

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

OHIO NORTH EAST HEALTH SYSTEMS, INC., d/b/a ONE HEALTH OHIO)	
)	
and)	
)	CASE NO. 08-CA-230542
AMANDA DELAY, an Individual)	
)	
)	
)	
OHIO NORTH EAST HEALTH SYSTEMS, INC., d/b/a ONE HEALTH OHIO)	
)	
and)	
)	CASE NO. 08-CA-233980
ECHO SEIDLER, an Individual)	
)	
)	
)	
OHIO NORTH EAST HEALTH SYSTEMS, INC., d/b/a ONE HEALTH OHIO)	
)	
and)	
)	CASE NO. 08-CA-235295
PATRICIA SAFIROWSKI, an Individual)	
)	
)	
)	
OHIO NORTH EAST HEALTH SYSTEMS, INC., d/b/a ONE HEALTH OHIO)	
)	
and)	
)	CASE NO. 08-CA-236795
CHARLOTTE TRAENKLE, an Individual)	
)	

**PARTIAL MOTION TO DISMISS ORDER CONSOLIDATING CASES,
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING AS IT RELATES TO
CHARGING PARTY PATRICIA SAFIROWSKI OF OHIO NORTH EAST HEALTH
SYSTEMS, INC., d/b/a ONE HEALTH OHIO**

Respondent, Ohio North East Health Systems, Inc., d/b/a ONE Health Ohio, pursuant to Section 102.24 of the National Labor Relations Board's Rules and Regulations, respectfully moves the Administrative Law Judge for an order dismissing the General Counsel's Order Consolidating Cases, Consolidated Complaint And Notice of Hearing ("Complaint") in the above-captioned matter as it relates to Charging Party Patricia Safirowski, Case No. 08-CA-235295¹ for failure to state a claim upon which relief as to Charging Party Patricia Safirowski can be granted.

As more fully stated in the attached Memorandum in Support, incorporated herein, the General Counsel's Complaint with respect to Charging Party Safirowski is deficient. Even if the General Counsel's allegations in the Complaint are true, which they are not, as stated in Respondent's Answer, there are no allegations relating to Charging Party Safirowski. Thus, the General Counsel's Complaint, as pleaded, allows for no relief to be obtained as to Charging Party Safirowski. For this reason, Respondent respectfully moves the Administrative Law Judge for an order dismissing the Complaint as to Charging Party Safirowksi, Case No. 08-CA-235295, for failure to state a claim upon which relief can be granted.

¹ There is an internal inconsistency in the General Counsel's Complaint in the heading and Paragraph 2 as to what case number relates to Charging Party Patricia Safirowski. Respondent believes that the correct case number is either Case No. 08-CA-235295 or 08-CA-233980. For the reasons stated herein, Respondent requests dismissal as to the allegations and case number that relates to Charging Party Patricia Safirowski, whichever number that may be.

Respectfully submitted,

/s/ Richard L. Hilbrich

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MEMORANDUM IN SUPPORT

I. INTRODUCTION AND STATEMENT OF FACTS OF COMPLAINT

On September 13, 2019 the General Counsel filed an Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing (“Complaint”) for the cases against Ohio North East Health Systems, Inc., d/b/a ONE Health Ohio (“ONE Health Ohio”) involving Charging Parties Amanda DeLay (“DeLay”), Case No. 08-CA-230542; Echo Seidler (“Seidler”), Case No. 08-CA-233980; Patricia Safirowski (“Safirowski”), Case No. 08-CA-235295; and Charlotte Traenkle (“Traenkle”), Case No. 08-CA-236795 (DeLay, Seidler, Safirowski, and Traenkle, collectively, the “Charging Parties”).

The Complaint contains various enumerated paragraphs relating to each of the Charging Parties. The only paragraphs in the Complaint that relate, in any way, to Safirowski are as follows:

“2. (A) The charge in Case 08-CA-233980 [*sic*] was filed by Charging Party Safirowski on January 11, 2019, and a copy was served on Respondent by U.S. mail on January 14, 2019.

(B) The first amended charge in in [*sic*] Case 08-CA-233980 [*sic*] was filed by Charging Party Safirowski on February 14, 2019, and a copy was served on Respondent by U.S. mail on February 14, 2019.

(C) The second amended charge in Case 08-CA-233980 [*sic*] was filed by Charging Party Safirowski on June 24, 2019, and a copy was served on Respondent by U.S. mail on June 24, 2019.”

General Counsel’s Complaint, at ¶ 2. There are no other paragraphs in the Complaint which relate to Safirowski, specifically or generally.

