

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

Montefiore Medical Center
Respondent

and

Case 02-CA-229024

New York State Nurses Association
Charging Party

**COUNSEL FOR THE GENERAL COUNSEL'S EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

Susannah Z. Ringel
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National Labor Relations Board
Region 2
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Dated at New York, New York
June 27, 2019

Pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, Counsel for the General Counsel hereby excepts to the Decision of Administrative Law Judge Kenneth W. Chu, dated May 30, 2019.

Counsel for the General Counsel is filing a brief in support of these exceptions separately, in accordance with Section 102.46(a)(1)(i)(D) of the Rules.

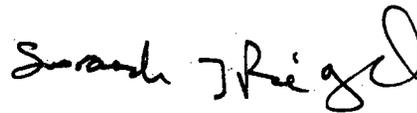
EXCEPTIONS

1. The ALJ erred in failing to credit the mutually-corroborated testimony of the three employee witnesses regarding the alleged threats.
 - a. The ALJ erred in failing to acknowledge the legal precedent regarding the particular reliability of current employees testifying adversely to their pecuniary interests.
 - b. The ALJ erred in failing to properly weigh the value of corroborated testimony.
 - c. The ALJ erred in finding that there was no testimony that the employees who heard the threat spoke about it afterwards and finding, based on this, that there was no threat. ALJD 15:12-14.
 - d. The ALJ erred in failing to properly weigh Nurse Marie Kiffin's nearly contemporaneous email recounting Simmons's threat in his evaluation of the credibility of the employee witnesses. ALJD 15:fn. 13, R. Ex. 1.
2. The ALJ erred in crediting Supervisor Shalom Simmons's testimony that she did not make the alleged threats.
 - a. The ALJ improperly relied upon Simmons's status and experience as a supervisor to find her credible. ALJD 15:16-21.

- b. The ALJ erred by finding Simmons to be credible without acknowledging and explaining the contradictions between Simmons's testimony and her contemporaneous email. ALJD 6:40-42, 7:2-8.
 - c. The ALJ erred in finding that, "Obviously, the contemporaneous statement made by Simmons on the day of the incident outweighs the memory of other witnesses made several months later." ALJD 15:1-2.
3. The ALJ erred in finding that the time elapsed between the threat and the Union's filing of the timely-filed charge underlying the Complaint is relevant to his evaluation of the credibility of Nurse Marie Kiffin or the other employee witnesses. ALJD 15: fn.13; Tr. 82.
4. The ALJ erred by using a subjective standard rather than a reasonable employee standard to determine whether Simmons made an unlawful threat. ALJD 15:9-10 ("Perhaps, the nurses were afraid to confront Simmons over her alleged threat, but no one testified to that.").
5. The ALJ erred by making erroneous, unnecessary, and irrelevant findings about incidents which are unrelated or ancillary to the alleged violation. ALJD 4:5-6:10 (reassignment of charge nurse duties); 6:12 -7:8 (incident with Patient Care Technician Natalie Grant); ALJD 13:19 – 14:16 (credibility findings with respect to ancillary incidents which are not alleged to be violations); *passim*. Specific examples include:
 - a. Finding that Nurse Davis did not testify about other, unalleged, statements by Simmons to other employees that she had previously represented at prior investigatory interviews. ALJD 15:21-23.
 - b. Crediting, "testimony of Simmons," that, "everyone already knew that Guzman was not the charge nurse on [June 25]." ALJD 13:21-22.

- c. Finding that Supervisor Simmons did not use the phrase, “8th-grade level” in telling Guzman to use simple language when speaking with a patient-care technician. ALJD 13:38-39.
 - d. Finding that Davis had previously served as delegate for Guzman. ALJD 11:24-26, and fn.9.
 - e. Finding that Respondent did not violate the Act with respect to the change in charge nurse assignment or the instructions to Guzman about communicating with patient care technicians, despite acknowledging that there are no allegations related to these events. ALJD 14:fn11.
6. The ALJ erred in dismissing the Complaint and failing to order a remedy for the alleged threat.

Respectfully submitted,



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Counsel for the General Counsel

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AFFIDAVIT OF SERVICE

I hereby certify that a copy of Counsel for the General Counsel's Exceptions to the Administrative Law Judge's Decision and Counsel for the General Counsel's Brief in Support of Exceptions is being served on June 27, 2019, on the following parties:

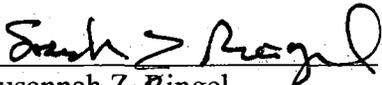
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