

*United States Government*  
*National Labor Relations Board*  
OFFICE OF THE GENERAL COUNSEL

## Advice Memorandum

DATE: June 4, 2015

TO: Charles L. Posner, Regional Director  
Region 5

FROM: Barry J. Kearney, Associate General Counsel  
Division of Advice

SUBJECT: Providence Hospital  
05-CA-142996

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The Region submitted this Section 8(a)(1) case for advice as to whether a nurse lost protection of the Act by knowingly or recklessly making false statements when she made public statements regarding how her Employer — a hospital — had failed to train its nurses to treat potential Ebola patients. We conclude that the nurse did not lose protection of the Act because there is no conclusive evidence that her statements were actually false. Furthermore, even if the statements were found to be false, there is no evidence that the nurse spoke with “actual malice,” i.e., knowledge that the statements were false or with reckless disregard for truth or falsity.

### FACTS

Providence Hospital (“Providence” or the “Employer”) is a 408-bed hospital located in Washington, DC. Nurse A began working for the Employer as a registered nurse in the Emergency Care Center (ER) in December 2012. From time to time, Nurse A was required to participate in Employer-sponsored trainings where the hospital introduced a new medical protocol. During these trainings, nurses would attend a class outside of their scheduled shifts, which typically included hands-on demonstrations and opportunities for nurses to practice new skills. The nurses were required to pass a test in order to use the new protocol when treating patients.

In September 2013, National Nurses United (the “Union”), began a campaign to organize the Employer’s nurses. Nurse A was very active throughout the Union organizing campaign. After a Board election, the Union was certified as the representative of the Employer’s approximately 380 nurses in December 2013.

During the parties’ negotiations for an initial collective-bargaining agreement in the summer of 2014, the Union made proposals to improve the nurses’ safety and

health training. Due to the Ebola outbreak in West Africa and reports of hundreds of healthcare workers contracting the virus while treating Ebola patients, the Union asked the Employer to provide information on the hospital's preparations to treat potential Ebola patients and protect employees from infection. The Union also proposed that the Employer obtain personal protective equipment similar to hazmat suits and instruct employees on properly using that equipment to prevent infection.

In August 2014,<sup>1</sup> the Employer adopted a protocol regarding Ebola based on recommendations from the Centers for Disease Control ("CDC"). The protocol consisted of a two-page memorandum explaining how Ebola is transmitted; providing directions on how to screen potential Ebola patients; and directing medical staff to use protective equipment, such as gowns and gloves, when treating Ebola patients. The Employer did not immediately provide ER nurses with information regarding the protocol; instead, on October 3, the Employer sent a copy of the memorandum to the ER nurses by email attachment. The subject of the email was titled "Protocol," but the body of the email message did not contain any text.

The hospital's ER department routinely holds short meetings between the night and morning shifts called "huddles." During huddles, supervisors or managers make announcements and the staff shares information about ER patients. On October 13, shortly after the first cases of Ebola were confirmed in the United States, the ER held a regular morning huddle. After the ER director spoke to the staff for approximately fifteen minutes regarding other matters, the ER's clinical educator spoke for a few minutes about the Employer's Ebola protocol. The clinical educator also stated that the ER had a cart with supplies and equipment that should be used to treat a potential Ebola patient.<sup>2</sup>

On October 17, the Employer held a few "town hall" meetings on Ebola and invited all employees to attend. During these meetings, the Employer showed attendees power-point slides on Ebola and the hospital's Ebola protocol. The power-point slides included pictures of hazmat suits to be worn when treating Ebola patients; the slides were also sent by email to all hospital staff. Nurse A was working the night shift and did not attend the town hall forums because of her work and sleep schedule. The Employer's CEO also sent an email to all employees on October 17, stating that the hospital had adopted the CDC-recommended protocol for treating

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<sup>1</sup> All dates *infra* are 2014 unless otherwise noted.

<sup>2</sup> Nurse A, who was finishing a 12-hour night shift on the morning of October 13, does not recall attending a huddle in which the Ebola protocol was discussed but states that she most likely attended if the Employer's records show that she was there. The Employer has submitted evidence that Nurse A did not clock out until 7:49 A.M., which it claims is after the morning huddle would have ended.

potential Ebola patients and that, “to date, we have...established and provided specific training for associates on how to put on, remove and dispose of [proper personal protective equipment].”

