

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7**

WILLIAM BEAUMONT HOSPITAL

Respondent

and

MICHIGAN NURSES ASSOCIATION

Charging Party

NLRB Case No. 7-CA-244615

**RESPONDENT’S MOTION TO DISMISS,
OR ALTERNATIVELY FOR A BILL OF PARTICULARS**

Respondent William Beaumont Hospital, by and through undersigned counsel, and pursuant to Sections 102.20 and 102.21 of the Rules and Regulations of the National Labor Relations Board (“Board”), as amended, hereby moves to dismiss several claims in the Complaint and Notice of Hearing (“Complaint”) issued on January 31, 2020 (Attached as **Exhibit A**) because they fail to sufficiently allege a violation of the National Labor Relations Act (the “Act”). Alternatively, if Respondent’s Motion to Dismiss is not granted, Respondent moves for an Order requiring the Regional Director of Region 7 to specify with particularity the factual and legal basis upon which she relies in advancing those claims.

I. INTRODUCTION AND COMPLAINT ALLEGATIONS

Myriad inadequate pleading issues plague the Complaint. Numerous Complaint allegations rely on unadorned legal conclusions unsupported by even any basic factual detail. Specifically, Paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 – in

whole or in part – lack the required specificity by relying on vague legal conclusions rather than a factual description of the alleged unlawful activity. Absent the requisite specificity, all of these boilerplate allegations fail to sufficiently state a claim and should be dismissed.

Alternatively, Respondent respectfully moves for a Bill of Particulars to obtain sufficient information to meet the requirements of the NLRB's Rules and Regulations, the Casehandling Manual, and applicable precedent. These allegations fail to put Respondent on notice of the allegations against it, and therefore, deny Respondent a meaningful opportunity to respond to and defend such allegations. During the Region's investigation of this case, it likewise refused to provide Respondent with these facts and thereby prejudiced Respondent by precluding Respondent from responding fully. Failure to grant such relief will further irreparably prejudice Respondent and will deny its fundamental procedural due process rights. Indeed, these glaring pleading failures may give Respondent no option but to request a continuance of the Hearing after Respondent hears the General Counsel's and/or Union's witnesses and evidence and learns for the first time what Respondent's supervisors or agents are allegedly to have said or done.

II. LAW AND ARGUMENT

Longstanding United States Supreme Court precedent dictates that an unfair labor practice complaint must adequately put the charged party on notice of the alleged unlawful conduct. “[T]he respondent [is] entitled to know the basis of the complaint against it, and to explain its conduct, in an effort to meet the complaint[.]” *NLRB v. Mackay Radio & Telegraph Co.*, 304 U.S. 333, 350 (1938). “The propriety of a pleading is today judged by its effectiveness as a mechanism for giving an adverse party notice of the claim upon which relief is sought.” *Curtiss-Wright Corp. v. NLRB*, 347 F.2d 61, 72 (3d Cir. 1965). The Administrative Procedure Act also requires that an administrative agency's complaint

notify the Respondent of the facts and law at issue so it has a full and fair opportunity to prepare a defense. See Administrative Procedure Act, 5 U.S.C. §554(b)(3) (“Persons entitled to notice of an agency hearing shall be timely informed of ... the matters of fact and law asserted”).

With these tenets in mind, the NLRB’s Rules and Regulations detail the information required in a complaint:

The complaint shall contain (a) a clear and concise statement of the facts upon which assertion of jurisdiction by the Board is predicated, and (b) a clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of respondent’s agents or other representatives by whom committed.

NLRB Rules and Regulations, §102.15. Simply put, to satisfy due process, the Complaint must “clearly define the issues and advise an employer charged with a violation ... of the specific complaint he must meet ... [and the failure to do so] is ... to deny procedural due process of law.” *Soule Glass Co. v. NLRB*, 652 F.2d 1055, 1074 (1st Cir. 1981).

