

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ALARIS HEALTH AT CASTLE HILL,

Employer,

- and-

1199, SEIU UNITED HEALTHCARE WORKERS EAST
UNION.

CASE: 22-CA-125034
22-CA-125866
22-CA-140619

ALARIS HEALTH AT HARBORVIEW,

Employer,

- and-

1199, SEIU UNITED HEALTHCARE WORKERS EAST
UNION.

CASE: 22-CA-125023
22-CA-125882
22-CA-140491

ALARIS HEALTH AT BOULEVARD EAST,

Employer,

- and-

1199, SEIU UNITED HEALTHCARE WORKERS EAST
UNION.

CASE: 22-CA-125076
22-CA-125886
22-CA-131372
22-CA-140582

ALARIS HEALTH AT ROCHELLE PARK,

Employer,

- and-

1199, SEIU UNITED HEALTHCARE WORKERS EAST
UNION.

CASE: 22-CA-124968
22-CA-126889
22-CA-140560

**RESPONDENTS' EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE'S DECISION**

Submitted by:

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Dated: May 23, 2016

Respondents Alaris at Rochelle Park, Alaris at Harbor View, Alaris at Boulevard East, and Alaris at Castle Hill,¹ by and through their undersigned attorneys and pursuant of Section 102.46 of the Board’s Rules and Regulations, hereby file their exceptions to the Decisions and Orders issued by Administrative Law Judge Michael A. Rosas (“ALJ”) on February 25, 2016 for Alaris at Rochelle Park JD-17-16, February 18, 2016 for Alaris at Boulevard East JD-15-16, February 11, 2016 for Alaris at Harborview JD-12-16, and February 3, 2016 for Alaris at Castle Hill JD-09-16. In accordance with Section 102.46(c), the analysis, rationale, and legal precedent supporting these exceptions are fully set forth in the accompanying brief.

I. ALARIS AT ROCHELLE PARK JD-17-16

A. Respondent Alaris at Rochelle Park Excepts To The Following Factual Findings Of The ALJ On The Ground That They Are Not Supported By The Weight Of The Evidence In The Record²

1. Respondent Alaris at Rochelle Park excepts to the ALJ’s finding as misleading and contrary to the record evidence, credited or uncredited, that: “This was a peculiar development in light of the Union’s prior notice of a three-day strike.” (JD-17-16 ALJD 20; Tr. N/A).³
2. Respondent Alaris at Rochelle Park excepts to the crediting of William Massey’s testimony that: “Jasinski explained that the facilities needed to be cautious in case the employees changed their minds and remained on strike for a longer period of

¹ The four individual Employers are collectively referred to herein as “Respondents” unless a specific Employer or group of Employers is being discussed.

² Some of these “factual findings” may involve mixed questions of fact and law.

³ Throughout this document, the ALJ’s decision will be cited as “(JD-__ - __ ALJD __)”;

the transcript of the proceedings before the ALJ will be cited as “(Tr. __)”;

Respondents exhibits will be cited as “(R Exh. 1, etc.)”;

and references to the Acting General Counsel’s exhibits will be cited as “(GC Exh. 1, etc.)”.

- time” as contrary to the record evidence credited or uncredited. (JD-17-16 ALJD 20; Tr. N/A).
3. Respondent Alaris at Rochelle Park excepts to the ALJ’s failure to find that it was unable to return employees to work immediately after the strike due to contractual commitments with staffing agencies. (JD-17-16 ALJD 20; Tr. N/A).
 4. Respondent Alaris at Rochelle Park excepts to the ALJ’s limited credit to Jasinki’s testimony: “I credit Jasinski’s testimony that he ‘reviewed’ the agency contracts, but not his vague assertion regarding alleged negotiations by unidentified persons which resulted in Rochelle Park agreeing to four week terms” as contrary to the record evidence credited or uncredited. (JD-17-16 ALJD 20 fn 61; Tr. 2767, 2803, 3282-3283; R Exh. 11, 305.)
 5. Respondent Alaris at Rochelle Park excepts to the ALJ’s finding as contrary to the record evidence, credited or uncredited, that: “Linda Dooley, an Alaris officer who signed the agreements was available, but did not testify, and the circumstances by which the addenda were added were not explored.” (JD-17-16 ALJD 20 fn 61; Tr. 722, 2636).
 6. Respondent Alaris at Rochelle Park excepts to the ALJ’s statement as contrary to the record evidence, credited or uncredited, that: “Employees Locked-Out on September 20” were Rodley Lewis, Deloris Alston, Julieta Dominguez, Jacinta Hormaza, Jean Abellard, Rajvinder Padda, Evelyn Meronvil, Santia Vilceus, Gabby Youmane, and Jamir Gaston. (JD-17-16 ALJD 21-23; Tr. 2895-2896,