On October 21, the ER’s clinical educator gave Nurse A a nine-page guidance document printed from the CDC website regarding the use of personal protective equipment when caring for Ebola patients. The document stated that all healthcare workers involved in the care of Ebola patients “must have received repeated training and have demonstrated competency in performing all Ebola-related infection control practices and procedures[.]” The document also stated that the proper personal protective equipment for healthcare workers included a full face shield or helmet with a respirator and impermeable gowns, similar to a hazmat suit, as well as boots and gloves to eliminate any skin exposure. The document specified that, prior to working with Ebola patients, healthcare workers must have the opportunity to engage in “repeated practice” donning and doffing the equipment “while being observed by a trained observer” and also must be required to “demonstrate competency” and show “proficiency and comfort with performing required duties while wearing [the equipment].” When Nurse A received the guidance document, the ER nurses did not have access to the type of personal protective equipment described in the guidance document and the Employer had not conducted any demonstrations or provided the nurses with an opportunity to practice using such equipment.

On October 24, the District of Columbia City Council Committee on Health held a “public roundtable” where representatives of hospitals, unions, and healthcare workers were invited to testify regarding Ebola preparedness. Several nurses, including Nurse A, testified about preparations at their respective institutions. The Union president — a nurse at another area hospital — spoke first. She testified that the Union wanted to ensure that nurses had access to proper equipment and training. Proper equipment, according to the Union’s president, included full-body hazmat suits. She explained further that proper training meant “continuous, on-site, interactive training” that would prepare nurses to use the protective equipment and treat Ebola patients without exposing themselves to the virus. After the Union president spoke, a nurse who worked at another hospital testified that nurses generally had no experience wearing hazmat suits and had no opportunity to learn proper donning and doffing to avoid exposure to a virus like Ebola. That nurse also explained that some employees at his hospital had participated in drills to practice treating Ebola patients but that many more healthcare workers still needed that type of training.

Nurse A testified next. She read a prepared statement that was written by a Union representative based on what Nurse A and other Providence nurses had reported. While reading the statement, Nurse A testified that the Employer was not prepared for treating Ebola patients and that nurses could easily become infected with Ebola. She also stated that the Employer “has shown [nurses] power-point

presentations about Ebola and...samples of new protective gear,” but that “we have yet to actually receive the gear in my department nor have we been trained or drilled in donning and doffing.” Nurse A concluded her prepared testimony by stating that the Union had proposed that the Employer provide “optimal personal protective equipment...including full-body hazmat suits” and “continuous interactive training with the [nurses] who are exposed to potentially infected Ebola patients.”

After the nurses and Union representatives testified, City Councilmembers asked the participants questions. The City Council’s committee chairperson asked Nurse A to explain what level of training she had received on Ebola, and Nurse A responded, “None whatsoever....Providence Hospital has not given us any formal training....The only thing we have been given is a print-out page...from a CDC webpage.” In response to another question, Nurse A confirmed that there had been no Ebola drill at Providence. Nurse A also stated that the nurses were scared because they knew that many healthcare workers had contracted the virus while treating Ebola patients, including other nurses in the U.S., and that the Providence nurses did not feel prepared to protect themselves or their patients.

After the panel of nurses completed their testimony, the Employer’s chief medical officer was invited to address the City Council. The medical officer testified that the Employer had created an Ebola protocol in August and updated it as recently as October 16. Responding to questions from a council member, the medical officer agreed that all employees in the ER needed to be prepared for potential Ebola patients. The medical officer also stated that Providence had held multiple town hall meetings and posted information on its intranet to provide information on Ebola preparations. She also stated that trainings had been conducted in individual departments, including the ER, but she did not specify what the trainings involved. The medical officer also stated that upgraded personal protective equipment had just arrived at Providence.

After the City Council roundtable, Providence sent more emails to its employees regarding Ebola preparedness. However, ER nurses did not receive any training in the form of demonstrations or drills for using the newly-acquired upgraded protective equipment that the medical officer referred to in her City Council testimony.

