

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
JD(SF)-01-19**

**ST. MARY-CORWIN MEDICAL CENTER**

**and**

**Case No. 27-CA-216441**

**COMMUNICATIONS WORKERS OF AMERICA,  
LOCAL 7774**

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**RESPONDENT'S STATEMENT OF EXCEPTIONS**

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Respondent St. Mary-Corwin Medical Center (“Respondent”), by and through its attorneys Sherman & Howard L.L.C., pursuant to the National Labor Relations Board Rules and Regulations § 102.46, takes the following exceptions to the Decision of the Administrative Law Judge:

1. The Administrative Law Judge’s implicit finding, without record evidence, that the parties have defined the term “bargaining unit work.” (3 ALJD 20-22).<sup>1</sup>

2. The Administrative Law Judge’s finding that PRN employees performed so-called “bargaining unit work.” (3 ALJD 20-22).<sup>2</sup>

3. The Administrative Law Judge’s failure to consider that Charging Party’s representative and only witness, Garry Jordan, denied ever observing PRN employees performing what was alleged to be “bargaining unit work.” (3 ALJD 20-22) (Tr. 116:15-23).

4. The Administrative Law Judge’s failure to consider that the term “bargaining unit work” has no agreed-to meaning between the parties, and the parties have never negotiated the term. (3 ALJD 20-22) (Tr. 107:12-14; 116:3-5; 130:12-20).

5. The Administrative Law Judge’s refusal to consider the undisputed facts that PRN employees are not part of the bargaining unit and are not subject to layoff. (4 ALJD 21-22) (Tr. 105:4-10; 131:2-8; 136:22-23).

6. The Administrative Law Judge’s unsubstantiated finding that Respondent’s notice pursuant to the Worker Adjustment and Retraining Notification Act was possibly inconsistent with Article 5.1 of the Collective Bargaining Agreement. (4 ALJD 29-33).

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<sup>1</sup> It appears from the Decision that the Administrative Law Judge simply adopted Charging Party’s premise that the term “bargaining unit work” needs no definition through collective bargaining, but is universally understood. The record is undisputed, however, that the parties have no such term in their parlance.

<sup>2</sup> Citations in this Statement of Exceptions will be as follows: “Tr. \_\_:\_\_” to indicate the hearing transcript’s page and line numbers, respectively; “G.C. Ex. \_\_” to indicate Counsel for General Counsel’s exhibits; and “\_\_ ALJD \_\_” to indicate page and line numbers, respectively, of the Administrative Law Judge’s Decision. Additional record citations are set forth in the Brief in Support of Statement of Exceptions and incorporated by reference herein.

7. The Administrative Law Judge's reliance on Garry Jordan's testimony that his request for information was aimed at "policing" Article 11 of the Collective Bargaining Agreement in the absence of any allegation regarding misapplication of the severance provision. (5 ALJD 23-25) (Tr. 102:14-23; 115:9-15).

8. The Administrative Law Judge's reliance on Garry Jordan's post-hoc testimony concerning his thoughts and intentions underlying the requests for information rather than Charging Party's express communications to Respondent regarding the requests for information. (5 ALJD 23-25).

9. The Administrative Law Judge's failure to consider that, at the time of Charging Party's requests for information, Respondent had not laid off or made severance payments to any employee. (5 ALJD 27-29) (Tr. 100:12-24; 101:3-10).

10. The Administrative Law Judge's failure to rely on her own finding that Charging Party "had no factual basis to conclude that Respondent planned to pay any unit employee less severance" than any non-unit employee. (5 ALJD 27-29 and 11 ALJD 44-47).

11. The Administrative Law Judge's implicit conclusion that Garry Jordan's mere speculation underlying the requests for layoff and severance information comprised objective evidence supporting a reasonable belief that Respondent would not abide by the Collective Bargaining Agreement. (5 ALJD 29-32 and 11 ALJD 44-47) (Tr. 114:16-115:2).

12. The Administrative Law Judge's failure to find that Respondent provided a complete list of bargaining unit employees impacted by Respondent's layoffs, the applicable workforce reduction policy, and confirmation that the workforce reduction policy would apply to bargaining unit employees. (7 ALJD 11-22) (G.C. Ex. 8).

13. The Administrative Law Judge's failure to consider that Charging Party never provided a specific articulation of how Respondent was alleged to have violated Article 5 or Article 11 of the Collective Bargaining Agreement. (7 ALJD 39 – 8 ALJD 30).

14. The Administrative Law Judge's failure to find that Respondent satisfied Charging Party's request for a list of "all PRN employees who perform work that would otherwise be bargaining unit work" when it responded that there were no such employees. (8 ALJD 34-35).

15. The Administrative Law Judge's conclusion that non-unit information related to an alleged "contractual parity provision" is presumptively relevant to Charging Party's role as bargaining representative. (9 ALJD 17-45).

16. The Administrative Law Judge's conclusion that an employer may not refuse to furnish extra-unit information solely on the basis that it concerns matters outside the scope of the bargaining unit. (9 ALJD 28-30).

17. The Administrative Law Judge's conclusion that Charging Party's requests for information were relevant to effects bargaining in the absence of any such claim by Charging Party and when Charging Party had explicitly refused to engage in effects bargaining. (11 ALJD 27-29) (Tr. 107:4-6).

18. The Administrative Law Judge's failure to cite to any non-speculative evidence that Respondent would not abide by its contractual obligations with respect to layoffs and severance. (11 ALJD 31-41).

19. The Administrative Law Judge's conclusion that Charging Party met its burden establishing the relevance for the requests for information in the absence of any objective factual basis for such requests. (11 ALJD 1 – 12 ALJD 4).

20. The Administrative Law Judge's conclusion that Respondent's responses to Charging Party's requests amounted to "gamesmanship" and provided an additional basis for the requests for information. (11 ALJD 43 – 12 ALJD 4).

21. The Administrative Law Judge's failure to find that Charging Party failed to respond to Respondent's attempts to elicit Charging Party's purported basis for the requests for non-unit information. (12 ALJD 8-13) (G.C. Exs. 4-5).

22. The Administrative Law Judge's conclusion that Respondent was required to rebut a presumption of relevance improperly applied to Charging Party's requests for non-unit information. (12 ALJD 6-35).

23. The Administrative Law Judge's failure to consider that Charging Party has never alleged that any unit employee did not receive proper severance payment, nor identified any PRN employee whom Charging Party contends should have been laid off. (12 ALJD 15-24) (Tr. 106:3-6; 136:22-23).

24. The Administrative Law Judge's conclusion that, once Respondent announced future layoffs, Respondent was required to respond to requests for information in order for Charging Party to assess whether contractual layoff protections would be honored in the absence of any evidence or allegation that they would not be honored. (12 ALJD 26-35).

25. The Administrative Law Judge's conclusion that Respondent violated Section 8(a)(1) and (5) of the Act by failing to supply information to Charging Party in response to requests for information. (13 ALJD 21-28).

26. The Administrative Law Judge's refusal to consider Charging Party's admission that Charging Party's attorney received a response to one of the three requests for information and, therefore, Respondent has no further obligation to respond to it. (13 ALJD 37-43) (Tr. 113:6-16).

27. The Administrative Law Judge's recommendation that Respondent should be ordered to supply Charging Party's requested information or inform Charging Party that such information does not exist. (13 ALJD 37-43 and 14 ALJD 28-35).

28. The Administrative Law Judge's recommendation that Respondent should be ordered to post an appropriate informational notice to employees concerning certain rights under the Act. (13 ALJD 43-44 and 14 ALJD 37 – 15 ALJD 6).

Dated: February 6, 2019



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