2904-2908, 2991-2992, 2998-2999, 3025-3026, 3042-2036, 3059-3067; GC Exh. 313(b), 317, 318, 323, 323(a), 324(c), 324(d), 324(g), 325, 325(a), 325(e), 328, 329).

- B. Respondent Alaris at Rochelle Park Excepts To The Following Specific Analyses And Conclusions Of Law By The Administrative Law Judge On The Grounds That They Are Not Supported By The Weight Of The Evidence In The Record Or Are Contrary To Established Policy And Law**
7. Respondent Alaris at Rochelle Park excepts to the ALJ's legal conclusion as incomplete and contrary to Board law and contrary to the record evidence, credited or uncredited, that: "In the case of an unfair labor practice strike, employees are entitled to immediate reinstatement to their former positions upon their unconditional offers to return to work, even if the employer has hired replacements. *See International Van Lines*, 409 U.S. at 50–51, 93; *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 278 (1956); *Gen. Indus. Emps. Union*, 951 F.2d at 1311; *Hajoca Corp. v. NLRB*, 872 F.2d 1169, 1177 (3d Cir.1989). Accordingly, an employer violates the Act if it fails to reinstate such strikers once they have made an unconditional offer to return to work. *See Alwin Mfg. Co. v. NLRB*, 192 F.3d 133, 141–142 (D.C. Cir.1999)." JD-17-16 ALJD 31; Tr. N/A).
8. Respondent Alaris at Rochelle Park excepts to the ALJ's failure to apply *Pacific Mutual Door Co.*, 278 NLRB 854 (1986). (JD-17-16 ALJD 31).
9. Respondent Alaris at Rochelle Park excepts to the ALJ's legal conclusion as incomplete and contrary to Board law and contrary to record evidence, credited or uncredited, that: "Under the circumstances, Rochelle Park's refusal to reinstate Dominguez, Hormaza, Gaston, Lewis, Alston, Abellard, Padda, Meronvil, Vilceus

and Youmane upon their return to work on or after September 20 violated Section 8(a)(3) and (1) of the Act.” (JD-17-16 ALJD 32; Tr. N/A).

10. Respondent Alaris at Rochelle Park excepts to the ALJ’s legal conclusion as incomplete and contrary to Board Law and contrary to record evidence, credited or uncredited, that: “By failing and refusing, on or after September 20, to immediately reinstate ten employees who engaged in protected concerted activity and made an unconditional offer to return to work, Rochelle Park violated Section 8(a)(3) and (1) of the Act.” (JD-17-16 ALJD 35; Tr. N/A).
11. Respondent Alaris at Rochelle Park excepts to the ALJ’s Remedy as incomplete and contrary to Board Law and contrary to record evidence, credited or uncredited, that: “Rochelle Park shall also, within 14 days of the Board’s Order, offer the ten employees who engaged in an unfair labor practice strike in September 2014, and were not immediately reinstated on request, recalled to their former positions, terminating, if necessary, any replacements who occupy those positions, or if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed. I shall also order Rochelle Park to make whole the unfair labor practice strikers who were denied reinstatement for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). In addition, I shall order Rochelle Park to expunge from its

files any reference to the failure to reinstate the strikers, and to notify them in writing that this has been done.” (JD-17-16 ALJD 35; Tr. N/A).