On November 12, the Union held a one-day strike in support of its efforts to reach agreement on an initial collective-bargaining agreement. Joined by Union members from other area hospitals, employees picketed with signs highlighting the Union’s efforts to improve Ebola preparation and protect healthcare workers from infection. RT, an international news network, covered the strike and interviewed Union representatives and nurses. According to RT’s news segment, the nurses were striking to protest insufficient protection of healthcare workers who have to treat

Ebola patients.<sup>3</sup> Nurse A spoke on camera during the news segment and stated, “We have not received any training; we have not seen any hazmat suits; we have not received a basic even show-how. We were handed out a CDC printout from the website, which is very sad, and told to read it.” Two other Providence nurses spoke during the segment as well. Nurse B stated that the nurses needed the right equipment, including hazmat suits. Nurse C commented that the Texas nurses who had contracted Ebola while treating a patient had been unfairly blamed but that the Texas hospital was actually to blame because that hospital had been unprepared to care for Ebola patients. All of the nurses were identified as Providence employees during RT’s news segment.

A CBS news affiliate also covered the November 12 strike. In a story on its website, it quoted Nurse C as saying, “We are not prepared for Ebola, despite what management is telling the residents and the DC City Council[.] . . . We have not been trained, the equipment has not been identified.”<sup>4</sup>

The following day, the Employer suspended Nurse A and told her that it was investigating her public statements. The Employer’s investigative summary, dated December 4, concluded that Nurse A’s testimony at the DC City Council public roundtable and her statement during the RT news segment that employees had not received Ebola training were “materially false.” On December 13, Nurse A received a termination notice, which referred to her “no training” statements at the City Council roundtable. The notice claimed that Nurse A had attended an Ebola training session on October 13, that she was “well aware that such training was being conducted at the hospital,” and, therefore, that her public statements were “false and malicious” and warranted termination. No other nurses were disciplined or discharged as a result of their public statements regarding the Employer’s Ebola preparedness.

### ACTION

We conclude that Nurse A did not lose the protection of the Act because there is no conclusive evidence that her statements regarding the Employer’s Ebola training were objectively false. Furthermore, even if the statements were found to be false,

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<sup>3</sup> The RT news segment can be viewed at: <http://rt.com/usa/204979-nurses-ebola-strike-protest/> (last visited May 28, 2015).

<sup>4</sup> The CBS news story can be viewed at: <http://washington.cbslocal.com/2014/11/12/d-c-hospital-nurses-strike-over-Ebola-other-issues/> (last visited May 28, 2015).

there is no evidence that Nurse A spoke with “actual malice,” i.e., knowledge that her statements were false or reckless disregard for the truth or falsity of her statements.<sup>5</sup>

As a threshold matter, Nurse A’s public statements about Ebola preparedness were protected concerted activity. Section 7 includes the rights of employees to communicate with third parties and obtain their support regarding an ongoing labor dispute as long as the communication is not “so disloyal, reckless, or maliciously untrue as to lose the Act’s protection.”<sup>6</sup> Here, the Employer does not dispute that Nurse A’s statements were protected activity but rather claims that the statements lost protection because they were false and malicious.<sup>7</sup>

In considering whether a communication loses the Act’s protection because it is “reckless or maliciously untrue,” the Board applies the test for “malice” enunciated by the Supreme Court in *New York Times v. Sullivan*<sup>8</sup> and *Linn v. Plant Guards*.<sup>9</sup>

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<sup>5</sup> The Region also requested advice regarding whether Nurse A’s statements were protected by the Act under the “Guideline Memorandum Concerning ULP Charges Involving Political Advocacy,” GC Memorandum 08-10, dated July 22, 2008. Since there is no allegation that Nurse A’s conduct was a type of political activity too distinct from the nurses’ workplace interests to be protected by Section 7, we do not need to consider that line of analysis here.

<sup>6</sup> *E.g., MasTec Advanced Technologies*, 357 NLRB No. 17, slip op. at 5 (July 21, 2011), citing *NLRB v. Electrical Workers Local 1229 (Jefferson Standard)*, 346 U.S. 464 (1953).

<sup>7</sup> The Employer may also assert that Nurse A’s statements lost protection because they were “so disloyal,” but we would reject this argument. Nurse A’s statements were clearly related to the Union’s efforts to improve training and safety for nurses and did not generally denigrate the Employer’s services. And the statements were not otherwise so incommensurate with the employees’ grievances as to show that their purpose was to harm the Employer in a manner unrelated to the labor dispute. *Compare Allied Aviation Service Co. of New Jersey*, 248 NLRB 229, 231 (1980) (finding employee’s letter to airline industry employer’s customers emphasizing safety concerns was sufficiently related to ongoing labor disputes regarding discipline and job classifications to be protected, despite employer’s sensitivity to employees publicizing safety concerns), *enforced mem.*, 636 F.2d 1210 (3d Cir. 1980), *with Five Star Transportation*, 349 NLRB 42, 45 (2007) (bus driver’s letters lost protection because criticisms had no relation to driver’s legitimate concerns about terms and conditions of employment and used inflammatory language intended to damage the employer’s reputation), *enforced*, 522 F.3d 46 (1st Cir. 2008).