II. LAW AND ARGUMENT

A. Standard for Motions to Dismiss And Adequately Pleaded Complaints

Pursuant to Section 102.24(b) of the National Labor Relations Board's Rules and Regulations, a Respondent may file a motion to dismiss all or part of a complaint twenty-eight (28) days in advance of the hearing date. In ruling on a motion to dismiss, an administrative law judge should "construe the complaint in the light most favorable to the General Counsel, accept all factual allegations as true, and determine whether the General Counsel can prove any set of facts in support of his claims that would entitle him to relief." *Detroit Newspapers Agency*, 330 NLRB 524, 525 fn. 7 (2000). An administrative law judge has the authority to grant a motion to dismiss certain allegations in a complaint. *See Greensboro News & Record*, 293 NLRB 1243 (1989)(affirming dismissal of complaint allegations relating to one respondent); *see also Sprint Communications d/b/a/ Cent. Tel. Co. of Texas & Communications Workers of America, Local 6174, Afl-Cio*, 343 NLRB 987 (2004)(affirming dismissal of certain allegations relating to documents withheld during the discovery process).

A valid complaint before the Board requires "a plain statement of the things claimed to constitute an unfair labor practice **that the respondent may be put upon his defense.**" *American Newspaper Publishers Assn. v. NLRB*, 193 F.2d 782, 800 (7th Cir. 1951), *affd.* 345 U.S. 100 (1953), *quoting from NLRB v. Piqua Munising Wood Products Co.*, 109 F.2d 552, 557 (6th Cir. 1940)(emphasis added). In *Retail Clerks Union, Local 770*, the Board dismissed a complaint, after the hearing, because there was "no evidence that any of these employees was engaged in concerted or union activities in seeking a separate and independent representative for the purpose of collective bargaining with Respondent." *Retail Clerks Union, Local 770*, 208

NLRB 356, 357 (1974).² As a standard rule, a complaint is to allege “who committed the act, what was done, when was it done, and where.” *See* NLRB, Bench Book, § 3–230; *see also* NLRB Rules and Regulations, § 102.15.

B. The General Counsel’s Complaint, as to Safirowski, Fails the Minimum Pleading Standard and Fails to State A Claim for Relief as to Safirowski

In this case, ONE Health Ohio has alleged failure to state a claim as an affirmative defense. *See* Respondent’s Answer, at Affirmative Defense No. 1. The Complaint contains just one paragraph, Paragraph 2, cited above, which concerns Safirowski. There are no other allegations in this case relating to Safirowski, except that she filed a charge, an amended charge, and a second amended charge, which were allegedly served on Respondent. *See* Complaint, at ¶ 2. If the Administrative Law Judge takes these allegations as true, as required under the above precedent, Safirowski is, nevertheless, unable to recover on the Complaint, as it does not relate to her charge. Safirowski is unable to recover on the Complaint, as pleaded.

Further, the Complaint fails the pleading standard required under *American Newspaper Publishers Assn.*, as it does not give facts sufficient that ONE Health Ohio “may be put on [its] defense.” *American Newspaper Publishers Assn.*, *supra*, 193 F.2d at 800. Without such facts, ONE Health cannot adequately prepare a defense to the allegations as to Safirowski.

Contrary to the allegations concerning DeLay, Seidler, and Traenkle, there are no allegations relating to Safirowski which would allow ONE Health Ohio to even discern the General Counsel’s allegations concerning Safirowski, let alone prepare a defense. The Complaint does not allege, for example, that ONE Health Ohio employed Safirowski; that Safirowski concertedly complained to ONE Health Ohio; that Safirowski engaged in any other protected activity; that ONE Health Ohio terminated, or took other adverse employment action, against

² The standard for an administrative law judge to rule on a motion to dismiss before or after the hearing is the same. *See* NLRB, Bench Book, § 11–340.

Safirowski; or that ONE Health Ohio believed that Safirowski engaged in any protected activity. *Cf.* Complaint, at ¶ 9 (alleging that ONE Health Ohio employed DeLay, Seidler, and Traenkle, that each of these engaged in protected activity, and that each were terminated).

Without knowing what wrongdoing the General Counsel alleges ONE Health Ohio committed as to Safirowski, it is impossible to analyze whether Safirowski engaged in any protected activity. ONE Health Ohio would have to speculate as to the factual allegations as to Safirowski to even defend itself at the hearing. Because the Complaint fails the pleading standard as to Safirowski's charge and does not allow for any relief for Safirowski, as pleaded, it should be dismissed as to her charge.

III. CONCLUSION

The General Counsel's Complaint fails to allege any facts relating to Safirowski that are pertinent for this dispute. The Complaint, as written, does not allege any protected activity by Safirowski, nor any facts relating to Safirowski's relationship to ONE Health Ohio, nor that Safirowski is entitled to any relief. The Complaint, as pleaded, does not meet the minimum pleading requirements as to Safirowski, and, as a result, it is impossible for ONE Health Ohio to prepare a defense as to Safirowski's charge. As such, the Complaint fails to state a claim concerning Safirowski and should be dismissed as to her charge.

Respectfully submitted,

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*Counsel for Respondent Ohio North East Health
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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of December, 2019, a copy of the foregoing *Partial Motion to Dismiss* was filed electronically through the Agency's website and was sent to the following by certified mail and/or electronic mail in accordance with Section 102.5 of the Board's rules and regulations:

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