work records and offenses, divergence from the employer's past practices, and temporal proximity between the discipline and Union activity, all of which are present in the instant record. Embassy Vacation Resorts, 340 NLRB 846, 848 (2003).

Here, Northrup was ostensibly disciplined for allowing a visitor, Lomuscio, into the hospital through a particular door and without signing in. As Respondent knows that Lomuscio is a frequent visitor to the facility, logic would dictate that Respondent would inform her not to enter through that door in the future and without signing in. However, Respondent's separate communications to Northrup and Lomuscio is where its shifting justifications for discipline begin and indicates its true discriminatory motivation. Respondent's December 30, 2013 letter to Lomuscio stated that its problem regarding December 26, 2013 was the fact that the Union had been in the main lobby. (GC Exh. 6). The letter raised no issues about the time of day or night, about which entrance the Union used to get into the building, or about whether the Union signed in. Instead, the issue raised was solely about physical location, the main lobby. Incongruently, the January 8 discipline form to Northrup defines the problem at issue as being the means by which the Union entered the building and its failure to sign in. (GC Exh. 10). The discipline form raises no issue about the lobby, the time of day, or what the Union or 'unauthorized visitor' did once inside the building. The issue is solely the method of access.

The decision to discipline Northrup for allowing an unauthorized visitor onto the premises is further revealed as based on an unlawful Section 8(a)(3) motivation because it was disparate. Respondent introduced no evidence that any other employee has ever been disciplined for facilitating unauthorized access, failing to require a visitor to sign in, or misuse of a swipe card. (Tr. at 562). Northrup is the sole example. The Union is likewise unaware of such action ever being a source of discipline before. (Tr. at 87). Respondent has presented no evidence that it

ever monitored which doors employees, patients, and visitors use, or whether employees held doors open for groups of employees or non-employees. Respondent has presented no evidence that it ever tracked down a visitor who failed to sign in and then ordered that individual to return to the front lobby and write his or her name in the sign in book. Respondent has never instructed hospital security or employees, let alone a staff pharmacist, to act as hall monitors. (Tr. 223, 260-261). Respondent's act of disciplining an employee for facilitating access and allegedly creating a security risk at the Prospect Avenue entrance is particularly disingenuous because the current and previous Directors of Human Resources have themselves held this door open for the Union. (Tr. at 62-63).

The hospital has been in operation for many decades and due to its size and twenty-four schedules it can safely be surmised that many tens or hundreds of people enter and exit the building each day. As the testimony of Lomuscio, Northrup, and Rodgers has established, Respondent did not enforce its previously unwritten policy of requiring all visitors to sign in and its employees to police the various doorways. (Tr. at 62-63, 222-223, 310-311). If Respondent did have a completely objective safety concern about visitors not signing in and employees granting them access through side doors, it defies credibility that the only two culprits of such activity, in thirty or more years of hospital operations, were the Vice President of the Union, Lomuscio, and an openly active Union delegate, Northrup.

Respondent's claim that its policy of requiring visitors to sign in is critical to safety is not believable. Respondent submits that it is a sound policy, so that security can identify who is in the building during an emergency. However, as the policy does not require visitors to sign out, security would not know if visitors had in fact left the building and would be needlessly searching for a visitor, possibly long after he or she left. (GC Exh. 5; Tr. at 528). If Respondent

truly enforced the policy as strictly as it claims, such an obvious flaw would have been identified long ago.

Here, the record shows not only Respondent's failure to display comparable discipline, but actual examples of employees engaging in the same activity as Northrup and not being disciplined. On the night of December 26, both hospital security and Nursing Supervisor Cindy Blair walked through the main lobby and saw Lomuscio, Northrup, and other delegates and members seated there. Neither Security nor Blair had any way of knowing whether Lomuscio had been there since 10:30 a.m. or had just arrived, of knowing if she had signed in, or of knowing which entrance she had come through. Yet seemingly neither Security nor Blair took any interest in these questions or acted on need to confront Lomuscio. In fact, the night passed quietly. If Security had believed Lomuscio was an actual threat they would have removed her immediately, instead of waiting days and making a report at the behest of Human Resources.

