

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

ALARIS HEALTH AT ROCHELLE PARK

and

Cases: 22-CA-124968
22-CA-125889
22-CA-140560

1199 SEIU UNITED HEALTHCARE WORKERS EAST

**ANSWERING BRIEF ON BEHALF OF THE GENERAL COUNSEL IN
RESPONSE TO RESPONDENT'S EXCEPTIONS TO THE DECISION OF
ADMINISTRATIVE LAW JUDGE MICHAEL A. ROSAS**

Michael Silverstein
Eric Sposito
Saulo Santiago
Counsels for General Counsel
National Labor Relations Board
Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102
(862) 229-7059

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I. SUMMARY OF THE ARGUMENT

The record evidence adduced at the hearing before Judge Michael A. Rosas clearly supports the Administrative Law Judge's findings that Alaris Health at Rochelle Park (Rochelle Park) violated Section 8(a)(3) of the Act by failing and refusing to timely reinstate certain CNA, housekeeping, and dietary department strikers at the conclusion of the September 2014 3-day strike. Judge Rosas correctly found that Rochelle Park should have immediately reinstated these CNA strikers prior to the expiration of Rochelle Park's contracts for replacement employees. The record evidence also clearly established that Rochelle Park did not use any agency employees to replace its striking housekeeping and dietary employees, and Judge Rosas correctly concluded that Rochelle Park's post-strike reduction of hours for these housekeeping and dietary employees was similarly unlawful. Additionally, Judge Rosas correctly refused to credit Rochelle Park officials' testimony regarding the necessity of the four to six week windows for the temporary employee contracts given that a different staffing agency, Staff Blue, was used by Alaris Health at Harborview during the strike, and Staff Blue did not require a multi-week minimum guarantee in order to meet staffing needs. Furthermore, the record evidence shows that Rochelle Park hired new CNAs and dietary department employees at the same time that it was refusing to reinstate its striking employees.

II. STATEMENT OF FACTS

A. Background and Bargaining History

Rochelle Park is engaged in the operation of a long-term care nursing facility in Rochelle Park, New Jersey. Rochelle Park's supervisory hierarchy at the time of the strike consisted of Administrator Kristine Giles, Director of Nursing Dexter Caldon,

Dietary Director Arlene Concepcion, and Housekeeping Director Peter German. (GC-301(r)).

For over a decade, 1199 SEIU United Healthcare Workers East (“the Union”) and Rochelle Park have been parties to successive collective bargaining agreements covering a bargaining unit of licensed practical nurses, CNAs, dietary and housekeeping employees, and recreation employees. (GC-301(r)). There are approximately 110 employees in the unit. (GC-304).

B. The Union and Rochelle Park Bargain for a Successor Agreement

The existing collective bargaining agreement between the Union and Rochelle Park expired on March 31, 2014 and negotiations for a new collective bargaining agreement began in March 2014. (GC-302). David F. Jasinski, Rochelle Park’s labor counsel, acted as the chief negotiator for Rochelle Park during the 2014 negotiations. (Tr. 1414-1415, 3259). Negotiations occurred simultaneously at three other Alaris nursing home facilities and Jasinski was chief negotiator for all of those Alaris facilities as well.¹ Mendy Gold, a principal for Alaris, also represented Rochelle Park at the bargaining table and attended most of the bargaining sessions. (Tr. 1427-1428). William Massey served as the Union’s Chief negotiator and Union representative Ron McCalla assisted him during the negotiations.

C. ALJ Rosas Findings and Conclusions

In his Decision dated February 25, 2016, ALJ Rosas made certain findings of fact and legal conclusions based on the record evidence. First, Judge Rosas found that by walking out of the March 27, 2014 collective bargaining session, Rochelle Park refused

¹ The other three Alaris facilities include Alaris Health at Castle Hill, Alaris Health at Boulevard East and Alaris Health at Harborview.

to bargain in good faith in violation of Section 8(a)(5) of the Act. (ALJD page 25, lines 31-40). Next, Judge Rosas found that Rochelle Park unlawfully delayed in furnishing the Union with requested information relevant to the parties' collective bargaining negotiations. (ALJD page 26, lines 36 through 45). Additionally, Judge Rosas found that Rochelle Park refused to provide the Union with requested health insurance information and employee daily work schedules in violation of Section 8(a)(5) of the Act. (ALJD page 28, lines 19-21). Furthermore, Judge Rosas found that Rochelle Park violated Section 8(a)(1) of the Act by engaging in numerous threats and interrogations of employees prior to the September 2014 strike. (ALJD page 28, line 25 through page 30, line 14). Also, Judge Rosas found that Rochelle Park violated Section 8(a)(5) of the Act by failing to bargain over its decision to deny Union representative Christina Ozual access to its facility. (ALJD page 30, line 14 through page 31, line 14). Finally, Judge Rosas found that the September 2014 3-day strike engaged in by the Union was an unfair labor practice strike. (ALJD page 32, lines 7 through 35). Rochelle Park has not filed exceptions to any of these factual findings or legal conclusions.²

The Union Holds Informational Picketing At Rochelle Park

The Union routinely held monthly membership meetings at each Alaris facility. However, starting in March 2014, the Union's monthly membership meetings changed focus to prepare for bargaining. Union vice-president Clauvice St. Hilaire and business representative Christina Ozual were responsible for educating the Rochelle Park membership on the contract, contract proposals, and to receive feedback about what

² To the extent that it is relevant to support these findings, Counsel for the General Counsel relies on Judge Rosas' findings of facts on pages 2-23 of his Decision.

contract changes should be sought in bargaining.³ (Tr. 1003-1009, 1176-1187). St. Hilaire testified that the focus of the monthly meetings further changed in May 2014 to emphasize actions that the bargaining unit might take to pressure Rochelle Park to negotiate in good faith. (Tr. 1067-1072, 1182-1187).

Recognizing that there was little progress at bargaining, the Union engaged in informational picketing in June 2014. The informational picketing was held to protest Rochelle Park's unfair labor practices and the perceived lack of progress in bargaining. Several Rochelle Park employees held placards that said "1199 Stop Unfair Labor Practices!" (GC-315(a), GC-315(b), Tr. 2934-2936).

The Union Calls a Delegate Meeting for August 27, 2014

On the afternoon of August 27, 2014, the Union held a meeting (at the Union's office) with the delegates from the four Alaris facilities to discuss the possibility of going on strike. Massey and McCalla led this meeting.

Approximately 10 delegates attended this meeting in person and another 4-5 Castle Hill delegates participated in the meeting by conference call. Maxsuz Predestin, Deloris Alston, Jean Fritz, and Jamir Gaston served as Rochelle Park delegates at this meeting. Union vice-president Milly Silva also participated in the meeting via conference call. McCalla compared Alaris' proposals to the Union's proposals and recapped what had transpired in bargaining at all four facilities. (Tr. 103-107).

After McCalla's contract status presentation, Massey discussed the status of the Union's unfair labor practice charges and indicated that an NLRB complaint would likely issue against Rochelle Park and the 3 other Alaris facilities in September 2014. Massey

³ St. Hilaire testified that Rochelle Park employees complained about short-staffing, health insurance, and vacation benefits, and he passed along those complaints to William Massey and Ron McCalla prior to the start of bargaining. (Tr. 1008-1013).

also told delegates that the Alaris charges against the Union were going to be dismissed, and that there was nothing else delaying the complaints from issuing. Massey also informed the delegates that based on reports he had received, it appeared that additional unfair labor practices had been committed by the four Alaris facilities. (Tr. 107, 116-119, 121, 888-889, 896-898).

Massey further explained to delegates the difference between a purely economic strike versus a strike which was partially motivated by unfair labor practices. Massey had drawn up a strike resolution for discussion at the meeting. (Tr. 121-122, 136-137, 898). The strike resolution read in *pertinent* part:

WHEREAS, the Employer has violated our rights by committing Unfair Labor Practices, specifically by failing and refusing to provide information requested by the Union that is needed for bargaining (especially health insurance and staffing information), unduly delaying in providing other information, and interfering with the composition of the Union's bargaining committee; and

WHEREAS, Region 22 of the National Labor Relations Board has informed the Union that a Complaint against the Employer alleging multiple Unfair Labor Practices in connection with this unlawful conduct is forthcoming; and

WHEREAS, the Employer has continued to commit additional Unfair Labor Practices, including by unlawfully polling and coercively interrogating Union members, and threatening Union members with adverse employment consequences for engaging in protected Union activity; and.

BE IT FURTHER RESOLVED THAT: the Union and its members hereby determine to serve the Employer with a subsequent legally required 10-day notice of intent to engage in a strike, for three days at each facility, in response to the Employer's ongoing Unfair Labor Practices and unreasonable bargaining position. (GC-15)

The strike resolution was read out loud and debated with the delegates. The delegates then voted unanimously to authorize a 3-day strike. (Tr. 219-220, 223-226,

261, 346-348, 898). Following the strike resolution vote, the Union officials and delegates talked about the next steps. The group decided that the employees would deliver 10-day strike notices to each Alaris facility administrator and that delegates would talk with workers about the dual nature of the strike: dissatisfaction with the progress in bargaining and the unfair labor practices committed by Alaris in bargaining, as well as recent threats and interrogations of employees. (Tr. 136-137, 899).

On September 5, Maxsuze Predestin and approximately 15 of her co-workers delivered the 8(g) notice to Giles in her office. The notice announced that the strike would start on September 17 and end on September 20. (GC-312, Tr. 3077-3078, 3088).

The Strike Begins on September 17 and Ends on September 20

The Rochelle Park strike was scheduled to begin at 5:30 am on September 17. The two days before the strike began, Jasinski asked the Union to permit striking night shift employees to complete their full shifts, which were scheduled to end at 7:00am. By email dated September 15, Massey granted Jasinski's request. Massey reiterated that the strike would begin at the time indicated in the 8(g) notice served on Rochelle Park and the night shift workers would join after the conclusion of their shift. (GC-28).

