

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' REPLY BRIEF IN RESPONSE TO GENERAL COUNSEL'S AND
CHARGING PARTY'S ANSWER TO EXCEPTIONS**

Submitted by:

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Respondents Alaris at Rochelle Park, Alaris at Harbor View, Alaris at Boulevard East, and Alaris at Castle Hill¹ submits this Reply Brief in support of its Exceptions to the Decisions and Orders of the Administrative Law Judge Michael A. Rosas (hereinafter “ALJ”) and in reply to the Answering Brief of the General Counsel and Charging Party (“Union”).

I. BOTH THE GENERAL COUNSEL AND UNION MISUNDERSTAND THE NATURE OF RESPONDENTS’ EXCEPTIONS.

First, the General Counsel and Union both make protracted arguments against Respondents’ right to a five day grace period to return the striking employees to work. The Respondents, however, never argued that a five day grace period was applicable in this case. Rather, cases involving five day grace periods were cited by Respondents as examples of situations where the Board did not require the *immediate* return of unfair labor practice strikers, an important point when considering the policy argument advanced by Respondents’ exceptions.

Next, to further its misguided point, the General Counsel argues that *Sutter Health Center*, 348 NLRB 637 (2006), found it unnecessary to apply the five day reinstatement rule. This argument, however, ignores a critical point in *Sutter*, where the Board allowed a health care employer to delay the return of strikers due to temporary staffing contracts. The unfair labor practice findings in *Sutter* centered only on economic strikers replaced by in-house supervisory and managerial employees as well as by nonunit employees. The complaint in *Sutter* “did not allege that the Respondents violated the Act with respect to strikers who were replaced by the employees hired from the temporary agencies.” *Id.* at 637 fn 6. Thus, the *Sutter* case is actually an example of health care facility employees who engaged in a one day strike being lawfully replaced for a longer period of time due to the contractual requirements of temporary staffing agencies.

¹ The four individual Employers are collectively referred to herein as “Respondents.”

Finally, Respondents' reliance on *Roosevelt Memorial Medical Center*, 348 NLRB 1016 (2006) is not misplaced. In *Roosevelt Memorial*, the Board upheld an employer's contractual commitments to temporary staffing agencies which the employer made to allow it to operate during a strike, which is of paramount importance in a healthcare setting where the health and well-being of patients is at stake. This is precisely the issue in the instant cases, where the Respondents sought to ensure continuation of patient care in the face of staffing agencies insisting on multi-week contracts. In such a scenario, ensuring continuity of patient care must control.

II. GENERAL COUNSEL'S ANALYSIS OF THE EXACT PLACEMENT OF TEMPORARY EMPLOYEES IS A RED HERRING.

The General Counsel went to great lengths in an effort to document the alleged exact placement of temporary agency employees.² The purpose of the General Counsel's efforts appears to be to show there was no legitimate business need for Respondents not to have returned striking employees to work. However, the General Counsel's efforts instead serve to support the Respondents' point. Respondents most certainly used temporary employees and continued to use these temporary employees throughout the four to six weeks of the staffing agency contracts. As repeatedly addressed, the overarching goal was for the patients to receive proper care (Tr. 1646); "to make sure that [Respondents] had sufficient staff in case there was a hundred percent walk out." (Tr. 2554, 2552). In other words, Respondents' focus was on the lives of patients, a focus the Union and General Counsel seem content to throw by the wayside in their very technical analysis. Where exactly the Respondents placed each temporary employee cannot be decided by mere happenstance of who chose to strike. Rather, the temporary

² Contrary to the General Counsel's assertion, the Respondents did not leave the facilities understaffed. The citations to a few paltry examples in the schedules do not come close to supporting the General Counsel's outrageous assertion in this regard.

employees must be placed where skill and training is best-suited. Respondents were not required to place each temporary employee in the exact place of a striker, but where the skills and needs of the non-striking employees and the temporary replacements were most needed. If that meant rearranging the staffing from its stable pre-strike arrangement in order to benefit patients, then that was obviously necessary.³ Further, the appropriate staffing needs/mix could change on a daily basis. The Union and General Counsel's inability to understand this is point in rather shocking.

III. CONCLUSION

For the reasons set forth herein as well as the Respondents' Exceptions and brief in support of its exceptions, the Respondents request that the Board grant its exceptions in full.

Respectfully submitted,


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³ In addition, the type of detailed analysis conducted by the General Counsel seems more appropriate in a compliance proceeding, should there be one, rather than in the instant proceeding.