

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' ANSWERING BRIEF IN RESPONSE TO
GENERAL COUNSEL'S AND CHARGING PARTY'S CROSS-EXCEPTIONS**

Submitted by:

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Dated: July 25, 2016

TABLE OF CONTENTS

	Page
I. CROSS EXCEPTIONS TO THE DECISIONS SHOULD BE DENIED	1
A. Cross Exceptions 1 And 3 Are Contrary To The ALJ's Unchallenged Findings.....	1
B. Cross-Exceptions 2 And 4 Are Contrary to the ALJ's Unchallenged Findings.....	2
II. CONCLUSION.....	2

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>American Baptist Homes of the West d/b/a Piedmont Garden,</i> 364 NLRB No. 13 (May 31, 2016).....	2
<i>Hot Shoppes, Inc.,</i> 146 NLRB 802 (1964)	2
<i>Nicholas County Heath Care Center,</i> 331 NLRB 970 (2000)	2
<i>Pennsylvania Glass Sand Corp.,</i> 172 NLRB 514 (1968)	1, 2
STATUTES	
29 C.F.R. 102.46(f)(1)	1

Pursuant to 29 C.F.R. 102.46(f)(1), Respondents Alaris at Rochelle Park, Alaris at Harbor View, Alaris at Boulevard East, and Alaris at Castle Hill¹ hereby submits its combined answers to the General Counsel's and Charging Party 1199 SEUI United Healthcare Workers East ("Union" or "Charging Party") Cross Exceptions to the Decisions and Orders of Administrative Law Judges Michael A. Rosas ("ALJ").² The Cross Exceptions filed by the General Counsel and joined by the Union are frankly inapposite to the Decisions in this case and must be denied.

I. CROSS EXCEPTIONS TO THE DECISIONS SHOULD BE DENIED

A. Cross Exceptions 1 And 3 Are Contrary To The ALJ's Unchallenged Findings.

Cross Exceptions 1 and 3 ask the Board to find additional 8(a)(3) violations for Respondents alleged failure to prove two employees were permanently replaced. Given the ALJ's unchallenged findings that the strike was an unfair labor practice strike, the General Counsel's raising of this issue is perplexing. Because the strike was found to be an unfair labor practice strike, whether or not certain employees were permanently replaced is now moot, as employers cannot permanently replace unfair labor practice strikers. *Pennsylvania Glass Sand Corp.*, 172 NLRB 514 (1968)(the Board found it "unnecessary" to make conclusions about reinstatement rights had an unfair labor practice strike remained an economic strike). Thus, Cross Exceptions 1 and 3 must be rejected.

B. Cross-Exceptions 2 And 4 Are Contrary to the ALJ's Unchallenged Findings.

The General Counsel claims Devika Smith and Claudia Saldana were unlawfully selected for "permanent replacement." As stated above, the entire argument regarding permanent

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

² The Union joined the General Counsel's Cross Exceptions. (Union Answer at 3.)

replacement is moot given the ALJ's unchallenged findings and any further violations based on such an argument are misplaced.

Further, the General Counsel presents a convoluted explanation with case law focusing on whether the hiring of replacement workers in general was done for an "independent unlawful purpose." In this regard, the General counsel cites to *Hot Shoppes, Inc.*, 146 NLRB 802 (1964) and newly decided *American Baptist Homes of the West d/b/a Piedmont Garden*, 364 NLRB No. 13 (May 31, 2016). The present case, however, is more akin to *Nicholas County Heath Care Center*, 331 NLRB 970 (2000) and *Pennsylvania Glass Sand Corp.*, 172 NLRB 514 (1968), where the Board declined to make such a determination because it found the strikers were unfair labor practice strikers as the ALJ did here. As such, Cross Exceptions 2 and 4 must be rejected.

II. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Board deny the Cross Exceptions to the ALJ's Decisions.

Respectfully submitted,



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