Many of the Complaint allegations fail to meet these basic precepts. As amplified below, the Administrative Law Judge should dismiss these allegations, or, at the very least, require the General Counsel to issue a Bill of Particulars. Indeed, a “bill of particulars is justified ... when the complaint is so vague that the party charged is unable to meet the General Counsel’s case.” *North American Rockwell Corp. v. NLRB*, 389 F.2d 866, 871 (10th Cir. 1968). “[Respondent] is entitled to due process. That is, it is entitled to know ahead of time what alleged violations it must defend. It is, after all, a simple matter to prepare or amend a complaint that does so.” *SFTC, LLC d/b/a Santa Fe Tortilla Company*, 360 NLRB. No. 130 (June 13, 2014)

A. The Complaint Allegations that Respondent's Managers "Coercively Interrogated Employees About Their Union Sympathies" Fail to Allege Facts Sufficient to State any Actionable Claims

Paragraphs 7(a), 9(b), 11(a), 13, 16, 17, and 18 of the Complaint, each allege that Respondent, through certain managers, "coercively interrogated its employees about their union sympathies and activities and other protected concerted activities." Paragraphs 8(d) and 9(b) similarly assert that Respondent "coercively interrogated its employees about their union sympathies and activities and other protected concerted activities and the union sympathies and activities and other protected concerted activities of other employees." Without substantially more, these repeated, entirely conclusory allegations fail to state a claim.

As the Board has explained, "[t]o hold that any instance of casual questioning concerning union sympathies violates the Act ignores the realities of the workplace." *Abramson, LLC*, 345 NLRB 171, 172 (2005) quoting *Rossmore House*, 269 NLRB 1176 (1984), *affd. sub nom. HERE Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). "Since the word 'interrogation' itself contains no implication of coercion, for an interrogation to be unlawful 'either the words themselves or the context in which they are used ... [must] suggest an element of coercion or interference.'" *Westwood Health Care Center*, 330 NLRB 935 (2000) (citation omitted).

In assessing the lawfulness of a purported interrogation, the Board applies the totality of circumstances test adopted in *Rossmore House, supra*. This test involves a case-by-case analysis of: (1) the background – *i.e.*, whether the employer has a history of hostility toward or discrimination against union activity; (2) the nature of the information sought; (3) the identity of the interrogator – *i.e.*, his or her placement in the respondent's

hierarchy; (4) the place and method of the interrogation; and (5) the truthfulness of the interrogated employee's reply. *Public Service Company of New Mexico*, 360 NLRB 573 (2014) enfd. 843 F.3d 999 (D.C. Cir. 2016). The identity of the employees alleged to have been interrogated also bears on the lawfulness of the inquiry, because the Board has found no unlawful interrogation where a supervisor asked an employee who was a known union supporter how she felt about the union. See *Tribune Co.*, 279 NLRB 977 (1986).

Based on these factors, the Board has routinely found several circumstances in which questions or statements about union activity do not rise to the level of unlawfully coercive interrogation. See, e.g., *Abramson, LLC*, supra (supervisor's question, "what about this union?" not unlawful under the circumstances); *Temp Masters, Inc.*, 344 NLRB 176 (2005) (question about union activity not coercive given circumstances surrounding question); *Toma Metals, Inc.*, 342 NLRB 787 (2004) (supervisor's question, "what's up with the rumor of the union I'm hearing?" not unlawful interrogation where employees prompted the question and it occurred on shop floor). See also *NLRB v. Champion Lab*, 99 F.3d 223 (7th Cir. 1996) (supervisor's question to employee about number of employees who attended union meeting not unlawful).

As the Seventh Circuit explained:

an employer in planning his campaign has a legitimate interest in finding out whether the union has approached his employees, and if he merely asks – without pressing the inquiry when the employee balks, or following up with coercive statements – he has not violated the statute.

NLRB v. Village IX, Inc., 723 F.2d 1360, 1369 (7th Cir. 1983) (reversing the Board's finding of unlawful interrogation arising from the respondent's co-owners asking employee at a social gathering whether any union people had visited him in his home).

The identical conclusory legal assertions in each of the Complaint Paragraphs and sub-Paragraphs detailed above claiming that the alleged interactions were “coercive” or “interrogations” were “coercive,” or otherwise unlawful, fail to state a claim as a matter of law. Without specific facts alleging what the managers are alleged to have said and to whom, the General Counsel cannot prevail on any of these claims. Yet, each of these Complaint Paragraphs and sub-Paragraphs contain no such alleged facts, and therefore, they utterly fail to meet the basic standards of notice pleading. Accordingly, the ALJ should dismiss these allegations for failure to state a claim. *See, e.g., Montgomery Ward and Co.*, 187 NLRB 956, 964 n. 9 (1971) (finding a complaint alleging that supervisors “verbally abused employees known as union supporters” was insufficient to place in issue whether the alleged verbal abuse violated the Act).