12. Respondent Alaris at Rochelle Park excepts to the ALJ’s Order as incomplete and contrary to Board Law and contrary to record evidence, credited or uncredited, that: “(d) Within 14 days from the date of the Board’s Order, offer Julieta Dominguez, Jacinta Hormaza, Jamir Gaston, Rodley Lewis, Delores Alston, Jean Abellard, Rajvinder Padda, Evelyn Meronvil, Santia Vilceus, Gabby Youmane and Jean Fritz full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.” (JD-17-16 ALJD 37; Tr. N/A).
13. Respondent Alaris at Rochelle Park excepts to the ALJ’s Order as incomplete and contrary to Board Law and contrary to record evidence, credited or uncredited, that: “(e) Make Julieta Dominguez, Jacinta Hormaza, Jamir Gaston, Rodley Lewis, Delores Alston, Jean Abellard, Rajvinder Padda, Evelyn Meronvil, Santia Vilceus, Gabby Youmane and Jean Fritz whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.” (JD-17-16 ALJD 37; Tr. N/A).
14. Respondent Alaris at Rochelle Park excepts to the ALJ’s Order as incomplete and contrary to Board Law and contrary to record evidence, credited or uncredited, that: “(f) Within 14 days from the date of the Board’s Order, expunge from its files any reference to the failure to reinstate the strikers, and to notify them in

writing that this has been done and that such adverse actions will not be used against them in any way.” (JD-17-16 ALJD 37; Tr. N/A).

II. ALARIS AT BOULEVARD EAST JD-15-16

A. Respondent Alaris at Boulevard East Excepts To The Following Factual Findings Of The ALJ On The Ground That They Are Not Supported By The Weight Of The Evidence In The Record

15. Respondent Alaris at Boulevard East excepts to the ALJ’s finding as misleading and contrary to the record evidence, credited or uncredited, that: “This was a peculiar development in light of the Union’s prior notice of a three-day strike.” (JD-15-16 ALJD 19; Tr. N/A).
16. Respondent Alaris at Boulevard East excepts to the crediting of William Massey’s testimony that: “Jasinski explained that the facilities needed to be cautious in case the employees changed their minds and remained on strike for a longer period of time” as contrary to the record evidence credited or uncredited.” (JD-15-16 ALJD 20; Tr. N/A).
17. Respondent Alaris at Boulevard East excepts to the ALJ’s failure to find that Respondents were unable to return employees to work immediately after the strike due to contractual commitments with staffing agencies. (JD-15-16 ALJD 20; Tr. N/A).
18. Respondent Alaris at Boulevard East excepts to the ALJ’s limited credit to Jasinski’s testimony: “I did not credit Jasinski’s vague testimony regarding alleged negotiations by unidentified persons which resulted in Boulevard East agreeing to four week terms” as contrary to the record evidence credited or

uncredited. (JD-15-16 ALJD 19-20 fn 61; Tr. 2767, 2803, 3282-3283; R Exh. 11, GC Exhs. 226, 233-234.)

19. Respondent Alaris at Boulevard East excepts to the ALJ's finding as contrary to the record evidence, credited or uncredited, that: "Linda Dooley, an Alaris officer who signed the agreements was available, but did not testify, and the circumstances by which the addenda were added were not explored." (JD-15-16 ALJD 19-20 fn 61; Tr. 722, 2636).

20. Respondent Alaris at Boulevard East excepts to the ALJ's finding as contrary to the record evidence, credited or uncredited, that: "Two kitchen aides, Moreira and Aguilar, were informed that they were locked out." (JD-15-16 ALJD 20-21; Tr. N/A).

B. Respondent Alaris at Boulevard East Excepts To The Following Specific Analyses And Conclusions Of Law By The Administrative Law Judge On The Grounds That They Are Not Supported By The Weight Of The Evidence In The Record Or Are Contrary To Established Policy And Law

21. Respondent Alaris at Boulevard East excepts to the ALJ's legal conclusion as incomplete and contrary to Board Law and contrary to the record evidence, credited or uncredited, that: "In the case of an unfair labor practice strike, employees are entitled to immediate reinstatement to their former positions upon their unconditional offers to return to work, even if the employer has hired replacements. *See International Van Lines*, 409 U.S. at 50-51, 93; *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 278 (1956); *Gen. Indus. Emps. Union*, 951 F.2d at 1311; *Hajoca Corp. v. NLRB*, 872 F.2d 1169, 1177 (3d Cir.1989). Accordingly, an employer violates the Act if it fails to reinstate such strikers once

