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15 UNITED STATES OF AMERICA
16 NATIONAL LABOR RELATIONS BOARD
17 REGION 32

18 AMERICAN MEDICAL RESPONSE WEST,

No. 32-CA-147259 and 32-CA-149437

19 And

**BRIEF IN SUPPORT OF CROSS
EXCEPTIONS**

20 UNITED EMERGENCY MEDICAL SERVICE
21 WORKERS, AFSCME LOCAL 4911, AFL-CIO

22 **I. INTRODUCTION**

The Charging Party files this Brief in support of the Cross-Exceptions as described below.

23 **II. THE CHARGING PARTY JOINS IN THE LIMITED EXCEPTION FILED BY
COUNSEL FOR GENERAL COUNSEL**

24 The Counsel for General Counsel filed a limited Exception and the Charging Party joins
25 in that exception and the Brief submitted by the Counsel for the General Counsel.

26 **III. PIEDMONT GARDENS SHOULD BE APPLIED**

27 The only reason the Board did not apply *Piedmont Gardens* 362 NLRB No 139 (2015) to
28 the facts of that case was on a theory it created a “manifest injustice.” See Page 6. Here none of
the relevant factors were asserted or proved by the Respondent as to why the Board’s Decision in
Piedmont Gardens should not apply. The ALJ failed to analyze the relevant factors in

1 determining retroactivity. See ALJD p. 8. The conduct at issue here arose during a period when
2 the employer was well aware that Board law was changing. *Piedmont Gardens* should be applied
3 to this case.

4 **IV. THE REMEDY IS INADEQUATE**

5 The employer should be required to post permanently the Board's ill-fated employee
6 rights Notice. <https://www.nlr.gov/poster> The Courts that invalidated the rule requiring the
7 Notice posting indicated that such a Notice could be part of a remedy. The groups that opposed it
8 argued it could only be part of a remedy for specific unfair labor practices. It is time for the
9 Board to impose the requirement for a lengthy posting of that Notice as a remedy for unfair labor
10 practices.

11 Additionally, any Notice that is posted should be posted for the period of time from when
12 the violation began until the Notice is posted. The Board's traditional Notice period of 60 days
13 only encourages employers to delay proceedings, because the Notice posting will be so short and
14 so far in the future. By the time it is posted there will be so much turnover few of the remaining
15 employees will have any recollection of the events. A longer posting period will discourage
16 delay.

17 The Board's Notice and the Decision of the Board should be mailed to all employees who
18 have worked for the employer from the time the unfair labor practice was committed until the
19 Notice is mailed. Simply posting the Notice without further explanation of what occurred in the
20 proceedings is not adequate notice for employees. The Board Decision should be mailed to
21 former employees and provided to current employees. Mailing should be by US mail and email.¹

22 The Board should craft a letter to send with any mailing which explains in general that the
23 employer has been found guilty of unfair labor practices and that they are encourage to read the
24 enclosures to learn about this.

25 Notice reading should be required in this matter. That Notice reading should require that
26 a Board Agent read the Notice and allow employees to inquire as to the scope of the remedy and

27 ¹ We recognize that as time passes on the email address and street addresses may not be accurate.
28 If the employer delays for more than a year, the employer should be required to do an address
update though available sources to find more up-to-date addresses.

1 the effect of the remedy. Simply reading a Notice without explanation is inadequate.
2 Behavioralists have noted that, “[t]aken by itself, face-to-face communication has a greater
3 impact than any other single medium.”² Research suggests that this opportunity for face-to-face,
4 two-way communication is vital to effective transmission of the intended message, as it “clarifies
5 ambiguities, and increases the probability that the sender and the receiver are connecting
6 appropriately.”³ Accordingly, a case study of over five hundred NLRB cases, commissioned by
7 the Chairman in 1966, strongly advocated for the adoption of such a remedy, recommending
8 “providing an opportunity on company time and property for a Board Agent to read the Board
9 Notice to all employees and to answer their questions...”⁴ The employer should not be present.
10 The Union should be notified and allowed to be present. This should be on work time and paid. If
11 the employees are working piece rate the rate of pay should be equal to their highest rate of pay to
12 avoid any disincentive to attend the reading.

13 The traditional Notice is also inadequate. The standard Board Notice should contain an
14 affirmative statement of the unlawful conduct. We suggest the following:

15 We have been found to have violated the National Labor Relations
16 Act. We illegally failed and refused to provide information to your
17 Union which it needed to represent you. We have agreed provide
that information and we have agreed not to refuse to commit the
same violation of the law in the future.

18 Absent some affirmative statement of the unlawful conduct, the employees will not
19 understand the arcane language of the Notice. Nor is the Notice sufficient without such an
20 admission. In effect, the way the Notice is written it is the equivalent of a statement that the
21 employer will not do specified conduct, not an admission or recognition that it did anything
22 wrong to begin with. It can be read by many as a denial of misconduct and only a statement of
23 not engaging in further like conduct.

24
25 ² Stuart M. Klein, Management Communication Strategy for Change, JOURNAL OF
26 ORGANIZATIONAL CHANGE MANAGEMENT, Vol. 9.2 (1996) at 34

27 ³ Id.

28 ⁴ Phillip Ross, “The Labor Law in Action: An Analysis of the Administrative Process Under the
Taft-Hartley Act”, 32 (Sept. 1966), available at
<http://babel.hathitrust.org/cgi/pt?id=mdp.35128001041431;view=1up;seq=15>

1 The Notice should require that the person signing the Notice have his or her name on the
2 Notice. This avoids the common practice where someone scrawls a name to avoid being
3 identified with the Notice, and the employees have no idea who signed it.

4 The employees should be allowed work time to read the Board's Decision and Notice. To
5 require that they read the Notice whether by email, on the wall or at home on their own time is to
6 punish them for their employer's misdeeds.

7 Other remedies might be appropriate in other cases. Broad orders, multiple readings,
8 readings by the president of the employer are all possible. Charging Party does not seek those
9 remedies in this case.

10 **V. CONCLUSION**

11 For the reasons suggested above, these Cross-Exceptions should be granted and the
12 Decision of the Administrative Law Judge be modified as requested.

13 Dated: January 27, 2016

WEINBERG, ROGER & ROSENFELD
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15 By: /S/ DAVID A. ROSENFELD
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1 **PROOF OF SERVICE**
2 **(CCP §1013)**

3 I am a citizen of the United States and resident of the State of California. I am employed
4 in the County of Alameda, State of California, in the office of a member of the bar of this Court,
5 at whose direction the service was made. I am over the age of eighteen years and not a party to
6 the within action.

7 On January 27, 2016, I served the following documents in the manner described below:

8 **BRIEF IN SUPPORT OF CROSS EXCEPTIONS**

- 9 (BY U.S. MAIL) I am personally and readily familiar with the business practice of
10 Weinberg, Roger & Rosenfeld for collection and processing of correspondence for
11 mailing with the United States Parcel Service, and I caused such envelope(s) with
12 postage thereon fully prepaid to be placed in the United States Postal Service at
13 Alameda, California.
- 14 (BY FACSIMILE) I am personally and readily familiar with the business practice of
15 Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be
16 transmitted by facsimile and I caused such document(s) on this date to be transmitted by
17 facsimile to the offices of addressee(s) at the numbers listed below.
- 18 (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy
19 through Weinberg, Roger & Rosenfeld's electronic mail system from
20 kshaw@unioncounsel.net to the email addresses set forth below.

21 On the following part(ies) in this action:

22 Mr. Daniel F. Fears
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 27, 2016, at Alameda, California.

/s/ Katrina Shaw

Katrina Shaw

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