

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

COLUMBIA MEMORIAL HOSPITAL

and

1199 SEIU, UNITED HEALTHCARE WORKERS EAST

**Case No.:
03-CA-132367**

**RESPONDENT, COLUMBIA MEMORIAL HOSPITAL'S
EXCEPTIONS TO THE ADMINISTRATIVE
LAW JUDGE'S DECISION**

**LOMBARDI, WALSH, DAVENPORT
AND AMODEO, P.C.**

Paul E. Davenport, Esq.
Attorneys for Columbia Memorial Hospital
187 Wolf Road, Suite 211
Albany, New York 12205
Tel. No.: (518) 438-2000

Dated: March 30, 2015

Pursuant to Section 102.46 of the NLRB's rules and regulations, the Respondent, Columbia Memorial Hospital (hereinafter "the Hospital") submits the following exceptions to the recommended findings of facts and conclusions of law as set forth in Administrative Law Judge, Steven Davis's February 20, 2015 Decision. Concurrently with these exceptions, the Hospital is submitting a brief that sets forth the factual grounds and legal authorities supporting the exceptions.

The Hospital takes exception to the following findings of fact and conclusions of law:

1. Page 12, lines 42-43: The ALJ's finding that "It (Union) needed the information in furtherance of its obligations to represent the unit employees".

2. Page 15, line 55, and lines 5-12: That the information requested listed below are relevant to the Union's role to police the contract:
 - (a) The dates and times of all calls made to agencies in the past 12 months to avoid the use of mandatory overtime;
 - (b) The number of agency nurses used by the employer in the past 12 months, including dates, shift and unit worked;
 - (c) The number of times the employer used and/or attempted to use agency nurses in the last 12 months, including dates and agencies of the nurses; shift and detail explanation of the emergency for each time a nurse was mandated over the past twelve months; and

(d) Any and all documentation showing the employer attempted to prevent mandating over the past 12 months.

3. Page 15, line 26-34; page 15, line 50; p. 16, line 55 and line 5: The ALJ's reliance on Ms. Bishop's anecdotal evidence that she and other nurses did not recall seeing agency nurses working, as one of the basis for filing the voluminous information request was relevant.
4. Page 16, line 35-36: The ALJ's finding that all information requested, as set forth in Exception 2 above is required to be furnished to the Union.
5. Page 17, line 45-50: The ALJ's findings characterizing the Hospital's argument against the information requests were not timely and relevant solely due to the 10 day limitation of filing grievance in the parties' collective bargaining agreement, without analyzing the additional grounds based upon the proof that at least two (2) prior grievances on the same subject were filed and resolved between the parties, and the specific language in the request limited the demands to the pending grievance.
6. Page 17, line 11-23; p. 17, line 36-40: The ALJ's finding that the Union's information request were for the purpose of the Union policing and enforcing the Collective Bargaining Agreement, and as such was relevant.

7. Page 17, line 25-28: The ALJ's finding that the Hospital failed to produce evidence that the information requests was complex, voluminous and burdensome to provide.

8. Page 19, lines 15-34: The ALJ's finding that the Hospital violated Sections 8(a)(1) and 8(a)(3) of the Act by failing and refusing to supply the following information:
 - (a) Dates and times of all calls made to agencies over the last 12 months to avoid the use of mandatory overtime.

 - (b) Number of agency nurses used by the Hospital over the past 12 months, to include date, shift, and unit worked.

 - (c) Copies of any and all nursing agency contracts utilized by the Employer over the last 12 months.

 - (d) Number of times the Employer used and/or attempted to use agency nurses over the last 12 months, including dates and agencies. Name, shift, and detailed explanation of emergency for each time a nurse was mandated over the last 12 months.

- (e) Any and all documentation showing the employer's attempt to prevent mandation over the last 12 months.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Paul E. Davenport", written over a horizontal line.

PAUL E. DAVENPORT
Counsel for the Respondent
Columbia Memorial Hospital
187 Wolf Road, Suite 211
Albany, New York 12205
Tel. No.: (518) 438-2000