The most glaring example of Respondent's unlawful 8(a)(3) motivation and disparate standards for Northrup occurs at about 9:45 p.m. on December 26, 2013. At about that time Lomuscio and Northrup left the building through the Prospect Avenue entrance, Northrup went home, but Lomuscio walked around the building and reentered through the front lobby doors. (Tr. at 69). Lomuscio was able to get in the locked front door because employee Kim Bishop opened it from the inside. (Tr. at 69). There is no practical difference between Bishop opening the lobby door from the inside to let Lomuscio in, or Northrup using her swipe card at Prospect Avenue to let Lomuscio in. Nonetheless, security, Blair, and Bishop were not disciplined or investigated for facilitating unauthorized access or failing to require a visitor to sign in, only Northrup.

The Board has identified employers' disparate discipline of employees, departure from past practice when imposing discipline, and shifting explanations for adverse actions as evidence of unlawful discriminatory motives. See Naomi Knitting Plant, 328 NLRB 1279, 1283 (1999) (employer disciplined only open union supporter for same conduct engaged in by two other employees); Regal Recycling, Inc., 329 NLRB 355, 356-357 (1999) (employer required only supporters of disfavored union to produce immigration documents); JAMCO, 294 NLRB 896, 905 (1989) (employer's method of layoff selection was "clear departure from prior practice" in direct response to union activity); Seminole Fire Protection, 306 NLRB 590, 592 (1992) ("Evidence showing that an employer gave shifting reasons for action against an alleged discriminatee, illustrates that those reasons are pretextuous").

Similarly here, Northrup alone was disciplined because of the nature of Respondent's investigation into the incident. In this instance Respondent undertook to identify Northrup on the surveillance cameras not because it regularly plays back the footage to check for unauthorized visitors of any kind, but because it was specifically looking for a Union delegate. Respondent has introduced no evidence that it regularly employs such security protocols, but for the fact that it knew a Union meeting was occurring on December 26, 2013.

**3. Allegedly lesser discipline is not dispositive of anti-Union animus.
(Respondent's Exceptions 4 and 9)**

Respondent submits that the ALJ's finding of anti-Union animus is refuted by the fact that Respondent issued a less severe discipline to Northrup, a five-day suspension, than to other employees who allegedly engaged in dishonesty, who were terminated. In support of this proposition Respondent cites to Dish Network Corporation, 359 NLRB No. 108, slip op. at 10 (April 30, 2013). There the employer decided to discipline an employee only once for three separate violations and the Board interpreted this action as "willingness to offer rehabilitation by

subjecting him to a less onerous penalty [which] contradicts an invidious [anti-Union] intent.” 359 NLRB slip op. at 10. Respondent’s reliance on Dish Network is misplaced, as the Board did not rule that imposition of a lesser discipline is dispositive of whether or not anti-union animus is present. Rather, the imposition of a less severe discipline on a Union supporter merely cuts against an argument that the employer had an unlawful motive and does not absolve the Board from weighing other factors connected to the discipline.

Here, Sweeney testified that Northrup was given a five-day suspension and not a termination, because Respondent took into account, “her long years of service and excellent performance as a Pharmacist.” (Tr. at 533-534). However, Respondent does not argue that taking into account Northrup’s seniority and performance history was a special leniency that it reserved only for Northrup. Here, the ALJ properly found that the examples of discipline for dishonesty offered by Respondent are not comparable. (R Exhs. 8-11; Tr. at 532-533). The alleged comparable disciplines offered by Respondent involved falsification of timesheets, wage theft, and harm to patients, all far more serious matters than Northrup’s alleged dishonesty and for which termination was likely appropriate. The General Counsel does not concede that Northrup engaged in any dishonesty. However, simply stating that she ‘does not recall’ an incident does not involve the same seriousness as dishonesty that results in financial loss to Respondent or harm to patients. Thus Northrup’s conduct warranted a less severe discipline by its very nature.