- they have made an unconditional offer to return to work. *See Alwin Mfg. Co. v. NLRB*, 192 F.3d 133, 141–142 (D.C. Cir.1999).” JD-15-16 ALJD 31; Tr. N/A).
22. Respondent Alaris at Boulevard East excepts to the ALJ’s failure to apply *Pacific Mutual Door Co.*, 278 NLRB 854 (1986). (JD-15-16 ALJD 31).
23. Respondent Alaris at Boulevard East excepts to the ALJ’s legal conclusion as incomplete and contrary to Board law and contrary to record evidence, credited or uncredited, that: “Under the circumstances, Boulevard East’s refusal to reinstate Moreira, Christie-Duran, Howard, Diaz, Mejia, Goris, Dena, and Aguilar on or after September 20 violated Section 8(a)(3) and (1) of the Act.” (JD-15-16 ALJD 32; Tr. N/A).
24. Respondent Alaris at Boulevard East excepts to the ALJ’s legal conclusion as incomplete and contrary to Board law and contrary to record evidence, credited or uncredited, that: “By failing and refusing, on or after September 20, to immediately reinstate eight employees who engaged in protected concerted activity and made an unconditional offer to return to work, Boulevard East violated Section 8(a)(3) and (1) of the Act.” (JD-15-16 ALJD 34; Tr. N/A).
25. Respondent Alaris at Boulevard East excepts to the ALJ’s Remedy as incomplete and contrary to Board Law and contrary to record evidence, credited or uncredited, that: “Boulevard East shall also, within 14 days of the Board’s Order, offer the eight employees who engaged in an unfair labor practice strike in September 2014, and were not immediately reinstated on request, recalled to their former positions, terminating, if necessary, any replacements who occupy those

positions, or if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed. I shall also order Boulevard East to make whole the unfair labor practice strikers who were denied reinstatement for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). In addition, I shall order Boulevard East to expunge from its files any reference to the failure to reinstate the strikers, and to notify them in writing that this has been done.” (JD-15-16 ALJD 35; Tr. N/A).

26. Respondent Alaris at Boulevard East excepts to the ALJ’s Order as incomplete and contrary to Board Law and contrary to record evidence, credited or uncredited, that: “(c) Within 14 days from the date of the Board’s Order, offer Wallace Moreira, Elizabeth Christie-Duran, Lovette Howard, Norma Diaz, Sandra Mejia, Maria Goris, Erika Pena and Lorena Aguilar full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.” (JD-15-16 ALJD 37; Tr. N/A).
27. Respondent Alaris at Boulevard East excepts to the ALJ’s Order as incomplete and contrary to Board Law and contrary to record evidence, credited or uncredited, that: “(d) Make Wallace Moreira, Elizabeth Christie-Duran, Lovette Howard, Norma Diaz, Sandra Mejia, Maria Goris, Erika Pena and Lorena Aguilar

whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.” (JD-15-16 ALJD 37; Tr. N/A).

28. Respondent Alaris at Boulevard East excepts to the ALJ’s Order as incomplete and contrary to Board Law and contrary to record evidence, credited or uncredited, that: “(e) Within 14 days from the date of the Board’s Order, expunge from its files any reference to the failure to reinstate the strikers, and to notify them in writing that this has been done and that such adverse actions will not be used against them in any way.” (JD-15-16 ALJD 37; Tr. N/A).

III. ALARIS AT HARBORVIEW JD-12-16

A. The Respondent Alaris at Harborview Excepts To The Following Factual Findings Of The ALJ On The Ground That They Are Not Supported By The Weight Of The Evidence In The Record

29. Respondent Alaris at Harborview excepts to the ALJ’s finding as misleading and contrary to the record evidence, credited or uncredited, that: “This was a peculiar development in light of the Union’s prior notice of a three-day strike.” (JD-12-16 ALJD 17; Tr. N/A).
30. Respondent Alaris at Harborview excepts to the crediting of William Massey’s testimony that: “Jasinski explained that the facilities needed to be cautious in case the employees changed their minds and remained on strike for a longer period of time” as contrary to the record evidence credited or uncredited. (JD-12-16 ALJD 18; Tr. N/A).