On September 17, approximately 15-30 Rochelle Park employees walked out to join the picket line outside Rochelle Park. The employees carried picket signs that said "1199 Stop Unfair Labor Practices," "Be Fair to Those Who Care," "NO to Unfair Labor Practices," "We Care for NJ" and "Standing Up For Our: Residents, Families and Communities." Employees wore 1199 T-shirts and chanted Union slogans while picketing. (GC-19, GC-325(a)-(e), Tr. 2934, 2936-37, 3089).

Rochelle Park Refuses to Reinstate Employees After the Strike

- i. **The Union Engaged in a Three Day Strike, Unconditionally Offered to Return to Work on September 20, 2014, and Rochelle Park Informs the Union that it Believes the Strike Will Last More than 3 Days.**

The Union's 10-day strike notice, which was sent to Rochelle Park on September 6, 2014, informed Rochelle Park that the strike would begin on September 17 and end at 6:59am on September 20. (GC-312). On the morning of Thursday, September 18 (Day 2 of the strike), Jasinski informed Massey by telephone that not all of the strikers at Rochelle Park and the other three Alaris facilities would be allowed to return to work at the end of the strike. Jasinski also told Massey that Rochelle Park and the other three Alaris facilities entered into month long or 30-day contracts with outside agencies to provide CNAs during the strike. Massey questioned why Alaris did this when it knew that the Union was conducting a limited duration, 3-day strike. Jasinski replied, in part, that the strike notices said three days, but what if the employees stayed out longer- how do we know that they are actually going to return after three days? We need to be prepared in case they decide to change their minds and not return after three days. Massey reminded Jasinski of the strike five years earlier at the same facilities, said that the Union only engages in strikes of limited duration and that the Union had a perfect track record of respecting a 3-day strike when it said that it was going to engage in a 3-day strike. (Tr. 902-904).

Later that day, Massey emailed Jasinski the following reminder: " .I also want to reiterate the point I made to you this morning (and which should have been clear to the Employers from the Union's 8g notices), namely that the Union informed the Employers from the outset that the strikes (and picketing) are limited in duration to three days. Nothing has changed in that regard and therefore all of the returning strikers (at all four

facilities) are unconditionally offering to return to work at the conclusion of the strikes. In light of the fact that these strikes were all motivated by Employer ULPs, we hope and expect that your clients will reconsider their plans and abide by the law, and thus not discharge, replace, or selectively lock out any of the returning strikers. (I make these points because you informed me this morning that the employers entered into 30 day contracts for agency/replacement workers because you somehow believed that the Union might extend the strike past three days, and that thus there will be no work for some returning strikers.” (GC-28).

ii. **Rochelle Park Retaliates Against Housekeeping Department Employees for Striking**

1. **Rochelle Park Delays Reinstating Julieta Dominguez and Reduces Her Hours After the Strike**

Julieta Dominguez began working in the housekeeping department for Rochelle Park in 2010. Before participating in the Union’s September 2014 strike, Dominguez held a steady, 5 day per week schedule, working from 7:00 a.m. until 3:00 p.m., with Tuesdays and Saturdays off. (Tr. 3008-3009, 3025).

After participating in the three-day strike, Dominguez returned to Rochelle Park with her co-workers on the morning of September 20. Outside the facility, Dominguez observed Jasinski hand papers to Union representative Clauvice St. Hilaire. St. Hilaire told Dominguez that she could not work that day because Rochelle Park had changed her schedule and that she should return to the facility on Tuesday. (Tr. 3022-3024).

When Dominguez arrived at work on Tuesday, September 23, housekeeping supervisor Peter German handed her a schedule that indicated she was now a part-time employee working three days per week. (Tr. 3024-3025).

Dominguez testified that after the strike, she has worked between two and four days per week. (Tr. 3025). The following chart shows Dominguez' work history for the period between August and December, 2014. (GC-323).⁴

Week Beginning	Dates Worked	Week Beginning	Dates worked
8/10/2014	10, 11, 13, 14, 15	10/12/2014	12, 14, 15
8/17/2014	18, 19, 21, 22, 23	10/19/2014	20, 22, 25
8/24/2014	24, 25, 26, 28, 29	10/26/2014	26, 29, 30, 31
8/31/2014	1, 2, 4, 5, 6	11/02/2014	* ⁵
9/07/2014	7, 8, 10, 11, 12	11/09/2014	*
9/14/2014	15, 16 ⁶	11/16/2014	18, 19, 20, 21, 22
9/21/2014	23, 24, 26, 27	11/23/2014	23, 25, 26, 27, 29
9/28/2014	28, 29, 2, 3	11/30/2014	2, 3, 5, 6
10/05/2014	7, 8, 10, 11	12/07/2014	8, 9, 12, 13

2. Rochelle Park Delays Reinstating Jacinta Hormaza and Reduces her Hours After the Strike

Jacinta Hormaza began working in the housekeeping department at Rochelle Park almost 13 years ago. (Tr. 3042). Before participating in the Union's strike, Hormaza was a full-time employee working the 7:00 a.m. to 3:00 p.m. shift. (Tr. 3043, 3059-3060).

At the conclusion of the strike on Saturday, September 20, Hormaza returned to work, but was not permitted to enter Rochelle Park. Hormaza's first day back after the strike was Tuesday, September 23. (GC-323-5).

Hormaza testified that after the strike, the housekeeping schedules identified her as part-time and that German announced, in Hormaza's presence, that Noris Lopez had replaced Hormaza as a full-time employee. Hormaza testified without contradiction that

⁴ Dominguez is listed on the Rochelle Park Housekeeping schedules as full-time before the week beginning September 21 and part-time thereafter. (GC-323-3 and GC-323-5).

⁵ Rochelle Park failed to provide subpoenaed housekeeping schedules for the weeks of November 2nd and 9th.

⁶ Dominguez participated in the strike on the last three days of the week beginning September 14, 2014. The housekeeping schedules show that Dominguez was scheduled to work every other Saturday before the strike. Dominguez was off on Saturday, September 13, which made Saturday, September 20 her regularly scheduled day to work. (GC-323-3). (The schedule appears to have been modified to show that Dominguez was not scheduled to work on Saturday, September 20).

when she asked German why she was reduced from full-time to part-time after the strike, German told her that she had been warned there would be consequences if she went on strike. (GC-321, GC-322, Tr. 3064-3067).⁷ Hormaza recorded this conversation. (GC-322).

The following chart shows Hormaza's work history for the period between August and December 2014. (GC-323)⁸

Week Beginning	Dates worked	Week Beginning	Dates worked
8/10/2014	10, 12, 13, 14, 15	10/12/2014	12, 13, 18
8/17/2014	18, 19, 29, 21, 23	10/19/2014	21, 23, 25
8/24/2014	24, 26, 27, 28, 29	10/26/2014	26, 30, 1
8/31/2014	1, 2, 3, 4, 6	11/02/2014	* ⁹
9/07/2014	7, 9, 10, 11, 12	11/09/2014	*
9/14/2014	15, 16 ¹⁰	11/16/2014	18, 19, 22
9/21/2014	23, 26, 27	11/23/2014	23, 25, 26, 29
9/28/2014	28, 30, 3, 4	11/30/2014	2, 3, 6
10/05/2014	7, 8, 11	12/07/2014	9, 12

3. Jean Fritz Has His Hours Reduced After the Strike

Before the strike, Jean Fritz worked full-time in the Rochelle Park housekeeping department. (GC-323). He was a Union delegate who participated in the 3-day strike. (Tr. 3225, 3074-3075, 3076). Fritz's activity in support of the Union included speaking at the Union's July 23 Jersey City press conference announcing the potential for a strike, speaking at a Union rally in front of Alaris Health at Castle Hill on September 17, and

⁷ Rochelle Park hired two new housekeepers in early 2015 (Marie V. Jean Pierre Paul and Olga Stijovic Bogoeski) despite the fact that Hormaza's hours had not been fully restored to pre-strike levels. (GC-330).

⁸ Hormaza is listed on the Rochelle Park Housekeeping schedules as full-time before the week beginning September 21 and part-time thereafter. (GC-323).

⁹ Rochelle Park failed to provide subpoenaed housekeeping schedules for the weeks of November 2nd and 9th.

¹⁰ Hormaza was scheduled to work on September 17 and 18 but participated in the strike and was scheduled to be off on September 19. The housekeeping schedules show that Hormaza was scheduled to work every other Saturday before the strike. Hormaza was off on Saturday, September 13, which made Saturday, September 20 her regularly scheduled day to work. (GC-323-3). (The schedule appears to have been modified to show that Hormaza was not scheduled to work on Saturday, September 20).

participating in the Union's strike authorization meeting on August 27, 2014. (GC-15, GC-57, Tr. 999).

The following chart shows Fritz's work history for the period between August and December, 2014. (GC-323).

Week Beginning	Days Worked	Week Beginning	Dates Worked
8/10/2014	10, 11, 12, 14, 15	9/21/2014	23, 24, 26, 27
8/17/2014	17, 18, 19, 21, 22	9/28/2104	30, 1, 3, 4
8/24/2014	24, 25, 26, 28, 29	10/05/2014	* ¹¹
8/31/2014	31, 1, 2, 4, 5	10/12/2014	* ¹²
9/07/2014	*	10/19/2014	19, 20, 21, 22
9/14/2014	* ¹³	10/26/2014	27, 28, 29, 31

iii. Rochelle Park Retaliates Against Dietary Department Employees For Going on Strike

1. Rochelle Park Delays Reinstating Jamir Gaston and Reduces His Hours After the Strike

Jamir Gaston began working as a dietary aide at Rochelle Park in 2010 and in 2011, he became a full-time employee. (GC-316, Tr. 2919-2920). Before the strike, Gaston worked 75 hours per two week pay period and maintained regular days off. (Tr. 2920-2921). For the past two years, Gaston served as a Union delegate, and in 2014, he participated in contract negotiations on behalf of the Union. (Tr. 2921).