Alternatively, the ALJ should require the General Counsel to provide a Bill of Particulars so Respondent can prepare a defense and meet these allegations during the Hearing. The Region’s conclusory allegations fail to give Respondent any information concerning the basis for the Region’s claims in plain contravention of the Board’s Rules and Regulations and Casehandling Manual. Further, since during the Region’s investigation of this case it also failed to provide Respondent with these requisite facts, without a Bill of Particulars the Hearing in this case will be the first time that Respondent learns of the specific facts underlying these cookie-cutter allegations. Setting aside the obvious and glaring procedural due process defects, such trial-by-ambush will necessitate a continuance of the Hearing so Respondent can prepare its defense and meet the General Counsel’s case. *See, e.g., United Biscuit Co.*, 101 NLRB 1552, 1554 (1952) (Bill of Particulars ordered on “the substance of the intimidatory and coercive statements attributed to the Respondent.”).

B. The Complaint Allegations that Respondent Threatened Employees With Loss of Favorable Working Conditions Fail to Allege Facts Sufficient to State any Actionable Claims

Similarly, the allegations in Paragraphs 7(c), 8(a), 8(b), 8(f), 10(a), 10(b), 10(c), 12(a), 14, and 15 of the Complaint, that Respondent, through various actors, “threatened employees with loss of favorable working conditions,” fail to provide sufficient substance to state a claim under the Act, much less to put Respondent on notice of the claims against it. Across these 10 sub-Paragraphs, the Complaint alleges vague categories of “threats” allegedly made by Respondent:

- threats of loss of flexibility with scheduling and other related issues – Complaint Paragraphs 7(c), 8(a), 10(a), 10(b), 10(c), 12(a);
- threats Respondent would outsource their work – Complaint Paragraphs 8(b) and 8(f)); and
- threats of loss of favorable working conditions – Complaint Paragraphs 14 and 15.

As with the vague and conclusory allegations concerning Respondent’s alleged coercive interrogations, these vague allegations of threats lack sufficient specificity to pass muster.

Under Section 8(c) of the Act, an employer can tell employees that in collective bargaining they “could lose what [they] have now.” *Wild Oats Mkts.*, 344 NLRB 717 (2005). An employer may lawfully comment on how unionization and collective bargaining may negatively affect issues such as outsourcing, seniority, scheduling, and less favorable working conditions. In *Delek Ref., Ltd.*, 2016 NLRB LEXIS 752, *29 (October 19, 2016), the Administrative Law Judge explained that the employer “correctly pointed out that the CBA defines wages and sets annual raises, controls job bidding, and contains various seniority definitions, which might be initially less favorable.” *See also*

Madison Kipp Co., 240 NLRB 879, 886 (1979) (lawful to inform employees they may lose existing benefits); *F.M. Broadcasting Corporation d/b/a WHLI Radio*, 224 NLRB 1540, 1545 (1976) (employers may lawfully communicate to employees that in a union environment, they could no longer personally present their issues and problems to management without going through the union); *Kirvin Hotel*, 142 NLRB 761 (1963) (same). Thus, Board precedent provides that in evaluating whether a statement rises to an unlawful threat, the specific content and context of the statement matters.

The Complaint lacks any of that specific content or context. Instead, the Region relies on conclusory legal assertions that the alleged interactions rose to the level of “threats,” or were otherwise unlawful. A valid claim requires at least some specificity as to what the managers allegedly said and to whom. For example, did the respective managers tell employees they *could* or *would* lose these benefits, or that the terms and conditions of employment *could* or *would* change if employees chose the union as their representative? Yet, these Complaint Paragraphs contain no such facts and, as such, fail to meet the basic standards of notice pleading. The ALJ should, therefore, dismiss the allegations for failure to state a claim. See, e.g., *Montgomery Ward and Co.*, *supra*.

Alternatively, the ALJ should require the General Counsel to provide a Bill of Particulars so Respondent can prepare a defense and meet these allegations during the hearing. Further, as with the Region’s allegations of coercive interrogation, because the Region also failed to provide these details to Respondent during its investigation of this case, without a Bill of Particulars the hearing in this case will be the first time Respondent learns of the specific facts underlying these various cookie-cutter allegations.

Even worse, although each of the alleged threats occurred at different times and/or involved different managers, the allegations themselves are virtually identical and provide

Respondent no real notice of the specific nature of the allegations. For example, Complaint Paragraphs 10(b) and 10(c) are almost identical, involve the same manager, the same date, and – very nearly – the same “threat” allegation. Since the Complaint fails to provide any of the requisite factual specificity, Respondent cannot tell whether these allegations involve a single unlawful conversation, or multiple different conversations. Again, besides the clear procedural due process defects and implications, without some basic knowledge of the content of the Region’s allegations, Respondent will require a continuance of the Hearing so it can prepare a defense to these vague and conclusory allegations. See, e.g., *United Biscuit Co.*, 101 NLRB 1552, 1554 (1952) (Bill of Particulars ordered on “the substance of the intimidatory and coercive statements attributed to the Respondent.”).

