

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

CORAL REEF OPERATING SYSTEMS, LLC
d/b/a CORAL REEF NURSING AND
REHABILITATION CENTER, L.L.C.

and

Case 12-CA-238299

1199 SEIU UNITED HEALTHCARE WORKERS EAST

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

On November 1, 2019, Administrative Law Judge Donna N. Dawson (“the ALJ”) issued her Decision in the above-captioned case, properly finding that, as alleged in the Complaint that issued on May 24, 2019, Coral Reef Operating Systems, LLC d/b/a Coral Reef Nursing and Rehabilitation Center, L.L.C. (Respondent) violated Section 8(a)(1) and (5) of the Act by failing and refusing, since January 9, 2019, to execute and give effect to an agreed-upon collective-bargaining agreement between Respondent and 1199 SEIU United Healthcare Workers East (the Union). [ALJD 1, 13:41-14:8].¹ However, the ALJ’s recommended Remedy, Order, and Notice to Employees are deficient in several respects.

Accordingly, pursuant to Section 102.46 of the Board’s Rules and Regulations, Counsel for the General Counsel files the following exceptions to the ALJ’s Decision, seeking the inclusion in the Board’s Decision and Order of all appropriate remedial language and the correction of minor, inadvertent errors in the ALJ’s Decision.

¹ The ALJ’s Decision is referenced as ALJD (page:line), except for page 1 and the Appendix, which have no line numbers. General Counsel’s Exhibits are referenced as GCX (number). The hearing transcript is referenced as Tr. (page number).

1. Although the ALJ properly identified the date that the Union assented to the Employer's sole bargaining proposal throughout the majority of her Decision as January 9, 2019 [ALJD 6:6, 6:8, 6:28, 6:34, 7:10, 9:28, 9:38, 10:8, 10:38, 13:20, 13:35, 14:17], in three places, the ALJ erred by inadvertently using the date of "January 19, 2019." [ALJD 10:23, 14:42, Appendix]. As the collective bargaining agreement signed by the Union's chief negotiator Denise Allegretti shows, and as corroborated by Allegretti's contemporaneous bargaining notes and her testimony at the hearing, January 9, 2019, is, in fact, the date the Union accepted the Employer's proposed collective-bargaining agreement. [GCX 9(e), 15; Tr. 66-73]. Accordingly, the Board should revise the ALJ's Decision to correct those three inadvertent errors.

2. The ALJ erred by recommending that Respondent be ordered to give effect to the collective bargaining agreement retroactively to January 9, 2019, instead of retroactively to March 1, 2017, which Respondent is required to do by the terms of the agreement itself. [ALJD 14:14-17; GCX 15]. See *G&T Terminal Packaging*, 326 NLRB 114, 117 (1998), *enfd.* in *rel. part* 246 F.3d 103 (2d Cir. 2001) (Board ordered employer to sign collective-bargaining agreement and give its terms retroactive effect to its effective date, not the date of the violation of failing to sign it – even though the contract had expired by the time of the Board Order). This exception is necessary to ensure that the Remedy expressly requires that Respondent retroactively implements the contractual wage increase scheduled for September 1, 2018, in addition to the wage increases scheduled to take effect after January 9, 2019 that Respondent has still to date failed to implement.

3. Although the ALJ's recommended remedy correctly requires backpay to be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir.1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), the ALJ erred

by failing to require that interest be compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). [ALJD 14:18-20].

4. The ALJ erred by failing to require that Respondent compensate employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards. [ALJD 14:12-23]. Accordingly, the ALJ's recommended Remedy should be revised to include the following provision:

We shall require Respondent to compensate the unit employees for any adverse tax consequences of receiving a lump-sum backpay award in accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), and to file a report with the Regional Director for Region 12 allocating the backpay award to the appropriate calendar years for each employee in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

5. The ALJ erred by failing to include in her recommended Order an instruction requiring that Respondent preserve and produce payroll records and other documents that may be necessary for calculating backpay owed to employees as is the Board's usual practice. [ALJD 14:27 to 15:31]. Accordingly, the Board should revise the ALJ's recommended Order to require that Respondent to preserve and, within 14 days of a request or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order and that, if requested, the originals of such records shall be provided to the Board or its agents in the same manner. See *777 Ethnic Dining Concept*, 368 NLRB No. 104, at 2 (2019).

6. The ALJ erred by failing to include in her recommended Order a provision requiring that Respondent file with the Regional Director for Region 12 a report allocating the

backpay awards to the appropriate calendar years. [ALJD 14:27 to 15:31]. Accordingly, the Board should revise the recommended Order to include a requirement that Respondent:

File with the Regional Director of Region 12, within 30 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

7. The ALJ erred by including in the Notice to Employees an affirmative provision requiring that Respondent file a report with the Social Security Administration allocating lump-sum backpay awards to the appropriate calendar quarters. [ALJD Appendix]. The Board should revise the Notice to Employees to require that Respondent file a report with the Regional Director for Region 12 allocating the backpay awards for each employee to the appropriate calendar year. See *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

For the reasons set forth above, Counsel for the General Counsel respectfully urges the Board to grant these exceptions in their entirety.

Dated: November 27, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document, Counsel for the General Counsel's Exceptions to the Decision of the Administrative Law Judge, was served on November 27, 2019 as follows:

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