Gaston did not return to work immediately after the strike ended. (Tr. 2941-2942). Gaston was originally scheduled to work on September 20 and 21. (GC-313(b), Tr. 2939). He entered Rochelle Park on the morning of the 20th with St. Hilaire, Massey, and a group of employees. They were stopped by Giles, German, and Jasinski. Gaston observed Jasinski handing a list of employees' names to Massey and Massey insisting

¹¹ Rochelle Park provided two different schedules for the week of 10/5. GC-323-4 shows Fritz worked 10/10 and 10/11. GC-323-7 shows Fritz worked 10/7, 10/8, and 10/9.

¹² Rochelle Park provided two different schedules for the week of 10/12. GC-323-4 shows Fritz worked 10/17 and 10/18. GC-323-7 shows Fritz worked 10/12, 10/13, 10/14, and 10/15.

¹³ Rochelle Park failed to provide subpoenaed housekeeping employee schedules for all employees for the weeks 9/7 and 9/14.

that Jasinski inform the employees of their status. Giles then told Gaston to call the facility on Monday to find out his status. (Tr. 2938-2941).

Gaston testified without contradiction that on Monday, September 22, Concepcion told him that he could return to work on Wednesday, the 24th, but that when he returned to work, he would be working a reduced schedule and that he would no longer be working full-time. (Tr. 2942-2943). Rochelle Park's dietary schedules confirm the veracity of Concepcion's comments. The schedules show that Gaston was originally scheduled to work on September 20 and 21, but a line was drawn through his assignments. (GC-313(a) and GC-313(b)).¹⁴ A similar line was drawn through Gaston's assignments on September 26, 29, and October 2.¹⁵ Additionally, there is a series of scribbles through Gaston's assignments scheduled for September 24, 25, 28, and October 1. It is unclear from the schedules why certain days were scribbled out while on other days, lines were drawn through assignments. (GC-313(b)).

The following chart pulled from GC-317 shows the days Gaston worked both before and after the strike:

Week Beginning	Dates Worked	Week Beginning	Dates Worked
7/27/2014	28, 30, 31, 1	01/11/2015	11, 13, 14, 15
8/03/2014	4, 6, 7, 8, 9	01/18/2015	19, 23, 24
8/10/2014	10, 11, 13, 14, 15	01/25/2014	25, 27, 29
8/17/2014	18, 20, 21, 22, 23	02/01/2015	5, 7
8/24/2014	24, 25, 28, 29	02/08/2015	8, 9, 10, 13
8/31/2014	3, 4, 5, 6	02/15/2015	16, 19, 21
9/07/2014	7, 8, 10, 11, 12	02/22/2015	22, 23, 24, 27, 28
9/14/2014	15, 16	03/01/2015	3, 4, 5, 7
9/21/2015	22	03/08/2015	8, 9, 11, 13
9/28/2014	3	03/15/2014	15, 16, 17, 20, 21
10/05/2014	5, 6, 10	03/22/2015	22, 25, 26, 27, 28

¹⁴ Gaston was scheduled to work the 7D assignment on each of these days. Cossley Ellis worked this assignment on September 20 and Delroy Miller worked this assignment on September 21. (GC-313(a) and GC-313(b)).

¹⁵ Dadda Bowman worked Gaston's 7C assignment on September 26. (GC-313(b)).

10/12/2014	13, 16, 17, 18	03/29/2015	31, 1, 2, 4
10/19/2014	19, 20, 21, 24	04/05/2015	5, 6, 9, 10
10/26/2014	27, 31, 1	04/12/2015	13, 14, 16, 18
11/02/2014	3, 5, 6	04/19/2015	19, 23, 24
11/09/2014	10, 14, 15	04/26/2015	30, 1, 2
11/16/2014	16, 20, 21	05/03/2015	3, 6, 7, 8
11/23/2014	27, 28, 29	05/10/2015	13, 14, 15, 16
11/30/2014	30, 5	05/17/2015	17, 21, 22, 23
12/07/2014	8, 11, 13	05/24/2015	24, 27, 28, 29, 30
12/14/2014	14, 17, 18, 19	06/07/2015	10, 11, 12, 13
12/28/2014	28, 29, 2	06/14/2015	14, 17, 18, 19
01/04/2015	7, 8, 9, 10	06/21/2015	25, 26, 27

2. **Rochelle Park Failed to Return Rodley Lewis to Work after the Strike**

Rodley Lewis began working at Rochelle Park as a dietary aide in 2010. Lewis was a part-time employee who maintained a steady schedule, working from 7:00 a.m. to 10:30 a.m. six days per week with Wednesdays off. In his dietary aide position, Lewis prepared breakfast for patients and performed other tasks such as dish washing. (Tr. 2895-2896).

After Lewis went on strike, he attempted to return to work on September 20th. When Lewis went to Rochelle Park that Saturday, St. Hilaire took him into the facility. Lewis testified that after St. Hilaire spoke to Giles, St. Hilaire told him that he must return on Monday, September 22. Lewis went back to the facility on Monday and again met with St. Hilaire outside the building. This time Giles, accompanied by German, came outside to speak to the group of strikers and said to Lewis, “you work per diem and Arlene (Concepcion) has no hours for you. When she has hours, she will call you” (Tr. 2904-2907).

Lewis testified that he never received any phone call, letters, or any other communication from Rochelle Park regarding a return to work. (Tr. 2907-2908). It is

uncontested that Lewis has not worked at Rochelle Park since the strike began on September 17th

The dietary department schedules indicate that Lewis was on strike on September 20, even though the strike ended before his regularly scheduled shift began. Lewis was originally listed on the dietary schedule to work from 7am to 10:30am on September 22, 23, 25, 26, 27, 28, 29, 30, October 2 and 3. Like with Gaston, a line was drawn through Lewis' assignment on each of these days. (GC-313(b)).

The following chart shows which dietary employees worked Lewis' originally scheduled hours immediately after the strike ended:

Date	Employee
9/20	Guens Pierre-Louis
9/22	Guens Pierre-Louis
9/23	Dadda Bowman
9/25	Nobody filled these hours
9/26	Guens Pierre-Louis
9/28	Delroy Miller
9/29	Dadda Bowman
10/2	Dadda Bowman
10/3	Guens Pierre-Louis ¹⁶

3. **Rochelle Park Hires New Dietary Employees After Reducing Gaston's Hours and Refusing to Recall Lewis**

After the strike ended, Rochelle Park reduced Jamir Gaston's hours and refused to recall Rodley Lewis. To fill these hours, Rochelle Park hired new dietary employees. On September 23, 2014, Xenory Zuniga started working as a new dietary employee. Her name first appears on the dietary department schedules on this date, working from 6:30 am to 10:30 am. (GC-313(b), GC-331, GC-333). Lewis' hours were cancelled on that date and Gaston was not scheduled to work then either. Zuniga next worked on

¹⁶ Pierre-Louis, Bowman, and Miller did not go on strike. (Tr. 2949).

September 27 and 28. Like the 23rd, Lewis' hours were crossed out on both the 27th and 28th and Gaston was not given hours on these days. Zuniga continued to work at Rochelle Park through about the end of December 2014. (GC-313(b) through (i), GC-331).¹⁷

On November 4, 2014, Joel Abello started working in the dietary department at Rochelle Park. (GC-313(e), GC-334). The first two days that Abello worked, November 4 and 5, he was given Rodley Lewis' 7 am to 10:30 am shift.¹⁸ The following week, Abello worked on November 12 and 13. Gaston was not scheduled to work on these days. Other days in which Abello worked, but Gaston did not, include November 17, 18, 24, 25, 26, December 1, 3, 10, 12, 15, 21, 22, 24, and 26.

On November 4, 2014, Remedios Montoya started working in the dietary department at Rochelle Park.¹⁹ (GC-313(e)). In his first week, Montoya was assigned to work on 2 days that Gaston was not given any work (November 4 and 8). In his second week, Montoya worked 3 days in which Gaston was not assigned any hours (November 17, 19, and 22). Montoya continued working in the dietary department until about July 2015.

In 2015, Rochelle Park hired 3 more new dietary employees- Kezia Robert Witter, Kaakyira Appia, and Emily Canilao- while still refusing to restore Jamir Gaston to his pre-strike full-time schedule. (GC-331). Gaston testified that as of September 2015, he was only receiving at most 50 hours per pay period. (Tr. 2944-2945). Gaston has never

¹⁷ Rochelle Park's list of dietary department new hires erroneously lists Zuniga's hire date as 2015 instead of 2014. Zuniga's application is dated in August 2014 and she first appears on the dietary department schedules on September 23, 2014. Therefore, Zuniga was hired in 2014. (GC-313(b), GC-331, GC-333(c)).

¹⁸ Gaston was not scheduled to work on November 4.

¹⁹ Rochelle Park provided 2 job applications for Montoya- one dated August 13, 2014 and the other dated October 16, 2014. He signed an acknowledgement for receipt of the employee handbook on October 24, and did not appear on the dietary schedule until November 4. (GC-313(e), GC-335).

rejected any hours that Concepcion has offered him and Concepcion has never offered him additional hours that have (or have not) conflicted with his other part-time job. (Tr. 2959, 2962-2963).²⁰

iv. **Rochelle Park Retaliates Against CNAs for Going on Strike**

1. **Rochelle Park Delays Deloris Alston's Reinstatement and Reduced Her Hours After the Strike**

Deloris Alston has been employed by Rochelle Park as a CNA for 26 years. For the last 25 years, Alston worked a full-time schedule on the 3:00 p.m. to 11:00 p.m. shift. She has been a shop steward for the past 23 years and participated in the 2014 contract negotiations. She also participated in the Union's August 27 strike authorization vote, and handed Giles the Union's 10-day strike notice. (GC-15, GC-312, Tr. 2967-2973).

Alston participated in all three days of the strike. She was scheduled to return to work on September 20, but St. Hilaire called her that day and told her that Giles said she could not return to work. (Tr. 2980-2982). The list of strikers Jasinski gave to the Union indicates that Alston did not have a schedule at the end of the strike. (GC-323(a)).