<sup>8</sup> 376 U.S. 254, 280 (1964).

Under this standard, a statement is maliciously false if it is made with knowledge of falsity or reckless disregard of truth or falsity.<sup>10</sup> Thus, statements that are merely false or mistaken do not lose the protection of the Act.<sup>11</sup> The Board and courts also have recognized that statements in hotly contested labor campaigns are often statements of opinion or figurative expression, “rhetorical hyperbole” incapable of being proved true or false in any objective sense.<sup>12</sup> An employer bears the burden of proving that an employee’s statements were false and that those false statements were made with knowledge of falsity or reckless disregard of truth or falsity.<sup>13</sup>

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<sup>9</sup> 383 U.S. 53, 61 (1956).

<sup>10</sup> See, e.g., *MasTec*, 357 NLRB No. 17, slip op. at 5 (finding technicians did not make maliciously false statements by failing to disclose details of employer’s practice of charging technicians for failing to connect customers’ satellite service to their home phone lines because the statements fairly reflected technicians’ personal experiences under the employer’s pay scheme).

<sup>11</sup> See, e.g., *KBO, Inc.*, 315 NLRB 570, 570 (1994) (finding employee’s inaccurate claim that the union had a recording of a supervisor stating that the employer was financing its anti-union campaign with employees’ profit sharing funds was not reckless or maliciously false because employee reasonably relied on union’s statements), *enforced mem.*, 96 F.3d 1448 (6th Cir. 1996).

<sup>12</sup> *Steam Press Holdings, Inc. v. Hawaii Teamsters and Allied Workers Union, Local 996*, 302 F.3d 998, 1006 (9th Cir. 2002) (in the “heated and volatile setting” of a labor dispute, “even seemingly ‘factual’ statements take on an appearance more closely resembling opinion than objective fact”) (citation omitted); *Valley Hospital Medical Center*, 351 NLRB 1250, 1253 (2007) (“[I]n the context of an identified, emotional labor dispute, the fact that an employee’s statements are hyperbolic or reflect bias does not render such statements unprotected.”), *enforced mem. sub nom. Nevada Serv. Employees Int’l Union Local 1107 v. NLRB*, 358 F. App’x 783 (9th Cir. 2009).

<sup>13</sup> See generally *American Hospital Association*, 230 NLRB 54, 56 (1977); see also *Beverly Health & Rehabilitation Services*, 346 NLRB 1319, 1321 n.16 (2006) (finding employer failed to proffer any specific evidence to disprove employee’s allegedly false statements).

**a. The Employer has not established that the communications were false statements of objective fact.**

First, the Employer has not carried its burden to demonstrate that Nurse A made objectively false statements regarding Ebola training. According to the Employer, Nurse A's October 24 testimony that the nurses had not received training on Ebola was false because, beforehand, the hospital had orally explained its Ebola protocol during the ER nurses' October 13 huddle and shared written memoranda regarding Ebola with the nurses. The Employer also asserts that it had publicized this Ebola training and the town hall forums regarding Ebola that were open to all employees. However, the Employer's definition of "training" — orally explaining protocol and sharing memoranda with employees — differs from how the term was used during the City Council roundtable. Nurse A and the other speakers at the roundtable discussed "training" in terms of "hands-on demonstrations" and "drills," including demonstrations of donning and doffing personal protective equipment and allowing nurses to practice that skill. This definition of training is also consistent with the Union's negotiating position, of which the Employer was well aware. Viewed in this context, Nurse A's statements at the City Council roundtable and during the RT interview that the Employer had provided "no training" regarding Ebola preparedness were referring to the absence of this kind of hands-on training. Furthermore, during both the public roundtable and the RT interview, Nurse A acknowledged that the Employer had provided Ebola-related resources to the nurses, i.e., her references to the power-point slides and CDC guidance, even though she implied that this did not constitute "training." Although Nurse A did not mention the October 13 huddle (involving a brief oral explanation of its protocol), which she did not recall attending, such an omission does not make her statements false.<sup>14</sup>