B. The ALJ properly concluded that absent Northrup’s Union activity Respondent would not have taken the same adverse action against her.

Turning to the second prong of the Wright Line standard, Respondent submits that even if the General Counsel has made a prima facie showing of unlawful motivation, that it would have issued the same discipline absent protected activity. On this second prong, the evidentiary

burdens shifts to the employer and it must show that it had a reasonable belief that the alleged misconduct occurred and warranted discipline. Wright Line, 251 NLRB 1083 (1980).

Here Northrup received two distinct disciplines, a verbal warning and a suspension, and Respondent must demonstrate that it would have issued both regardless of Northrup's delegate activities. (GC Exhs. 10, 20). Regarding the first discipline, there is no factual dispute that Northrup used her swipe card to let Lomuscio into the facility on the night of December 26, 2013. Also not in contention is Respondent's right to create reasonable safety rules for access to the facility as stated in Arbitrator Selchick's Award, as long as Respondent promulgates rules that would not otherwise violate the Act or contract as unilateral action. (GC Exh. 3). The primary dispute concerning this discipline is Respondent's motivation for choosing Northrup specifically on the night of December 26, 2013 to suddenly begin enforcing a policy that had otherwise not been enforced. (Tr. at 87).

Regarding the second discipline, Respondent claims that Northrup engaged in dishonesty on January 2, 3, and 28. There is no dispute that Northrup stated in her interviews with Steenburn on January 2 and 3 that she 'did not recall' if she let anyone into the facility on the night of December 26, 2013. The General Counsel maintains these were truthful statements. Also in dispute and on which there is contradictory testimony, is what Northrup said, if anything, at the grievance meeting on January 28. On this second prong Respondent takes several exceptions to the ALJ's finding that Respondent did not satisfy its burden, which are addressed in order herein.

1. The ALJ's decision did not turn wholly on Respondent's lack of written rules. (Respondent's Exceptions 6 and 10)

Respondent takes exception to the ALJ's supposed reasoning that Respondent did not have a reasonable belief that Northrup committed misconduct, by finding that no specific written policy prohibited her acts.

Regarding Northrup's alleged misconduct for use of the swipe card, the ALJ stated, "[w]hile it is reasonable to assume that the card holder would know not to swipe someone else in, it is entirely a different matter not to have written objective standards in place and to discipline an employee for that assumption." (ALJD at 11:33-35). However, the ALJ did not base his decision in this regard solely on the lack of a written rule on the use of swipe cards. The ALJ also stated, and the record reflects, that no other employee had ever been disciplined for improper use of his or her swipe card. (ALJD at 11:27-28; Tr. at 562). It is incredible to believe that no other employee has ever misused his or her swipe card and that Respondent could not have identified such misuse if it was interested in doing so, by using the cameras and computer record of card activity that the record established are already in place. (R Exh. 14; Tr. at 608-610). The ALJ found credible the testimony of Rodgers and Northrup that other employees have abused their swipe cards and that Respondent had not provided uniform instructions to employees on the use of their swipe cards. (ALJD at 11:28-33).

Regarding Northrup's alleged misconduct for dishonesty, the ALJ stated, "Respondent definitely failed to articulate the objective standard in defining dishonesty to justify the suspension." (ALJD at 11:47-48). Respondent has convoluted the ALJ's reasoning in this regard. The ALJ's decision does not state that 'but for' an employer having a written objective disciplinary policy, it cannot have a reasonable belief as to employee misconduct. Respondent cites to 6 West Limited Corp. v. NLRB, 237 F.3d 767, 778 (7th Cir. 2001) for the proposition that an employer is "entitled to rely on its good faith belief about falsity, concealment, and so forth." Here, however the General Counsel has argued that the entire interviewing of Northrup was conducted in bad faith by Respondent and the investigation into the alleged intruder on the night of December 26, 2013 was tainted by anti-Union animus from the outset.