C. The Complaint Allegations that Respondent Discriminatorily Enforced Its Solicitation and Distribution Policy Fail to Allege Facts Sufficient to State an Actionable Claim

Complaint Paragraphs 9(d), 9(e), 9(f), 12(b), and 12(c) each allege Respondent “discriminatorily enforced Respondent’s Solicitation and Distribution policy” by:

- “telling employees they are not permitted to bring Charging Party badge pulls to the nurses’ station” – Complaint Paragraph 9(d);
- “telling employees they are not permitted to bring Charging Party literature to the nurses’ station” – Complaint Paragraph 9(e);
- “telling employees they are not permitted to solicit employees at the nurses’ station” – Complaint Paragraph 9(f);
- “telling employees they are not permitted to pass out Charging Party badge pulls at the nurses’ station” – Complaint Paragraph 12(b); and
- “telling employees they are not permitted to have union related discussions

at the nurses' station during work hours" – Complaint Paragraph 12(c).

As a threshold matter, none of these allegations comport with the Casehandling Manual's requirement that a Complaint, identify "[t]he names of the alleged discriminatees and dates of the underlying acts." NLRB Casehandling Manual, *supra*, §10264.2. This deficiency particularly invalidates Complaint Paragraph 9(f), which appears to allege that Respondent engaged in discriminatory enforcement by telling *all* employees that *no* solicitation was permitted at *any* nurses' station. This allegation, therefore, alleges conduct that amounts to the antithesis of discriminatory enforcement and should be dismissed.

At a minimum, the ALJ should require the Region to provide Respondent with a Bill of Particulars identifying the alleged discriminatees and the specific conduct alleged to have been discriminatory.

D. The Complaint Allegations that Respondent Promulgated and Enforced Various Policies Fails to Allege Facts Sufficient to State an Actionable Claim

Complaint Paragraphs 19 and 20 allege Respondent violated the Act by promulgating and/or maintaining the following rules or policies:

- "Policy 275 – Solicitation and Distribution on Hospital Property;"
- "Policy 280 – Dress Code, Grooming and Image Policy;"
- "Policy 297 - Social Networking and Other Web-Based Communications;"
- "Unnumbered – Chain of Command Policy;" and
- "Unnumbered – News Media Relations Policy."

Again, the Complaint fails to meet the Board's basic pleading standards. It merely cherry-picks out-of-context statements – many of which are less than complete sentences – with no explanation as to the how the policies identified are alleged to have violated the

Act. It merely concludes in blanket fashion that these rules and policies somehow interfere with, restrain and coerce employees in the exercise of unidentified Section 7 rights.

In *The Boeing Co.*, 365 NLRB No. 154, *2 (2017), the Board held that it:

will no longer find unlawful the mere maintenance of facially neutral employment policies, work rules and handbook provisions based on a single inquiry, which made legality turn on whether an employee would reasonably construe a rule to prohibit some type of potential Section 7 activity that might (or might not) occur in the future.

Instead, the Board established a new standard that analyzes: (1) the nature and extent of the potential impact on Section 7 rights; and (2) legitimate justifications associated with the rule. The Board conducts this evaluation, consistent with its “duty to strike the proper balance.”

In applying this balancing test, the Board in *Boeing* defined three categories of employment policies, rules, and handbook provisions. Category 1 includes rules that the Board designates as lawful to maintain because the rule, when reasonably interpreted, does not prohibit or interfere with the exercise of Section 7 rights, or the potential adverse impact is outweighed by justifications. Category 2 includes rules that warrant individualized scrutiny on their potential interference and impact. Category 3 includes rules the Board will designate as unlawful to maintain because they would prohibit or limit protected conduct, and the adverse impact on Section 7 rights is not outweighed by justifications associated with the rule.

Here, the Complaint fails to include any allegations identifying under which Category – if any – the identified rules are alleged to fall. The distinction is not academic. The analysis for alleged Category 2 and Category 3 rules differs markedly and requires proof of different elements depending on categorization. For example, Category 2 rules

require specific analysis of the rules' impact on Section 7 rights, whereas Category 3 rules requires more routine analysis of the employer's justification for such rules. Regardless, the Complaint lacks any allegations on either the specific impact of the identified rules or the employer's justification for such rules – necessary elements of the respective Category 2 or Category 3 analyses. The Complaint merely asserts that certain rules exist, which does not, without more, establish a violation of the Act.