31. Respondent Alaris at Harborview excepts to the ALJ's failure to find that Respondents were unable to return employees to work immediately after the strike due to contractual commitments with staffing agencies. (JD-17-16 ALJD 18; Tr. N/A).
32. Respondent Alaris at Harborview excepts to the ALJ's limited credit to Jasinski's testimony: "I did not credit Jasinski's vague testimony regarding alleged negotiations by unidentified persons which resulted in Harborview agreeing to four and six week terms" as contrary to the record evidence credited or uncredited. (JD-12-16 ALJD 18 fn 55; Tr. 2168-2169; R Exhs. 11, 107-108).
33. Respondent Alaris at Harborview excepts to the ALJ's finding as contrary to the record evidence credited or uncredited, that: "Linda Dooley, an Alaris officer who signed the agreements was available, but did not testify, and the circumstances by which the addenda were added were not explored." (JD-12-16 ALJD 18 fn 55; Tr. 722, 2636).
- B. Respondent Alaris At Harborview Excepts To The Following Specific Analyses And Conclusions Of Law By The Administrative Law Judge On The Grounds That They Are Not Supported By The Weight Of The Evidence In The Record Or Are Contrary To Established Policy And Law**
34. Respondent Alaris at Harborview excepts to the ALJ's legal conclusion as incomplete and contrary to Board law and contrary to the record evidence, credited or uncredited, that: "In the case of an unfair labor practice strike, employees are entitled to immediate reinstatement to their former positions upon their unconditional offers to return to work, even if the employer has hired replacements. *See International Van Lines*, 409 U.S. at 50–51, 93; *Mastro*

Plastics Corp. v. NLRB, 350 U.S. 270, 278 (1956); *Gen. Indus. Emps. Union*, 951 F.2d at 1311; *Hajoca Corp. v. NLRB*, 872 F.2d 1169, 1177 (3d Cir.1989).

Accordingly, an employer violates the Act if it fails to reinstate such strikers once they have made an unconditional offer to return to work. *See Alwin Mfg. Co. v. NLRB*, 192 F.3d 133, 141–142 (D.C. Cir.1999).” JD-12-16 ALJD 25; Tr. N/A).

35. Respondent Alaris at Harborview excepts to the ALJ’s failure to apply *Pacific Mutual Door Co.*, 278 NLRB 854 (1986). (JD-12-16 ALJD 25).
36. Respondent Alaris at Harborview excepts to the ALJ’s legal conclusion as incomplete and contrary to Board law and contrary to record evidence, credited or uncredited, that: “Under the circumstances, Harborview’s refusal to reinstate the (sic) Ingrid Williams and Kyria Miller on September 19 violated Section 8(a)(3) and (1) of the Act.” (JD-12-16 ALJD 26; Tr. N/A).
37. Respondent Alaris at Harborview excepts to the ALJ’s legal conclusion as incomplete and contrary to Board law and contrary to record evidence, credited or uncredited, that: “By failing and refusing, on September 19, 2014, to immediately reinstate Ingrid Williams and Kyria Miller, two employees who engaged in an unfair labor practice strike and had made an unconditional offer to return to work, Harborview violated Section 8(a)(3) and (1) of the Act.” (JD-12-16 ALJD 27; Tr. N/A).
38. Respondent Alaris at Harborview excepts to the ALJ’s Remedy as incomplete and contrary to Board law and contrary to record evidence, credited or uncredited, that: “Harborview shall also, within 14 days of the Board’s Order, offer the two

employees who engaged in an unfair labor practice strike in September 2014, and were not immediately reinstated on request, recalled to their former positions, terminating, if necessary, any replacements who occupy those positions, or if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed. I shall also order Harborview to make whole the unfair labor practice strikers who were denied reinstatement for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). In addition, I shall order Harborview to expunge from its files any reference to the failure to reinstate the strikers, and to notify them in writing that this has been done.” (JD-12-16 ALJD 27-28; Tr. N/A).