In support of its argument that it harbored a good faith belief about the insincerity of Northrup's answer Respondent stated, "uncontroverted evidence in the record establishes that on three (3) occasions in January, 2014 Ms. Northrup told Company representatives that she did not remember bringing anyone into the Hospital." This statement is entirely disingenuous. As stated above, the General Counsel and Northrup have never conceded that Northrup stated she 'did not recall,' a third time at the January 28 grievance meeting. Contrary to Respondent's "uncontroverted evidence" the record contains conflicting testimony about what was stated on January 28, to which the ALJ's decision is silent on the specifics. (Tr. at 96-97, 241-242, 318-319).

Here, the ALJ properly found that Respondent could not have a good faith doubt as to Northrup's sincerity because it has not established a consistent objective standard for dishonesty. Respondent treated Northrup's 'do not recall' statements on January 2 and 3 and her silence on January 28 as being equally dishonest, but silence is not dishonesty. The ALJ's finding that "it is also understandable and reasonable for an employee not to self-incriminate him or herself," can reasonably be read to refer to Northrup's silence on January 28 and not the granting of permission to employees to be dishonest. Accordingly, there is nothing improper about the ALJ's decision in this regard.

2. Respondent's evidence did not include similar instances of discipline for dishonesty. (Respondent's Exceptions 5, 6, and 7)

The ALJ properly concluded that Respondent "produced no evidence of other employees who have been disciplined for using the access card on behalf of another individual" and that "[n]o examples were proffered by the Respondent of comparative discipline of employees charged with dishonesty for refusing to provide an answer during an investigative interview." (ALJD at 12:8-9, 12-14). Respondent excepts to these findings and submits that it has

demonstrated closely analogous prior disciplines that support its position that it would have issued the same discipline to Northrup even absent her protected activity. The ALJ has properly characterized Respondent's examples as distinguishable from Northrup's disciplines. As stated above, the allegedly similar disciplines involved falsification of time sheets, constructive cover-ups of what had occurred, and harm to patients. (R Exhs. 8-11). These disciplines are not comparative as they do not involve an employee being asked a question, either during the normal course of work or during an investigation, and being dishonest in response. The ALJ was not so narrow as to classify comparative instances as being only those where an employee failed to recall or refused to identify someone, but encompassed refusals to cooperate during investigatory interviews. The record reflects that Respondent did not provide any examples of employees being disciplined for granting a visitor access without requiring the visitor to follow the sign-in procedure or misuse of a swipe card. (Tr. at 562).

3. The record supports the ALJ's finding that there was an environment of animus. (Respondent's Exceptions 4 and 8)

The ALJ properly concluded that Respondent had an intense interest in the Union's presence on December 26, 2013. (ALJD at 15:23-25). Respondent excepts to this finding and argues that Respondent, particularly through Sweeney, had an interest only in the Union's location in the hospital, not its presence there. This is a distinction without a difference.

Respondent further takes exception to the ALJ's finding that Respondent never intended to truly investigate the matter at issue. Respondent's failure to conduct a thorough and complete investigation is supported by the fact that on the night of December 26, 2013, not only Northrup, but also Union delegate Kimberly Bishop allowed Lomuscio into the facility without requiring her to sign in. However, as related above, Respondent did not uncover this fact during its

investigation as it had an unlawful objective to ‘catch’ delegate Northrup and discipline her for granting access to Lomuscio.

III. CONCLUSION

For all the reasons set forth above, General Counsel respectfully requests that the Board deny Respondent’s Exceptions to the Decision of the Administrative Law Judge in their entirety.

DATED at Albany, New York, this 23rd day of February 2015.

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