Moreover, the Employer does not claim that nurses actually received the kind of *hands-on* training to which Nurse A was referring. At most, the Employer has established that nurses received oral instructions and written memoranda. Even the Employer's chief medical officer, who defended the hospital's Ebola preparations in her City Council testimony, did not claim that any hands-on training or drills had

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<sup>14</sup> Cf. *MasTec*, 357 NLRB No. 17, slip op. at 5 (satellite television technicians' failure to disclose to journalist the details of their employer's practice of financially penalizing technicians reflected personal experience and formed no basis to conclude that their statements regarding those penalties were false).

taken place. Therefore, the Employer has not shown that Nurse A's "no training" statements were objectively false.<sup>15</sup>

Second, the Employer also has failed to demonstrate actual falsity because Nurse A was arguably conveying her *opinion* that the Employer had not conducted "training," rather than making a statement of objective fact. That is, in stating that the Employer provided no "training," Nurse A was communicating her view that distributing written materials or making power-point presentations, without hands-on demonstrations or drills, was not actual training. Indeed, Nurse A openly acknowledged that the Employer had provided some Ebola resources. Thus, since her "statement of opinion" did "not imply an assertion of objective fact," it "cannot be proven false."<sup>16</sup> Accordingly, the Employer will be unable to satisfy its burden.

**b. The Employer has not established that the communications were made with knowledge of falsity or reckless disregard of truth or falsity.**

Even assuming that the Employer proves that Nurse A's statements were false, it will nonetheless bear the additional burden of establishing that the communications were *maliciously* false. For the reasons described below, the Employer will not be able to satisfy that burden.

Employee statements that are malicious, i.e., "knowingly false" or made with "reckless disregard of truth or falsity," are not protected.<sup>17</sup> Reckless disregard of

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<sup>15</sup> *Cf. Sprint/United Management Co.*, 339 NLRB 1012, 1018 (2003) (finding email with claim that anthrax had been found at employer's facility included statements lacking any factual basis).

<sup>16</sup> *Carpenters Local 1827 (United Parcel Service)*, 357 NLRB No. 44, slip op. at 3 n.3 (Aug. 11, 2011) (citing *Linn v. Plant Guards*, 383 U.S. at 53) (finding that union banner calling company a "Greedy Corporate Citizen" contained a First Amendment-protected message and, therefore, did not threaten, coerce, or restrain within the meaning of Section 8(b)(4)(ii)(B)); *see also Valley Hospital Medical Center*, 351 NLRB at 1254 (finding nurse's hyperbolic public statements about "doubling of the patient load" failed to accurately express that the situation was temporary but that the statements were protected nonetheless given context of ongoing emotional labor dispute).

<sup>17</sup> *E.g., Ogihara America Corp.*, 347 NLRB 110, 113 (2006) (finding employee lost protection when he engaged in deliberate falsification by sending damaging information to employer using another employee's name); *Sprint/United Management*, 339 NLRB at 1012 n.2 & 1018 (employee's email regarding anthrax

truth or falsity is defined as having “serious doubts as to the truth” of a statement or having a “high degree of awareness of...probable falsity.”<sup>18</sup> Thus, an employee’s false statement that resulted from an incorrect perception or mistake does not remove the Act’s protection.<sup>19</sup> Thus, this is a *subjective* standard; it is immaterial how the statements would be objectively understood.<sup>20</sup>

Here, the Employer has not met its burden to show that Nurse A knew that her statements were false or that she had serious doubts or a high degree of awareness of probable falsity. Rather, Nurse A conveyed her good-faith recollection that neither she nor any other hospital staff members had received the type of “hands-on” training that the Union believed was necessary to protect nurses from contracting Ebola.

First, the evidence shows that Nurse A held a good-faith belief that “training” for Ebola would involve hands-on demonstrations, drills, and tests. In Nurse A’s experience, the Employer had previously provided this kind of hands-on training when implementing new medical protocols. In addition, the Union’s position was that only hands-on, interactive training would adequately protect the nurses from Ebola, and Nurse A, as a Union activist, consistently conveyed that position. Further, the Employer’s communications to Nurse A and other hospital employees indicate that Ebola preparedness would involve “hands-on” training. Indeed, the Employer sent emails to all employees on October 14, stating that it had “provided specific training for associates on how to put on, remove and dispose of [personal protective equipment],” and on October 27, stating that it had “continued drills and hands-on training” during the past week.<sup>21</sup> And the CDC guidance document that the

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contained reckless and deliberately false statements); *HCA/Portsmouth Regional Hospital*, 316 NLRB 919, 919 & n.4 (1995) (employee “essentially admitted” using false rumor to discredit supervisor and lost protection).

