

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

<p>DHSC, LLC d/b/a AFFINITY MEDICAL CENTER, COMMUNITY HEALTH SYSTEMS, INC., and / or COMMUNITY HEALTH SYSTEMS PROFESSIONAL SERVICES CORPORATION, LLC, a single employer and / or joint employers, <i>et al.</i></p> <p>and</p> <p>CALIFORNIA NURSES ASSOCIATION / NATIONAL NURSES ORGANIZING COMMITTEE (CNA / NNOC)</p> <p>and</p> <p>UNITED STEEL, PAPER AND FORESTRY RUBBER, MANUFACTURING, ENERGY ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO</p>	<p>08-CA-117890, <i>et al.</i></p>
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**RESPONDENT HOSPITAL OF BARSTOW, INC. D/B/A BARSTOW
COMMUNITY HOSPITAL’S REPLY TO GENERAL COUNSEL’S
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT,
ALTERNATIVELY, MOTION TO DISMISS PARAGRAPH (54) OF
THE SECOND AMENDED COMPLAINT**

As a Respondent in the above-captioned cases, Hospital of Barstow, Inc. d/b/a Barstow Community Hospital (hereafter, “Barstow” or the “Hospital”) hereby replies, by and through the Undersigned Counsel, to the Opposition filed by the General Counsel (hereafter, the “Opposition”) to

Barstow's Motion for Summary Judgment, Alternatively, Motion to Dismiss Paragraph (54) of the Second Amended Complaint (hereafter, the "Motion").

In an effort to avoid the need to confront the merits of Barstow's argument, the General Counsel argues, in essence, that Your Honor is powerless to even consider the question as to whether any of the allegations now before Your Honor should be removed from the case. The Rules and Regulations of the National Labor Relations Board prove otherwise, as they clearly vest Your Honor with the authority to both consider the Motion, and should Your Honor be persuaded by the Hospital's arguments, as the Hospital believes Your Honor would be, enter summary judgment in favor of the Hospital or at least dismiss the allegations.

Under Section 102.35(a)(8) of the Board's Rules and Regulations, between the time Your Honor was assigned to these proceedings and up to the day the proceedings are transferred to the Board, Your Honor has possessed and will continue to possess the authority "[t]o dispose of procedural requests, motions, or similar matters, **including** . . . motions for summary judgment [;] also to dismiss complaints or portions thereof []." (emphasis added). Indeed, the Bench Book that was prepared for the use of all of the agency's Administrative Law Judges, and updated only a year ago, confirms: "[a] respondent may move the judge to dismiss a complaint or

portions of a complaint,” and “[a] judge likewise has the authority to rule on motions for summary judgment.” Bench Book, §§ 10-100, 10-300.

Notably, the Bench Book also confirms the authority of an Administrative Law Judge to grant a motion for summary judgment “*notwithstanding the failure of the moving party to file such a motion directly with the Board at least 28 days prior to the hearing under Section 102.24 of the Rules.*”

Bench Book, § 10-300 (emphasis added), citing Calyer Architectural Woodworking Corp., 338 NLRB 315 (2002). Moreover, the authority to rule upon motions for summary judgment and motions to dismiss has hardly been a spectator on the sidelines of unfair labor practice proceedings, as the agency’s Administrative Law Judges routinely invoke the authority. See e.g., UPMC and UPMC Presbyterian Shadyside, 2015 WL 4607437, *7, fn. 3.

In the Motion, the Hospital observed Your Honor’s authority to rule upon the Motion and cited to the Bench Book. See Motion, page 7. In the evidently urgent search for a procedural escape hatch, the General Counsel neglected to explain, as part of the Opposition, why Your Honor should not be able to invoke the authority expressly spelled out by Section 102.35(a)(8). Instead, almost by a sleight of hand, the General Counsel re-positions the Motion under Section 102.24 of the Board’s Rules and Regulations, which

not only serves as the basis for the Opposition now before Your Honor, but also the General Counsel's expressed intention to file any future "substantive opposition" with the Board, regardless of any authority Your Honor may intend to exercise over the Motion. See Opposition, page 2, fn. 1.

In summary, regardless of any opinion held by the General Counsel that the Motion should have been filed previously with the Board, the fact remains that Your Honor has the authority to rule upon the Motion. The authority is staked to Section 102.35(a)(8) of the Board's Rules and Regulations and was confirmed by the Division of Judges as recently as last year *via* the release of the updated Bench Book.

Dated: Glastonbury, CT
November 2, 2016

Respectfully submitted,

/s/ _____

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CERTIFICATE OF SERVICE

The Undersigned, Bryan T. Carmody, being an Attorney duly admitted to the practice of law, does hereby certify, pursuant to 28 U.S.C. § 1746, that, on November 2, 2016, the document above was served upon the following *via* email:

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Respectfully submitted,

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