Late in the afternoon of Monday, September 22, Alston met with Milly Silva near Boulevard East. Alston asked when she was going back to work and Silva called St. Hilaire to find out. St. Hilaire told Silva to have Alston check the return to work notices that he left with her (Silva). When Alston checked, she saw that she was scheduled to go back to work that day at 3:00 p.m. Since her shift had already started, Alston asked St. Hilaire what she should do. St. Hilaire suggested Alston go to Rochelle Park the next day. Alston went to the facility on September 23rd, spoke to Giles, and explained why she did not show up for work the day before. Because Tuesday was Alston's regular day off, Giles told Alston to go home and return the next day. (Tr. 2982-2985).

²⁰ Gaston's other part-time job is located about 10-15 minutes away from Rochelle Park. (Tr. 2964).

Alston worked on Wednesday, September 24, but did not work again until the following Monday, September 29. After working on the 29th, Alston was not scheduled to work again until October 5th. Alston testified, and the CNA daily schedules show, that after October 5th, Alston was permitted to resume her pre-strike full-time schedule once again. (GC-318-024 – GC-318-035).

Although Alston has resumed her full-time schedule, Rochelle Park has refused to offer her the same overtime opportunities that she was afforded before the strike. Alston testified without contradiction that before the strike, she always worked her Saturdays off, two times per month. (Tr. 2998-2999). On October 5th, Alston went to Director of Nursing Dexter Caldon's office to find out when she was going to be offered her pre-strike full-time schedule. Caldon called staffing coordinator Moses Adu and told Alston to wait outside his office. When Adu came out of Caldon's office, he informed Alston that she would be offered full-time hours again and would be working on the second floor. Alston testified without contradiction that she asked if she would be able to work overtime on her Saturdays off and Adu said that Giles ordered that there would be no overtime for anyone that had participated in the Union's strike. Alston has not worked any overtime since the strike. (Tr. 2991-2992). Neither Caldon nor Adu testified at the hearing. Although Giles testified, she did not address this subject in her testimony.

2. Rochelle Park Delays Reinstating Jean Abellard

Jean Patrick Abellard has been working as a CNA at Rochelle Park since 2007. Before the strike, Abellard worked a full-time 37.5 hour per week schedule covering the 7:00 a.m. to 3:00 p.m. and 3:00 p.m. to 11:00 p.m. shifts on Wednesdays, Saturdays, and Sundays. (Tr. 3027-3028). Abellard participated in the Union's three-day strike, walking

the picket line with his co-workers outside Rochelle Park on the first and third days. (Tr. 3027-3028).

A few minutes before 7:00 a.m. on the morning of September 20th, Abellard walked into the facility through a back door, and punched in. On his way to the elevator, Abellard ran into Giles and she instructed Abellard to go outside and meet with his Union representatives. (Tr. 3030-3031). Abellard went to the front of the facility and saw Massey, St. Hilaire, and his co-workers standing with Jasinski near the front entrance. As Abellard approached, he heard Jasinski calling out names, saying if employees could or could not return to work. Abellard asked Jasinski if he had called his name and Jasinski told Abellard that he was not on the schedule to work that day. (Tr. 3031-3033).

When Jasinski finished telling the employees who was working that day, the group of employees who had not returned to work, along with their union officials, drove to an off-site meeting. (Tr. 3118-31-19). While in route, Abellard, who was in Massey's vehicle, received a phone call informing him that he was on the schedule to work. (Tr. 3033-3034, 3119). Massey turned his car around and drove back to Rochelle Park. At the facility, Massey, Abellard, and St. Hilaire went inside. There, the group encountered Giles and German. Massey explained to Giles that they had come back because Abellard had received a phone call from the staffing coordinator saying that he was on the schedule and asking why he was not at work. Giles responded that Abellard is not on the schedule and that she did not know who told him otherwise. Upon hearing the news, the group left the building. (Tr. 3035, 3121-3122).

A few days later, staffing coordinator Adu called Abellard and told him that Rochelle Park had replaced him and that Giles wanted to send him to work in Jersey City.

Abellard asked to speak to Giles and when Giles got on the phone, she explained that Rochelle Park had replaced him, there was an opening in Jersey City, and she wanted to know if he would be willing to go there. Abellard told Giles that he would call her back. (Tr. 3035-3036).

Abellard called St. Hilaire and told him what Giles had said. St. Hilaire told Abellard that he was not hired to work in Jersey City and that he should not go. Abellard called Giles back and told her "I'm sorry, I cannot go to Jersey City." (Tr. 3036).

On Friday, October 10, Jasinki emailed Massey to let him know that Abellard could return to work on October 15. (GC-324(g)). Ozual informed Abellard of his return to work and he went to Rochelle Park as directed on October 15. He received his assignment and went to the second floor to begin working. Later that morning, Abellard was summoned to Giles' office. Giles asked Abellard who told him to come to work and he replied "the Union" Giles informed Abellard that the Union is not supposed to tell him he could come back to work because the Union is not his boss. After Giles was finished, Caldonga apologized to Abellard, said that he did not know he was coming back to work that day, the Employer was overstaffed, there was no work for him, and he had to go home. (Tr. 3038-3039).²¹

Abellard returned to work on Saturday, October 18, and testified that he has worked his pre-strike schedule ever since.

²¹ Massey e-mailed Jasinski complaining that Abellard was denied work on October 15th when Abellard was instructed to return to work. (GC-324(h)).

3. **Rochelle Park Delays Reinstating CNAs Rajvinder Padda, Evelyn Meronvil, Santia Vilceus, and Gabby Youmane**

CNAs Rajvinder Padda, Evelyn Meronvil, Santia Vilceus, and Gabby Youmane all participated in the Union's September 17th strike and, in retaliation for striking, Rochelle Park delayed reinstating them to their jobs. Although these witnesses did not testify at the hearing, record evidence establishing their participation in the strike includes photographs of these employees picketing during the strike, testimony from co-workers and Union officials confirming that these employees participated in the strike, Rochelle Park-generated documents showing that these employees did not have schedules at the conclusion of the strike, and emails between Massey and Jasinski confirming the dates that these employees would be allowed to return to work.

Rajvinder Padda is a full-time CNA that works on the 11:00 p.m. to 7:00 a.m. shift. Padda went on strike with the Union and when she attempted to return to work, the Union was told that there were no hours for her.²² (GC-323, GC-325(c), GC-327, Tr. 2978, 3075-3077, 3132, 3184). On September 24th, Jasinski verbally informed Massey that Padda could return to work on Sunday, September 28. Massey confirmed this conversation with a follow-up email to Jasinski and Padda worked the 11:00 p.m. shift that night. (GC-324C, GC-318-028).

Meronvil is a full-time CNA that works for Rochelle Park on the 7:00 a.m. to 3:00 p.m. shift and participated in the Union's strike. (GC-325(a), GC-325(e), Tr. 3131-3132, 3184). When Meronvil attempted to return to work, Rochelle Park informed her that there was no position for her. (GC-324). On October 1, Jasinski sent Massey an email

²² The nursing attendance sheet for the 11pm to 7am shift on September 18 (the 2nd night of the strike) has Padda's name crossed out with the word "strike" handwritten next to her name. (GC-327).

confirming that Meronvil could return to work on October 4. (GC-324(d)). Meronvil returned to work on October 4, and that day, the Employer asked her to sign a document confirming her return to work date. (GC-318-034, GC-328,).

Vilceus is a full-time CNA who works the 7:00 a.m. to 3:00 p.m. shift and participated in the Union's September 2014 strike. (GC-323(a), GC-324(g), Tr. 3075, 3131-3132). When the strike was over Rochelle Park informed the Union that it had no schedule for Vilceus.²³ (GC-323). By e-mail on October 10, Jasinski informed Massey that Vilceus could return to work on October 15. (GC-324(g)). Vilceus returned to work after signing the Employer's unconditional offer to return to work document on October 15. (GC-318-045, GC-329).

Youmane is a full-time CNA who works the 7:00 a.m. to 3:00 p.m. shift on the 3rd floor. She participated in the September strike and at the conclusion of the strike, Rochelle Park informed the Union that Youmane could not return to work because she had no schedule. (GC-323, GC-325, Tr. 3076, 3131-3132, 3184). On September 24, Jasinski verbally informed Massey that Youmane could return to work on Monday, September 29. Shortly after their conversation ended on the 24th, Massey sent Jasinki an email confirming Youmane's return to work offer. (GC-318-030, GC-324(d)).

4. Rochelle Park Hires New CNAs After the Strike

Abellard, Meronvil, and Vilceus all worked the 7am to 3pm shift prior to the strike.²⁴ While Rochelle Park was keeping these 3 striking CNAs off of work until

²³ The record shows that Vilceus was in the car with Bill Massey and Jean Patrick Abellard on September 20 when Abellard received the phone call that prompted a return to the facility to see if Abellard was on the schedule.(Tr. 3127).

²⁴ Abellard testified that he worked both the 7am to 3pm and 3pm to 11pm shifts on Wednesday, Saturday, and Sunday.