<sup>18</sup> *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968) (citation omitted).

<sup>19</sup> See *Tradewaste Incineration*, 336 NLRB 902, 906 (2001) (employee did not lose protection for posting flyer containing erroneous information about new employee’s wages where many employees mistakenly believed that new employee was receiving favorable treatment, absent evidence the flyer contained deliberately or maliciously false information).

<sup>20</sup> Under the *New York Times v. Sullivan* defamation standard, a plaintiff must provide evidence about the speaker’s state of mind to prove awareness of probable falsity. See *St. Amant v. Thompson*, 390 U.S. at 731.

<sup>21</sup> As mentioned above, there is no evidence that “drills and hands-on training” regarding Ebola preparedness occurred prior to Nurse A’s public statements.

Employer provided to Nurse A stated that, prior to working with Ebola patients, healthcare workers must have the opportunity to engage in “repeated practice” donning and doffing the specialized protective equipment “while being observed by a trained observer” and also must be required to “demonstrate competency” and show “proficiency and comfort with performing required duties while wearing [the equipment].” Therefore, Nurse A’s statements reflected a good-faith belief that Ebola “training” would include interactive demonstrations and drills.<sup>22</sup>

Second, Nurse A believed in good faith that neither the ER staff nor other hospital staff had received this kind of “hands-on” Ebola training. As a full-time ER nurse, Nurse A knew that she would have participated if such training had occurred in the ER or at least would have been made aware of it by coworkers, particularly given the Union’s position on training. And, given the ER’s role in treating acute medical emergencies (such as Ebola), Nurse A had good reason to believe that if hands-on training had not been provided to ER nurses, it also had not been provided in other departments.<sup>23</sup> Further, at the time of the City Council roundtable, the Employer had only just received the upgraded personal protective equipment, so Nurse A had no reason to believe that any hospital employees had received “hands-on” training to don, doff, and otherwise use the equipment. And finally, although only Nurse A’s subjective belief is relevant under the “malice” standard, it is significant that Nurse C made similar public statements regarding a lack of Ebola training on November 12, the same day as Nurse A’s statement in the RT news segment. This can only bolster a finding that Nurse A had a good-faith belief that the Employer had not provided Ebola “training,” as that term is understood by the nurses and their Union, and also clearly intended by the CDC documents.<sup>24</sup> Therefore, even assuming that Nurse A’s statements that the Employer’s staff had not received Ebola training

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<sup>22</sup> Cf. *HCA/Portsmouth Regional Hospital*, 316 NLRB at 919 (finding employee recklessly spread false rumor in a malicious attempt to harm supervisor’s reputation).

<sup>23</sup> Indeed, the Employer’s chief medical officer testified at the City Council roundtable that she believed that all ER staff needed to be prepared to treat potential Ebola patients, as opposed to a specially-designated Ebola team.

<sup>24</sup> If evidence arises that Nurse A also relied on information from coworkers or the Union when she said that there had been no Ebola training at the hospital, her statements will not lose the Act’s protection even if she repeated that information without verifying its accuracy. See, e.g., *KBO, Inc.*, 315 NLRB at 570-71, 571 n.6 (employee who relied in good faith upon information from union not obligated to independently investigate union’s claims and did not act with reckless disregard of the truth when he repeated those claims).

were incorrect statements of fact, we conclude that they were not made with reckless disregard for the truth, let alone any actual knowledge that the statements were false.<sup>25</sup>

In sum, the Employer has not met its burden to show that Nurse A's statements were actually false and, furthermore, even if it can show objective falsity, there is no evidence that Nurse A's statements were knowingly false or made with reckless disregard for truth or falsity. Therefore, Nurse A's public statements about working conditions remain protected, and the Region should issue complaint, absent settlement, alleging that Nurse A's discharge violated Section 8(a)(1).

/s/  
B.J.K.

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<sup>25</sup> Nurse A's brief statement during the RT news segment also reflected RT's editorial decisions that were beyond her control. *See MasTec*, 357 NLRB No. 17, slip op. at 5-6 n.12 (employees who merely responded to reporter's questions not held responsible for newscast's allegedly misleading statements).