

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16

Leukemia and Lymphoma Society,

Respondent

and

Case 16-CA-152958

Brittany Lynn Doering,

an Individual

**COUNSEL FOR THE GENERAL COUNSEL'S RESPONSE OPPOSING JOINT  
MOTION TO DISMISS**

COMES NOW Bryan Dooley, Counsel for the General Counsel in the above-styled matter, and submits this Motion in opposition to Respondent Leukemia and Lymphoma Society's and Charging Party Brittany Lynn Doering's Joint Motion to Dismiss dated February 19, 2016. In support of this Motion, Counsel for the General Counsel submits the following:

The General Counsel's position is that the non-Board settlement agreement signed by Respondent and Doering is not adequate to remedy the unfair labor practices alleged in the Complaint, and does not satisfy the standards set forth in *Independent Stave Co.*, 287 NLRB 740 (1978).

First, the settlement agreement does not include an offer by Respondent to reinstate Doering. Respondent has agreed to pay Doering \$24,681.63. The General Counsel calculates Doering's backpay through the date the settlement agreement was signed, including expenses related to her loss of health insurance, expenses related to her search for replacement employment, and interest, to be \$31,143. Absent an offer of reinstatement, it is the General

Counsel's position that Respondent's offer of approximately 79 percent backpay is inadequate to compensate Doering for her termination.

Second, the settlement agreement signed by Respondent and Doering does not provide for any notice to employees that their rights have been violated by Doering's termination. The notice posting is a central element of the Board's traditional remedies. As the Board noted in *McKenzie-Willamette Regional Medical Center*, 361 NLRB No. 7 (2014), the Board does not, as a general matter, endorse the settlement of alleged unfair labor practices without a notice to employees of the alleged violations and the actions taken to settle them. In approving a settlement agreement that did not provide for posting of a notice in that case, the Board noted that the alleged violations at issue did not result in any discipline or discharge, did not involve any threats or coercion, and had limited impact on individual employees. *Id.*, slip op. at 3. Similarly, in *Independent Stave*, the Board found it relevant in approving a settlement that did not include a notice posting that the act of reinstating affected employees demonstrated the employer's recognition of the statutory rights involved. 287 NLRB 740 at 743. Here, there has been no offer of reinstatement, and employees have been given no notice of the allegations regarding Doering's termination or the resolution of those allegations.

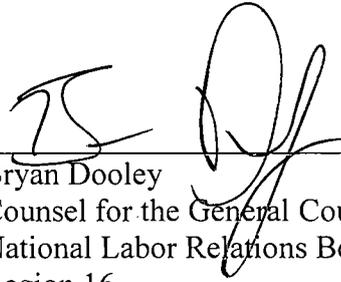
As to Respondent's allegedly unlawful handbook policies, Respondent has not acted to effectively repudiate its unlawful conduct under *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). To be effective, an employer's repudiation of unlawful conduct must be timely, unambiguous, specific in nature to the coercive conduct, and free from other proscribed illegal conduct. *Id.* at 138. Further, there must be adequate publication of the repudiation to the employees involved and there must be no proscribed conduct on the employer's part after the publication. *Ibid.* The repudiation or disavowal of coercive conduct should give assurances to

employees that in the future the employer will not interfere with the exercise of rights protected by Section 7 of the Act. *Id.* at 138-39. Here, the Employer's issuance of a new handbook on November 10, 2015 was not timely, coming long after the rules at issue were promulgated, and after Complaint issued in this case. Respondent's notice to employees that the new handbook had been issued contained no mention of the specific changes to the handbook, the reasons for these changes, or the employee rights implicated. Because the allegedly unlawful policies have not been cured by repudiation, a settlement that does not include a sufficient remedy as to these allegations should not serve as grounds for dismissal.

As part of the non-Board settlement agreement, Respondent has agreed to send an e-mail to its employees nationwide informing them of the sections of its handbook that were modified when Respondent issued its new handbook. Respondent's proposed e-mail to employees also broadly assures them of Respondent's commitment to respect rights protected by Section 7 of the Act. Respondent's e-mail fails to inform employees, however, that the handbook policies at issue violated the Act. A clear notice would serve to notify any employees who may have been disciplined pursuant to the rules at issue in the Complaint notice that such disciplinary actions may also have been unlawful.

For these reasons, it is the position of the General Counsel that the non-Board settlement agreement does not satisfy *Independent Stave*, and Counsel for the General Counsel respectfully requests that the Joint Motion to Dismiss be denied.

**DATED** at Fort Worth Texas, this 23<sup>rd</sup> day of February 2016.

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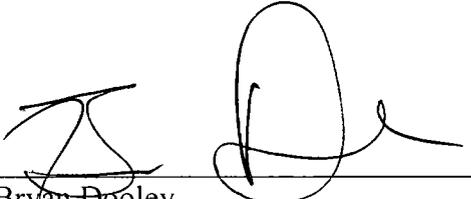
Bryan Dooley  
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**CERTIFICATE OF SERVICE**

I hereby certify that Counsel for the General Counsel's Response Opposing Joint Motion to Dismiss has been served this 23<sup>rd</sup> day of February 2016 on the following:

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A handwritten signature in black ink, appearing to read "Bryan Dooley", is written over a horizontal line. The signature is stylized with a large loop for the letter 'D'.

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