October, Rochelle Park hired several new CNAs for the 7am to 3pm shift- Vrajesh Mehta, Nimisha Hehta, and Carol Scott. (GC-318, GC-330). A review of Rochelle Park's nursing department schedules reveals that the new CNAs worked on the following dates, shifts, and assignments in September and October 2014:

Vrajesh Mehta (GC-318-31, 32, 33, 36, 37, 43, 44)
9/30 7 am to 3 pm 3rd Floor #8 (Meronvil, Santia)
10/1 7 am to 3 pm 2nd Floor #9 (Meronvil, Abellard [Wednesday], Santia)
10/2 7 am to 3 pm 3rd Floor #8 (Meronvil, Santia)
10/6 7 am to 3 pm 3rd Floor #9 (Santia)
10/7 7 am to 3 pm 4th Floor #8 (Santia)
10/13 7 am to 3 pm 2nd Floor #8 (Santia)
10/14 7 am to 3 pm 2nd Floor #7 (Santia)

Nimisha Hehta (GC-318-35)
10/5 7 am to 3 pm 4th Floor #8 (Abellard [Sunday], Santia)

Carol Scott (GC-318-44, 45)
10/14 7 am to 3 pm 4th Floor #7 (Santia)
10/15 7 am to 3 pm 3rd Floor #6 (Abellard- Wednesday)

5. **Rochelle Park Uses Two Temporary Agencies to Staff the Facility During the Strike**

Rochelle Park used two different staffing agencies to provide replacement CNAs during the 3-day September strike: Towne Nursing Staff, Inc. ("Towne"), and Tristate Rehab Staffing ("Tristate"). (GC-336, GC-337).²⁵

i. **Tristate**

The Tristate contract executed by Rochelle Park on September 10, 2014 specifically addressed the upcoming strike. The contract states: " .Anything to the contrary in the agreement between the parties, the facility will utilize temporary staffing provided by Tristate Rehab for 4 weeks following the pending strike scheduled to end on

²⁵ Giles testified that Rochelle Park also used CNAs from a neighboring facility, The Chateau, to staff Rochelle Park during and after the strike. (Tr. 3238).

September 20th Tristate will not replace any of its staff who may discontinue working at the facility.” (R-305).

During the strike, Tristate provided 2 CNAs to Rochelle Park: Sarah Green and Fahengy Pierre Louis. Of these CNAs, only 1 worked at Rochelle Park after the strike ended- Sarah Green. However, Green cannot be considered a replacement CNA because she worked at Rochelle Park before the strike; 22.5 hours during the week of September 6 and 34 hours for the week ending September 13. (GC-337).

ii. Towne

Rochelle Park executed an addendum to its existing contract with Towne specifically addressing the 3-day strike in September 2014. This addendum states that: “In order to secure and guarantee staffing during the 3 day strike, the facilities will guarantee the following full time positions for agency staff in each facility as follows: Alaris at Rochelle Park- 4 employees for 4 weeks. ” (R-11).

During the strike, 5 Towne CNAs worked at Rochelle Park- Kaprice Dennis, Emmanuel Dore, Nubia Espinoza, Claudette Leveque, and Toya Majette. Espinoza and Leveque worked only on the 11pm to 7am shift during the strike, while Dennis, Dore, and Majette worked both the 7am to 3pm and 3pm to 11pm shifts. (GC-336(d)).

After the strike, 4 Towne CNAs worked at Rochelle Park: Dennis, Dore, Leveque and Majette. All 4 CNAs worked on the 7:00am to 3:00pm shift. Majette worked on September 21, 22, and 25; Dennis called out on September 21, 22 (no-call, no-show), and 23, but then worked on September 27-29, October 5-6, 8-11²⁶, and 19-21; and Leveque worked on September 23, 24, 25, 27, called out on September 26 and 30, and then worked again on October 2, 9, 10, 14, 15, 16, 20, 21, and October 28. Dore was the only

²⁶ Dennis also called out on October 12. (GC-318-42).

Agency CNA that worked a steady 5 day a week schedule after the strike, working 5 shifts during the weeks of September 21, September 28, October 5, and October 12.

After the last Rochelle Park CNA returned to work, Dore continued to work an additional 25 days, her last day being November 10. (GC-318, GC-336). Espinoza was scheduled to work the 11pm to 7am shift on September 22, but she called out. (GC-318-024).

IV. ARGUMENT

EXCEPTIONS # 3, 6, 9, 10, 11, 12, 13 Re: Dominguez, Hormaza, and Fritz

POINT I. ROCHELLE PARK VIOLATED SECTION 8(a)(3) OF THE ACT BY REFUSING TO REINSTATE HOUSEKEEPING EMPLOYEES AND BY REDUCING THEIR HOURS AFTER THE STRIKE

An employer may hire permanent replacements for economic strikers. *NLRB v. Mackay Radio & Tel. Co.*, 304 U.S. 333, 345-346 (1938); *NLRB v. Fleetwood Trailer Co.*, 389 U.S. 375, 379 (1967). However, where an employer fails to show that economic strikers have been permanently replaced prior to their unconditional offer to return to work, an economic striker is entitled to immediate reinstatement, absent a demonstrated business justification. *Teledyne Still-Man*, 298 NLRB 982, 985 (1990); *Harvey Mfg.*, 309 NLRB 465, 469-470 (1992) (employer's contract with temporary replacement agency did not provide justification for delaying reinstatement of striking employees because there was no basis to find provisions allegedly requiring delay were necessary in order to induce agency to provide replacements and because provisions did not clearly require delay). The burden of proof in this regard is on the employer. *Fleetwood Trailer Co.*, 389 U.S. at 378 (1967); *Laidlaw Corp.* 171 NLRB 1366, 1368 (1968); *Pacific Mutual Door Co.*, 278 NLRB 854, 856 n.12 (1986) (employer lawfully delayed reinstating strikers for 30 days pursuant to a contract with a company providing strike replacements

where a 30-day cancellation provision was a necessary condition of employer getting temporary employees from the referring company). If an employer fails to establish such a “legitimate and substantial business justification” it violates Section 8(a)(3) and (1) of the Act, regardless of intent. *Fleetwood Trailer Co.*, 389 U.S. at 380; See also *Laidlaw Corp.*, 171 NLRB at 1368.

The unassailable credited record evidence shows that housekeeping employees Jacinta Hormaza, Julieta Dominguez, and Jean Fritz went on strike, Rochelle Park delayed reinstating them after the Union made an unconditional offer to return to work, and Rochelle Park did not permanently replace them before they returned. Consequently, Rochelle Park was legally obligated to return them to their full-time positions at the conclusion of the strike. By reducing them to part-time status, Rochelle Park violated Section 8(a)(3) of the Act.

1. No Agency Employees Worked in the Housekeeping Department During the Strike

Rochelle Park retained Towne and Tristate to staff its nursing department during the strike. (R-11, R-305). These temporary agencies, however, did not provide replacement employees for the housekeeping department. Rochelle Park covered the vacancies created by strikers by giving extra hours to existing non-striking employees. (GC-313, GC-323). Therefore, Rochelle Park’s contracts with Towne and Tristate are immaterial and cannot justify Rochelle Park’s refusal to offer Hormaza, Dominguez, and Fritz their jobs back at the conclusion of the strike.

2. Rochelle Park Delays Reinstating Hormaza After the Strike and Peter German Gives Hormaza's Full-Time Position to Noris Lopez After Hormaza Returned to Work

Veteran housekeeping employee Jacinta Hormaza went on strike on September 17. When she attempted to return to work on Saturday, September 20, she was told there was no work for her.²⁷ Hormaza went back to Rochelle Park the next day and again was told that she was not on the schedule. Hormaza finally returned to work on Tuesday, September 23. (GC-323-5). After Hormaza returned to work, housekeeping supervisor Peter German publically congratulated Noris Lopez on her promotion to full time status and announced that Hormaza was now going to be a part-time employee.²⁸ Hormaza then asked German why she had been reduced to part-time and German told her that her hours were reduced as a direct consequence of her decision to participate in the Union's strike. Thus, Judge Rosas correctly concluded that Rochelle Park's delay in reinstating Hormaza at the conclusion of the strike and its demotion of Hormaza to part-time status when the strike was over is unmistakable retaliation in violation of Section 8(a)(3) of the Act.²⁹

3. Judge Rosas Properly Found that Rochelle Park Violated Section 8(a)(3) of the Act By Refusing to Immediately Reinststate Julieta Dominguez and By Reducing Her Hours at the Conclusion of the Strike

Julieta Dominguez went on strike with the Union on September 17, 2014. Her first scheduled day to work after the strike was Saturday, September 20, but like

²⁷ The housekeeping schedules show that Hormaza was scheduled to work every other Saturday before the strike. Hormaza was scheduled to work Saturday August 23 and September 6. (GC-323-1). The pre-strike schedule shows that Hormaza was off on Saturday, September 13, which made Saturday, September 20 her regularly scheduled day to work. (GC-323-3) (The schedule, however, appears to have been modified to show that Hormaza was not scheduled to work on Saturday, September 20).

²⁸ Noris Lopez did not go on strike nor did she testify at the hearing.

²⁹ It is unclear from Rochelle Park's Exceptions as to whether it is taking Exceptions only to its refusal to immediately recall housekeepers Hormaza, Rodriguez, and Fritz after the strike, or whether it is also taking Exceptions to the finding that it unlawfully reduced these same employees' hours after the strike. To the extent the latter Exception is raised, we have responded in this Answering Brief.

Hormaza, Dominguez was turned away when she attempted to return to work.³⁰ On Tuesday, September 23, when Rochelle Park first permitted Dominguez to return, Peter German informed her that she would not be returning to her full-time position and that she only would be working 3 days per week. (GC-323-5, Tr. 3025). Rochelle Park assigned non-striking housekeeper Marie Francois to take Dominguez's full-time position the day after the Union unconditionally offered to return to work. (GC-323-5). In fact, Rochelle Park hired two new housekeeping employees (Marie V. Jean Pierre-Paul and Olga Stijovic Bogoeski) in early 2015 even though both Dominguez and Hormaza had not yet been returned to their pre-strike full-time positions. (GC-330). German did not testify and Rochelle Park provided no explanation for its reduction of Dominguez's hours. Based on the above, there is substantial record evidence to support Judge Rosas' findings that Rochelle Park's delay in restating Dominguez and its reduction of her hours after the strike violated Section 8(a)(3) of the Act.

4. Judge Rosas Correctly Concluded That Rochelle Park Unlawfully Reduced Jean Fritz's Hours at the Conclusion of the Strike

Rochelle Park retaliated against striker Jean Fritz by reducing his hours when he returned to work after the strike.³¹ (Tr. 3076). Fritz participated in the Union's August 27 strike authorization vote, was a prominent speaker at the Union's Jersey City strike rally in front of Alaris Health at Castle Hill, and was a Union delegate at Rochelle Park. (GC-

³⁰ The housekeeping schedules show that Dominguez was scheduled to work every other Saturday before the strike, including Saturday August 23 and September 6. (GC-323-1). The pre-strike schedule show that Hormaza was off on Saturday, August 16, August 30, and September 13. This pattern made Saturday, September 20 Dominguez's regularly scheduled day to work. (GC-323-3). Like with Hormaza, the schedule appears to have been modified to show that Dominguez was not scheduled to work on Saturday, September 20.