39. Respondent Alaris at Harborview excepts to the ALJ’s Order as incomplete and contrary to Board law and contrary to record evidence, credited or uncredited, that: “(c) Within 14 days from the date of the Board’s Order offer Ingrid Williams and Kyria Miller full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.” (JD-12-16 ALJD 29; Tr. N/A).
40. Respondent Alaris at Harborview excepts to the ALJ’s Order as incomplete and contrary to Board law and contrary to record evidence, credited or uncredited,

that: “(d) Make Ingrid Williams and Kyria Miller whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.” (JD-12-16 ALJD 29; Tr. N/A).

41. Respondent Alaris at Harborview excepts to the ALJ’s Order as incomplete and contrary to Board law and contrary to record evidence, credited or uncredited, that: “(e) Within 14 days from the date of the Board’s Order, expunge from its files any reference to the failure to reinstate the strikers, and to notify them in writing that this has been done and that such adverse actions will not be used against them in any way.” (JD-12-16 ALJD 29; Tr. N/A).

IV. ALARIS AT CASTLE HILL JD-09-16

A. The Respondent Alaris at Castle Hill Excepts To The Following Factual Findings Of The ALJ On The Ground That They Are Not Supported By The Weight Of The Evidence In The Record

42. Respondent Alaris at Castle Hill excepts to the ALJ’s finding as misleading and contrary to the record evidence, credited or uncredited, that: “This was a peculiar development in light of the Union’s prior notice of a three-day strike.” (JD-09-16 ALJD 20; Tr. N/A).
43. Respondent Alaris at Castle Hill excepts to the crediting of William Massey’s testimony that: “Jasinski explained that Castle Hill needed to be cautious in case the employees changed their minds and remained on strike for a longer period of time” as contrary to the record evidence credited or uncredited. (JD-09-16 ALJD 21-22; Tr. N/A).

44. Respondent Alaris at Castle Hill excepts to the ALJ's failure to find that Respondents were unable to return employees to work immediately after the strike due to contractual commitments with staffing agencies. (JD-09-16 ALJD 21; Tr. N/A).
45. Respondent Alaris at Castle Hill excepts to the ALJ's failure to credit to the testimony of Jaskinki, Figueroa, and Taylor: "I do not credit the vague testimony of Jasinski, Figueroa and Taylor regarding alleged negotiations by unidentified persons which resulted in Castle Hill agreeing to the terms in the attached addenda" as contrary to the record evidence credited or uncredited. (JD-09-16 ALJD 20-21 fn 67; R Exhs. 9-11.)
46. Respondent Alaris at Castle Hill excepts to the ALJ's finding as contrary to the record evidence, credited or uncredited, that: "Linda Dooley, an Alaris officer who signed the agreements was available, but did not testify, and the circumstances by which the addenda were added were not explored." (JD-09-16 ALJD 20-21 fn 67; Tr. 722, 2636).
47. Respondent Alaris at Castle Hill excepts to the ALJ's finding as contrary to the record evidence, credited or uncredited, that: "Leanne Crawford was locked out and, after being reinstated on October 27, also incurred reduced work hours." (JD-09-16 ALJD 22; Tr. N/A).

B. Respondent Alaris At Castle Hill Excepts To The Following Specific Analyses And Conclusions Of Law By The Administrative Law Judge On The Grounds That They Are Not Supported By The Weight Of The Evidence In The Record Or Are Contrary To Established Policy And Law