³¹ Christina Ozual identified Jean Fritz holding the sign "Contract Now" during the strike. (GC-325B, Tr. 3183).

57, GC-215, Tr. 999-1000, 3074). Fritz participated in the strike and after returning to a reduced schedule, left Rochelle Park to work elsewhere. (Tr. 3128).

The record evidence shows that before the strike, Fritz worked a full-time schedule in the Rochelle Park housekeeping department. (GC-323-1). After returning from the strike, Fritz was denied work on September 21, the first day he was scheduled to work after the strike.³² Fritz returned to work on Tuesday, September 23 and worked a part-time schedule until he departed.³³ The record evidence shows that Fritz worked between 2 and 4 days per week after the strike until he resigned. Here, the post-strike housekeeping schedules show that Fritz worked part-time and Luljete Lapatinca and Adriana Santos, two employees who did not go on strike, moved from part-time to full-time status. (GC-323). For the same reasons as those applicable to Hormaza and Dominguez, there is substantial record evidence supporting Judge Rosas' conclusion that Rochelle Park's decision to delay reinstating Fritz after the strike and refusing to reinstate him to his full-time pre-strike position ran afoul of Section 8(a)(3) of the Act.

EXCEPTIONS # 3, 6, 9, 10, 11, 12, 13 Re: Gaston and Lewis

POINT II. JUDGE ROSAS CORRECTLY FOUND THAT ROCHELLE PARK VIOLATED SECTION 8(a)(3) OF THE ACT BY REFUSING TO REINSTATE DIETARY DEPARTMENT EMPLOYEES RODLEY LEWIS AND JAMIR GASTON AND BY REDUCING THEIR HOURS AFTER THE STRIKE

1. No Agency Employees Worked in the Dietary Department During the Strike

As noted earlier, Rochelle Park retained Towne and Tristate to staff its nursing department during the strike. These temporary agencies, however, did not provide

³² Jean Fritz was off every Saturday before the strike. (GC-323-1).

³³ Rochelle Park provided housekeeping schedules at the hearing pursuant to subpoena. Rochelle Park did not, however, provide post-strike schedules for the period November 2 through November 15. Fritz last appears on the housekeeping schedules on October 31, 2014.

replacement employees for the dietary department. Rochelle Park covered the vacancies created by strikers by giving extra hours to existing non-striking employees. (GC-313, GC-323). Therefore, Rochelle Park's contracts with Towne and Tristate are immaterial to the dietary department and cannot justify Rochelle Park's refusal to offer Jamir Gaston and Rodley Lewis their jobs back at the conclusion of the strike.

2. Judge Rosas Correctly Found That Rochelle Park Unlawfully Delayed in Reinstating Jamir Gaston at the Conclusion of the Strike

Jamir Gaston worked a full-time schedule in the Rochelle Park dietary department from 2011 through mid-September 2014. For two years preceding the strike, Gaston was the Union delegate in the kitchen, a member of the Union's contract negotiating committee, and a vocal leader during the strike itself.

Gaston attempted to return to work after the strike ended on September 20 because he was on the schedule that weekend. (Tr. 2938-2939). Gaston arrived at Rochelle Park before the start of his shift, attempted to enter the facility, but was stopped by administrator Kristine Giles, housekeeping supervisor Peter German, and Rochelle Park counsel David Jasinski. Jasinski told Gaston that there was no work for him and that he would have to call the facility on Monday. Gaston returned to Rochelle Park on Monday and spoke to dietary supervisor Arlene Concepcion. Concepcion told him that he was no longer full-time, he would be returning to work on a reduced schedule, and his first day back was Wednesday, September 24. The record evidence shows that almost every week after the strike, Gaston worked fewer than 5 days per week. (GC-313).

Administrator Kristine Giles testified that "there might have been two [dietary employees] that did not return to work immediately" and "there were part-time people

that had been there longer that got increased hours.” (Tr. 3223). Giles then clarified that those “people that had been there longer with part-time hours got some increased hours temporarily” because “it happened during the strike” and “it involved two people getting more hours to cover the strike” (Tr. 3239-3240). Other than stating that dietary schedules were adjusted to cover for Gaston’s absence during the strike, Giles offered no testimony as to why Gaston’s hours were reduced after the strike. Concepcion did not testify at the hearing. But she did threaten Gaston that he would lose his full-time position if he went on strike. (ALJD, pages 28-29). And this is exactly what happened. Additionally, Rochelle Park hired at least 6 new dietary employees (Zuniga, Abello, Montoya, Witter, Appia, and Canilao) instead of restoring Gaston’s full-time hours. Consequently, the overwhelming record evidence supports Judge Rosas’ finding that Rochelle Park did not properly reinstate Gaston to his pre-strike full-time position at the conclusion of the strike in violation of Section 8(a)(3) of the Act.³⁴

3. Judge Rosas Correctly Concluded That Rochelle Park Violated Section 8(a)(3) of the Act By Refusing to Reinstate Rodley Lewis at the Conclusion of the September 2014 Strike

Since June 8, 2010, Rodley Lewis worked a steady part-time schedule as an aide in Rochelle Park’s dietary department. Before the strike, Lewis worked from 7:00 a.m. until 10:30 a.m., six days a week with Wednesdays off. After the strike ended, Rochelle Park refused to recall Lewis.

On September 17, Lewis went out on strike with the Union. Lewis went to Rochelle Park on Saturday, September 20, to return to work at the end of the strike, saw

³⁴ It is unclear from Rochelle Park’s Exceptions as to whether it is taking Exceptions only to its refusal to immediately recall dietary employees Lewis and Gaston after the strike, or whether it is also taking Exceptions to the finding that it also unlawfully reduced Gaston’s hours after the strike. To the extent the latter Exception is raised, we have responded in this Answering Brief.

union representative Clauvice St. Hilaire speaking to Giles, and was told that he had to come back on Monday to find out when he would be permitted to return to work. When Lewis returned on Monday morning, Giles and German came out of the facility and Giles told Lewis that “you work per diem and Arlene [Concepcion] has no hours for you. When she has hours, she will call you.”

It is uncontested that Lewis has not returned to work since the strike. It is further uncontested that Rochelle Park never contacted him after the strike. On cross examination, Lewis testified that he holds a full-time position at another employer from 3:00 p.m. to 11:00 p.m., that he held the same position while working his steady part-time Rochelle Park schedule before the strike, that his full-time job had not interfered with his Rochelle Park hours in the past, and would not interfere if Rochelle Park offered him his pre-strike position. (Tr. 2913-2917).

Rochelle Park has not offered any reason for failing to return Lewis to work at all. Concepcion did not testify and Giles offered no specific testimony regarding Lewis. In that light, there is overwhelming record evidence supporting Judge Rosas’ finding that Rochelle Park’s failure to reinstate Lewis to his pre-strike position violates Section 8(a)(3) of the Act.

4. To Avoid Restoring Gaston’s Full-Time Hours and Recalling Rodley Lewis, Rochelle Park Reassigned Existing Dietary Staff and Hired New Dietary Employees

Lewis and Gaston were originally scheduled to work their regular schedules in the weeks after the strike ended. But in order to fill the void created by Rochelle Park’s reduction of Gaston’s hours and its refusal to recall Rodley Lewis, Rochelle Park reassigned existing dietary employees and hired new employees. For Lewis, Rochelle

Park used 3 different employees to work his 7:00am to 10:30am shift through early October (Pierre-Louis, Bowman, and Miller). None of these employees went on strike. Clearly, this ad-hoc committee approach to filling Lewis' hours shows that Rochelle Park did not permanently replace Lewis.

Furthermore, new dietary employee Xenory Zuniga started working on September 23, 2014, three days after the strike ended. That day, Zuniga worked from 6:30 am to 10:30 am, Lewis' hours were cancelled, and Gaston did not work. Zuniga next worked on September 27 and 28, with the dietary department schedules showing Lewis' hours again crossed out and Gaston not working. Zuniga continued to work through the end of December 2014, while Gaston was working part-time and Lewis not at all. (GC-313B through I, GC-331).

On November 4, Rochelle Park hired Joel Abello and Remedios Montoya. Over the next 2 months, Abello worked on 14 days in which Gaston was not assigned any hours. Additionally, in his first 2 weeks of work, Montoya worked on 5 days in which Gaston was not assigned any work.

In 2015, Rochelle Park hired three more dietary department employees (Witter, Appia, and Canilao) in its continuing effort to deny Gaston and Lewis their reinstatement rights. The record evidence shows that during this time, Gaston continued to work a sharply reduced schedule. Therefore, Rochelle Park's post-strike hiring and its failure to offer any legitimate reason for refusing to reinstate Gaston and Lewis' pre-strike hours violate Section 8(a)(3) of the Act.

Exceptions # 1 Through 14:

POINT III. JUDGE ROSAS CORRECTLY FOUND THAT ROCHELLE PARK VIOLATED SECTION 8(a)(3) OF THE ACT BY REFUSING TO IMMEDIATELY REINSTATE 6 CNA STRIKERS AT THE CONCLUSION OF THE STRIKE

1. The 6 CNA Strikers Were Unfair Labor Practice Strikers

Judge Rosas found, and Rochelle Park did not take exception to the finding, that the Rochelle Park strikers were unfair labor practice strikers. Therefore, when the Union unconditionally offered to return to work at the conclusion of the strike, Rochelle Park was obligated to immediately reinstate the strikers. By failing to do so, Rochelle Park violated Section 8(a)(1) and (3) of the Act.

2. There is No Need for a 5-Day Drug Package Grace Period Here

In *Drug Package Co., Inc.*, 228 NLRB 108, 113-114 (1977), the Board reaffirmed the longstanding rule that the back pay period for unfair labor practice strikers commences 5 days after the date of the unconditional offer to return to work. The Board found that the 5-day grace period represented a reasonable accommodation between the employees' interest in a prompt return to work and the employer's interest in dealing with administrative issues involved in reinstating the strikers.

The Board, however, in a later case, confirmed that there was no need to apply this rule to a limited duration strike in the health care industry. In *Sutter Health Center d/b/a Sutter Roseville Medical Center*, 348 NLRB 637, 638 (2006), the Board said that:

“In the usual unfair labor practice strike situation, it may be necessary to discharge replacement workers before strikers return to work. And the Board believes that 5 days is a reasonable amount of time to do the necessary administrative and personnel tasks to accomplish this. By contrast, in the instant case, the Respondent needed only to return the replacements to their prestrike regular positions. Indeed, the Respondent had ample time to effectuate this result. The Respondent received notice on November 1 that the strikers would strike for

1 day and return to work on November 15, 2 weeks before the strikers offered to return. Thus, this case is a particularly good example of a situation where 5 extra days is not needed. In addition, as the judge found, the Union had previously engaged in 1-day strikes, in which the unconditional offer to return to work accompanied the strike notice, and the strikers returned to work as announced. Thus, the prestrike period was available to the Respondent to make necessary arrangements for a smooth transition upon the strikers' return. Moreover, the history of such strikes between the parties lessened the possibility, advanced by the Respondent, that it would be faced with uncertainties as to the strikers' return to work. We find, then, that there is no showing of a need for a further period of time for such purposes.”

Here, the Union called a short strike of limited duration at Rochelle Park, as it had done in the past. Rochelle Park received the 10-day notice on September 6, was on notice that the strike would conclude on September 20, and had the benefit of time to plan for a smooth transition from its replacement employees to reinstating its striking employees immediately after the strike was over. In point of fact, Rochelle Park reinstated most of the returning strikers on September 20 without a hitch. Rochelle Park did not need an extra 5 days to reset its operations and it certainly did not need up to 4 weeks that it used here.

3. Rochelle Park’s Contracts with the Temporary Staffing Agencies Do Not Constitute a Substantial and Legitimate Justification For Delaying the Reinstatement of the Returning CNA Strikers

The Board has never addressed the question of whether the rationale of *Pacific Mutual Door* appropriately applies to a short-term strike in the healthcare industry. Clearly there are distinguishing features between the instant case and *Pacific Mutual Door*. In *Pacific Mutual Door*, the strike was open-ended and in a non-healthcare facility. In this case, the Union submitted the requisite 10-day notice announcing a limited duration 3-day strike. Rochelle Park knew when it entered into the 4-week

contracts with Tristate and Towne that the lengths of these contracts greatly exceeded the duration of the strike, and would result in unnecessary disruptions to patient care.

The important factor distinguishing *Pacific Mutual Door* from the instant case, however, is that Rochelle Park has not met its burden to establish that the 4-week post-strike guarantees contained in the Agency contracts were necessary to staff its facility during the 3-day strike. Rochelle Park presented no record evidence chronicling its negotiations with the two temporary agencies it used during the strike and there is no probative evidence showing that Rochelle Park was required to agree to these post-strike guarantees in order to obtain their services. No official from Towne or Tristate testified nor did Alaris vice-president Linda Dooley, the individual who negotiated and signed the above-referenced contracts on behalf of Rochelle Park.³⁵ The point is that the burden of proving the post-strike replacement contracts were necessary falls squarely on Rochelle Park, and the record evidence reveals that Rochelle Park has completely failed in meeting its burden. Therefore, Judge Rosas correctly found that Rochelle Park violated Section 8(a)(3) of the Act when it refused to immediately reinstate 6 of its returning CNA strikers at the conclusion of the September 2014 strike.

Additionally, Rochelle Park tolerated egregious attendance problems from Towne CNAs in order to further its goal of keeping striking CNAs from returning to work. Of the 4 Towne CNAs that continued to work at Rochelle Park after the strike, Kaprice Dennis was a no-call, no-show on September 21 and 22 and was allowed to work for two weeks thereafter. Claudette Leveque called out on September 26 and 30 while being

³⁵ Regina Figueroa testified that she reports to Linda Dooley and Rochelle Park presented no evidence demonstrating that Dooley was unavailable during the lengthy hearing. (Tr. 1368). Therefore, an adverse inference should be drawn against Rochelle Park for refusing to call Dooley. *Martin Luther King, Sr., Nursing Center*, 231 NLRB 15 fn. 1 (1977).

permitted to work another 9 days (4 of those days after the last striking CNA had returned to work). Of the other two Towne CNAs that continued to work after the strike, Toya Majette worked only 3 days after the strike and Emmanuel Dore, the only replacement CNA to work a steady 5 day a week schedule after the strike, continued to work for 25 days after the last striking Rochelle Park CNA returned to work.

Of the 2 CNAs Tristate referred to Rochelle Park during the strike, only Sarah Green remained to work at Rochelle Park after the strike ended. Green, however, cannot be classified as a replacement worker because she worked at Rochelle Park for two weeks before the strike.³⁶ (GC 337). Rochelle Park provided no explanation as to why temporary CNA Fahengy Pierre Louis stopped working when the strike ended or why the parties did not honor their contractual obligation guaranteeing Pierre Louis 4 weeks of work.

If Rochelle Park cannot establish that it was obligated to use and pay for all of the temporary employees after the strike ended, it cannot establish it was obligated to use and pay for any of these employees post-strike and, therefore, was obligated to reinstate the returning CNA strikers once the Union made an unconditional offer to return to work.

4. Rochelle Park Possessed No Reasonable Basis to Believe that the Strike Would Extend Beyond 3 Days

On the second day of the Rochelle Park strike, Jasinski informed Massey that Rochelle Park and the other 3 Alaris Health facilities had entered into 30 day contracts with outside agencies and consequently, not all of the strikers would be immediately returned to work. When Massey questioned why Rochelle Park entered into such lengthy contracts when it knew the strike was going to be of limited duration, Jasinski posited

³⁶ Green worked 22.5 hours and 34 hours during the pre-strike weeks of September 6 and September 13, respectively.

that the strikers could potentially remain on strike beyond the three days and the facilities needed to prepare for this possibility. This statement is clear evidence of bad faith, tainting Rochelle Park's reasoning for entering into such lengthy contracts with the staffing agencies. As a veteran practitioner, Jasinski knew that the Union's 8(g) strike notice specified the date the strike would commence and the date and time the strike would end. He knew full well that extending the strike beyond those parameters would have left the strikers unprotected by the Act. Failing to adhere to its notice would have also run counter to the Union's perfect track record of respecting a 3-day strike when it noticed its intent to engage in a 3-day strike. Massey challenged Jasinski with those facts in their September 18 conversation, and in Massey's subsequent summarizing email to Jasinski. Jasinski did not reply. Notably, in his trial testimony, Jasinski did not deny that he made these statements to Massey. Massey's testimony on this subject stands unrebutted and, consequently, Rochelle Park had no good faith basis for believing that the Union might extend the 3-day strike. Without a good faith basis for this belief, and with no probative record evidence showing that it was necessary to sign lengthy contracts with the staffing agencies to adequately staff its facility during the strike, Rochelle Park's proffered reasons to justify its refusal to immediately reinstate 6 of its returning CNA strikers are blatantly pretextual. Based on the above, it can reasonably be concluded that Rochelle Park only entered into these lengthy contracts to punish union strikers, and in doing so, violated Section 8(a)(3) of the Act.

5. Additional Pretext is Found in Rochelle Park Hiring Three New CNAs after the Strike But Before Reinstating Strikers

Rochelle Park asserts that returning strikers were kept off of work due to agency commitments. But a review of the record evidence shows that Rochelle Park's defense is

a sham. In order to meet its goal of keeping striking CNAs from promptly returning to work after the strike, Rochelle Park hired three new CNAs (Vrajesh Mehta, Nimisha Hehta, Carol Scott). A careful review of the nursing department schedules reveals that, on various dates, Mehta replaced locked out CNAs Abellard, Meronvil, and Vilceus on the 7 am to 3 pm shift. The record evidence further shows that both Hehta and Scott replaced Abellard and Vilceus on 3 occasions in the month of October prior to Rochelle Park reinstating Abellard and Vilceus. (GC-318-31,32,35,36,37,43,44,45).

This record evidence shows that Rochelle Park's defense that it replaced its striking with agency employees is clearly illusory and must be rejected.

Additionally, Rochelle Park, in its Brief in Support of Exceptions, argues that a public policy exception should be carved out for health care institutions to essentially have the unfettered ability to delay reinstatement of its strikers. In support of its argument, Rochelle Park relies on *Roosevelt Memorial Medical Center*, 348 NLRB 1016 (2006). Rochelle Park's reliance on *Roosevelt* is misplaced and its argument for such a blanket exception must be rejected.

In *Roosevelt*, the Board held that an employer did not violate the Act when, in anticipation of a strike that was eventually called off, it crafted a strike schedule using temporary and per diem employees to cover shifts. The Board found that not calling all of the potential strikers to work during the week of the previously scheduled strike was not unlawful because the loss of hours to the discriminatees was minimal, the employer had established a substantial and legitimate justification for its conduct, and there was no evidence of anti-union animus on the part of the employer.

The facts in this case are clearly distinguishable from *Roosevelt*. First, Rochelle Park held 6 CNAs off of work for up to 4 weeks, and other striking dietary and housekeeping employees have seen their hours reduced for almost 2 years now. The damage inflicted here is far more substantial than what the discriminatees in *Roosevelt* experienced in that they only missed a few shifts in the course of a week. Next, there is ample evidence cited *infra* establishing that Rochelle Park has failed to prove a substantial and legitimate justification for keeping these 6 CNAs off of work. To this end, the fact that Staff Blue and Medistar were willing to provide temporary staff to Alaris Health at Harborview during the strike without requiring a minimum time commitment undercuts Rochelle Park's contention that it had no choice, but to agree to minimum commitments from TriState and Towne. Furthermore, the record evidence shows that Rochelle Park tolerated chronic absenteeism from the agency employees who ostensibly replaced unit employees during the strike.