48. Respondent Alaris at Castle Hill excepts to the ALJ's legal conclusion as incomplete and contrary to Board law and contrary to the record evidence, credited or uncredited, that: "In the case of an unfair labor practice strike, employees are entitled to immediate reinstatement to their former positions upon their unconditional offers to return to work, even if the employer has hired replacements. *See International Van Lines*, 409 U.S. at 50–51, 93 S.Ct. 74; *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 278, 76 S.Ct. 349, 100 L.Ed. 309 (1956); *Gen. Indus. Emps. Union*, 951 F.2d at 1311; *Hajoca Corp. v. NLRB*, 872 F.2d 1169, 1177 (3d Cir.1989). Accordingly, an employer violates the Act if it fails to reinstate unfair labor practice strikers once they have made an unconditional offer to return to work. *See Alwin Mfg. Co. v. NLRB*, 192 F.3d 133, 141–142 (D.C. Cir.1999)." (JD-09-16 ALJD 32; Tr. N/A).
49. Respondent Alaris at Castle Hill excepts to the ALF's failure to apply *Pacific Mutual Door Co.*, 278 NLRB 854 (1986). (JD-09-16 ALJD 32).
50. Respondent Alaris at Castle Hill excepts to the ALJ's legal conclusion as incomplete and contrary to Board law and contrary to record evidence, credited or uncredited, that: "Under the circumstances, Castle Hill['s] refus[al] (sic) to reinstate the following 15 employees on September 19 which violated Section 8(a)(3) and (1) of the Act." (JD-09-16 ALJD 33; Tr. N/A).
51. Respondent Alaris at Castle Hill excepts to the ALJ's legal conclusion as

incomplete and contrary to Board law and contrary to record evidence, credited or uncredited, that: “By failing and refusing, on September 19, 2014, to immediately reinstate fifteen employees who engaged in an unfair labor practice strike and had made an unconditional offer to return to work, Castle Hill violated Section 8(a)(3) and (1) of the Act.” (JD-09-16 ALJD 35-36; Tr. N/A).

52. Respondent Alaris at Castle Hill excepts to the ALJ’s order as incomplete and contrary to Board Law and contrary to record evidence, credited or uncredited, that: “Castle Hill shall also, within 14 days of the Board’s Order, offer the 15 employees who engaged in an unfair labor practice strike in September 2014, and were not immediately reinstated on request, recalled to their former positions, terminating, if necessary, any replacements who occupy those positions, or if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed. In addition, the two employees whose work hours were reduced after returning from the strike shall have their previous work hours restored. I shall also order Castle Hill to make whole the unfair labor practice strikers who were denied reinstatement for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). In addition, I shall order Castle Hill to expunge from its files any reference to the failure to reinstate

the strikers, and to notify them in writing that this has been done.” (JD-09-16 ALJD 36; Tr. N/A).

53. Respondent Alaris at Castle Hill excepts to the ALJ’s order as incomplete and contrary to Board law and contrary to record evidence, credited or uncredited, that: “(c) Within 14 days from the date of the Board’s Order, offer Devika Smith, Claudia Saldana, Lakeysa Smith, Cherlie Celestin Valfls, Natasha Santiago, Diana Lewis, Leanne Crawford, Angela Rodriguez, Aneglina Murillo, Stephanie Garcia, Musuretu Abdulazeez, Jeanie Alexandre, Danielle Humphrey, Janis Martin, Komi Anakpa, and Brenda Moto-Lopes full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.” (JD-09-16 ALJD 37; Tr. N/A).
54. Respondent Alaris at Castle Hill excepts to the ALJ’s order as incomplete and contrary to Board law and contrary to record evidence, credited or uncredited, that: “(d) Make Devika Smith, Claudia Saldana, Lakeysa Smith, Cherlie Celestin Valfls, Natasha Santiago, Diana Lewis, Leanne Crawford, Angela Rodriguez, Aneglina Murillo, Stephanie Garcia, Musuretu Abdulazeez, Jeanie Alexandre, Danielle Humphrey, Janis Martin, Komi Anakpa and Brenda Moto-Lopes whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.” (JD-09-16 ALJD 37; Tr. N/A).
55. Respondent Alaris at Castle Hill excepts to the ALJ’s order as incomplete and

contrary to Board law and contrary to record evidence, credited or uncredited, that: “(e) Within 14 days from the date of the Board’s Order, expunge from its files any reference to the failure to reinstate the strikers, and to notify them in writing that this has been done and that such adverse actions will not be used against them in any way.” (JD-09-16 ALJD 37; Tr. N/A).

Respectfully submitted,



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