The final distinguishing characteristic between *Roosevelt* and this case is the anti-union animus readily apparent here. In this regard, Judge Rosas correctly found a myriad of 8(a)(1) threats and interrogations engaged in by Rochelle Park's highest ranking officials in the run up to the September 2014 strike. As noted earlier, no exceptions were filed to these findings of unlawful threats and interrogations. Therefore, these 8(a)(1) violations demonstrate clear anti-union animus on the part of Rochelle Park. Based on the above, the facts here show that *Roosevelt* cannot be relied on to excuse or condone Rochelle Park's unlawful refusal to timely recall 6 striking CNAs here, and certainly cannot be used as a safe harbor for all nursing homes to delay reinstating their striking employees. Therefore, Rochelle Park's Exceptions must be rejected.

6. Judge Rosas Correctly Found That Rochelle Park Unlawfully Refused to Immediately Reinstate Deloris Alston at the Conclusion of the Strike and Denied her Overtime Opportunities After She Returned to Work

Rochelle Park delayed reinstating 26-year CNA Deloris Alston after the strike ended, temporarily gave Alston part-time work after reinstating her and, thereafter, refused to give her overtime work opportunities she had regularly worked before the strike. There is substantial record evidence supporting Judge Rosas' conclusions that the above-referenced acts were unlawful.

For the last 25 years, Alston has worked a steady, five day-a-week schedule on the 3 pm to 11 pm shift. In addition to her work duties, Alston has been a Union delegate for 23 years. As such, Alston participated in the Union's August 27 strike authorization vote, and personally handed Giles the Union's 10-day strike notice on September 6.

Alston went on strike and attempted to return to work when the strike was over on September 20, only to be told that she did not have a schedule. After Alston learned by happenstance that she could return to work late on September 22, she went to Rochelle Park the following day, spoke to Giles, and was instructed to return to work on September 24. When Alston returned to work on the 24th, however, she was limited to a mere two days of work over the course of the next two weeks.

Alston quickly grew tired of her situation and went to see Director of Nursing Dexter Caldon on October 5th to find out when she was going to be reinstated to her full-time position. In response to Alston's query, Caldon called Rochelle Park scheduler Moses Adu to his office and asked Alston to wait outside. Alston testified without contradiction that when their meeting concluded, Adu informed her she was being immediately reinstated to her full-time position. Alston then asked Adu if she would be

permitted to resume her pre-strike routine of working overtime on her Saturdays off and Adu replied that Giles issued an edict stating that there would be no overtime for anyone that had participated in the strike.

Neither Caldonia nor Adu testified at the hearing and Giles failed to address Alston's job status during her testimony. Therefore, based on the substantial record evidence, Judge Rosas correctly determined that Rochelle Park's refusal to timely recall Alston, its temporary reduction of her hours, and permanently erasing her overtime opportunities violates Section 8(a)(3) of the Act.

7. Judge Rosas Properly Found That Rochelle Park Unlawfully Refused to Immediately Reinstate Jean Patrick Abellard at the Conclusion of the Strike

Jean Patrick Abellard was hired by Rochelle Park as a CNA in 2007 and worked a full-time schedule (7 am to 3 pm and the 3 pm to 11 pm shifts on Wednesday, Saturday and Sunday) before the September 2014 strike.

When Abellard attempted to return to work after the strike on September 20, Jasinski told him he was not on the schedule. A few minutes later, Abellard received a call from scheduler Adu informing him that he was on the schedule and inquiring why he was not at work. Abellard returned to the facility, went inside with Union counsel William Massey and Union vice-president Clauvice St. Hilaire, only to be told by administrator Giles that there was no work for him.

A few days after being locked-out, Adu called Abellard to tell him that Giles had work for him in Jersey City. Abellard spoke to Giles and she explained that he had been replaced at Rochelle Park and that she wanted to know if he would be willing to take a position in Jersey City. Abellard told her he was not interested in her offer. Notably,

while Giles was disingenuously offering to send Abellard to another facility to work, Rochelle Park was busy covering Abellard's shifts with new hires Vrajesh Mehta on October 1, Nimisha Mehta on October 5, and Carol Scott on October 15.

On October 10, Christina Ozual called Abellard and told him that the Union attorney had received notice from Rochelle Park that he could return to work on October 15. Abellard returned to work on the 15th, but before he could start his tasks, he was summoned to Giles' office. There, Giles asked Abellard who had told him to come to work and Abellard informed Giles that the Union notified him. Giles said that the Union was not his boss, the Union could not tell him he is working, and ordered him to leave. Abellard finally returned to work on October 18 and testified that he has been working the same full-time schedule he worked before the strike began.

Based on the above, there is substantial record evidence supporting Judge Rosas' conclusion that Rochelle Park retaliated against Abellard for participating in the strike in violation of Section 8(a)(3) of the Act.

8. Judge Rosas Correctly Concluded That Rochelle Park's Refusal to Immediately Reinstate CNAs Rajvinder Padda, Evelyn Meronvil, Santia Vilceus, and Gabby Youmane at the Conclusion of the Strike Violated Section 8(a)(3) of the Act.

The actions that enabled Rochelle Park to delay reinstating strikers Abellard and Alston, also permitted Rochelle Park to lockout an additional 4 CNAs. Three of them, Evelyn Meronvil, Santia Vilceus, and Gabby Youmane, all held full-time 7 am to 3 pm CNA positions before the strike. The fourth, Rajvinder Padda, occupied a full-time CNA position on Rochelle Park's 11 pm to 7 am shift. Rochelle Park shifted existing staff, Agency CNAs, and new hires, all in an effort to cover shifts left vacant by returning strikers it was loath to reinstate. Even though all four did not testify at the hearing, there

is copious evidence in the record that they all participated in the Union's strike and Rochelle Park refused to reinstate them when they attempted to return to work.

Padda went on strike with the Union and when she attempted to go back to work on September 20, she was told there were no work for her. Padda went back to work after Jasinski informed Massey she could return on September 28. Notably, no agency CNA worked on the 11pm to 7am shift after the strike ended. (GC-318-028, GC-324C, GC-325C, GC-327, GC-323, Tr: 2978, 3075-3077, 3132, 3184).

Meronvil participated in the strike. When she tried to return to work on September 20, she was informed that there was no position available for her. While Meronvil was locked out, Rochelle Park utilized new hire Vrajesh Mehta to fill in for her on September 30, October 1, and October 2. On October 4, Jasinski informed Massey that Meronvil could return to work. When Meronvil went back to work, she signed a document memorializing her return date. (GC-318-034, GC-324, GC-324(d), GC-325A, GC-325E, GC-328, Tr. 3131-3132, 3184).

Vilceus joined the strike and when she endeavored to return to work on September 20, she was told that she was not on the schedule. Rochelle Park filled the vacancy created by Vilceus' absence by utilizing newly hired CNAs. For example, Vrajesh Mehta worked the 7am to 3pm shift on September 30, October 2, 6, 7, 13, and 14; Nimisha Mehta worked the 7am to 3pm shift on October 5, and Carol Scott worked the 7am to 3pm shift on October 14. Jasinski alerted Massey on October 10 that Vilceus could return to work and on October 15, Vilceus went to Rochelle Park, signed a document memorializing her return date, and was reinstated. (GC-318-045, GC-323, GC-323A, GC-324(g), GC 329, Tr. 3075, 3131-3132).

Youmane partook in the Union's strike and when she attempted to return to work on September 20, she was informed that she had no schedule. On September 24, Jasinski verbally informed Massey that Youmane could return to work and on September 29, Youmane was reinstated. (GC 318-030, GC-323, GC-324D, GC-325, Tr. 3076, 3131-3132, 3184).

Based on the above, there is overwhelming record evidence showing that Rochelle Park's retaliation against Rajvinder Padda, Evelyn Meronvil, Santia Vilceus, and Gabby Youmane for participating in the strike violated Section 8(a)(3) of the Act.

V. CONCLUSION

The entire record, a preponderance of the credible evidence, and the applicable case law prove that Rochelle Park violated Section 8(a)(1) and (3) of the Act, as found by Judge Rosas. Counsel for the General Counsel respectfully requests that the Board issue a broad order with a notice and make whole remedies, and for Rochelle Park to comply with any other remedies requested above and deemed appropriate.

Dated at Newark, New Jersey this 24th day of June, 2016.



Michael Silverstein
Saulo Santiago
Eric Sposito
Counsel for the General Counsel
National Labor Relations Board - Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102
Telephone: 862-229-7059

CERTIFICATION

This is to certify that copies of the foregoing Answering Brief on Behalf of the General Counsel to Respondent's Exceptions to the Decision of Administrative Law Judge Michael A. Rosas has been duly served on the Board's Executive Secretary on June 24, 2016 and on Rochelle Park's counsel and Charging Party on June 24, 2016 as follows:

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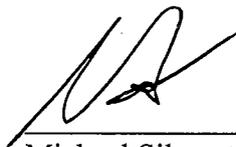
National Labor Relations Board
Office of the Executive Secretary
Attn: Executive Secretary Gary Shinnars
1015 Half Street S.E.
Washington, D.C. 20570

BY ELECTRONIC MAIL

John T. Bauer, Esq.
Denise Barton Ward, Esq.
Littler Mendelson, P.C.
290 Broadhollow Road, Suite 305
Melville, NY 11747

Patrick Walsh, Esq.
William Massey, Esq.
Gladstein, Reif & Meginniss, LLP
817 Broadway, 6th Floor
New York, New York 10003

Dated at Newark, New Jersey this 24th day of June, 2016.



Michael Silverstein
Counsel for the General Counsel
National Labor Relations Board - Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102
Telephone: 862-229-7059