Alternatively, because the analysis of Category 2 and Category 3 rules require proof of different elements, the ALJ should require the Region to provide a Bill of Particulars putting Respondent on notice of the Region's purported analysis of the policies and rules identified in Paragraphs 19 and 20 so Respondent can be prepared to meet the Region's allegations at the Hearing. Again, the Region never provided Respondent with this information during its investigation, and as above, without at least some foreknowledge of the factual and legal basis of the Region's claims, Respondent will be forced to seek a continuance of the Hearing after the General Counsel's and Union's presentation of their evidence so it can meet their claims.

E. Several Other Complaint Allegations Lack Sufficient Specificity Requiring a Bill Of Particulars

1. Certain Complaint Allegations Lack Sufficient Specificity as to When the Alleged Wrongdoing Occurred

Many of the Complaint allegations lack specificity as to when the alleged unlawful activity occurred. For example, Complaint Paragraphs 7(a), 7(b), 8(d), 8(e), 8(f), 10(b), 10(c), and 14, all fail to identify the specific dates on which the alleged unlawful conduct occurred, but instead providing only the month and year. This lack of specificity not only violates the Board's requirement that a Complaint provides detailed information about

when alleged conduct occurred, but also it prevents Respondent from investigating and gathering counter evidence. For example, if the Region alleges that a manager engaged in unlawful conduct on a certain date, but Respondent's records reflect that the manager was on a months-long leave of absence at that time, that would be important evidence. Yet, without specificity as to when unlawful conduct allegedly occurred, Respondent cannot gather that evidence before the Hearing. Similarly, Respondent cannot reliably identify, interview, and prepare potential rebuttal witnesses. Again, the Region never provided Respondent with this information during its investigation. Without a Bill of Particulars as to the specific dates involved in the identified Complaint Paragraphs, Respondent may have to seek a continuance of the Hearing after the General Counsel's and Union's presentation of their evidence so it can investigate the Region's claims and gather necessary evidence.

For these reasons, the ALJ should order a Bill of Particulars requiring the General Counsel to identify the specific dates of the alleged unlawful conduct in Complaint Paragraphs 7(a), 7(b), 8(d), 8(e), 8(f), 10(b), 10(c), and 14.

2. Certain Complaint Allegations Lack Sufficient Specificity as to Where the Alleged Wrongdoing Occurred

Several Complaint allegations also lack sufficient specificity as to where the alleged wrongdoing occurred. Complaint Paragraphs 7(c), 10(a), 10(b), 10(c), 11(b), 12(a), 12(b), 12(c), 14 and 15, all fail to sufficiently specify the specific location where the alleged wrongdoings occurred.

Complaint Paragraphs 12(a), (b), and (c) allege that Respondent engaged in various incidents of alleged wrongdoing in "the emergency center." The Emergency Center at Respondent's Royal Oak Hospital is an extremely large complex that occupies

more than 125,000 square feet of space (2.87 acres) divided into 9 separate major treatment Areas (A through J). The Emergency Center has some 180 treatment rooms, x-ray and CT imaging rooms, 20 nursing stations, 22 bathroom pods, a pharmacy, lounges, family areas, and a café.

This total lack of specificity as to the location where these alleged wrongdoings occurred not only violates the Board's requirement that a Complaint provide detailed information about where the alleged conduct occurred, but also it prevents Respondent from investigating and gathering counter evidence. This raises a fundamental issue as to whether Respondent will be afforded its procedural due process rights under the law. Accordingly, the law, including the Board's own Rules and Regulations and Casehandling Manual, entitle Respondent to sufficient specific information to identify the actual locations where these alleged incidents occurred. Without that information, Respondent cannot locate potential witnesses or other evidence sufficient to mount a defense.

The same lack of specificity plagues Complaint Paragraphs 10(a), (b), (c), 11(b), and 14 which allege multiple incidents of wrongdoing occurring somewhere within "the pediatrics department." Respondent's Pediatrics Department occupies more than 60,000 square feet of space on the 5th floor of the South Tower and includes general pediatrics, Pediatric ICU, Neonatal ICU, pediatric procedures, and pediatric radiology. As a result of the complete lack of specificity as to where these alleged violations occurred, coupled with the fact that the incidents alleged in Complaint Paragraphs 10(b) and (c) occurred sometime in or about "May 2019," Respondent has virtually no facts or information to be able to identify even the alleged misconduct, much less potential witnesses or other evidence.

Complaint Paragraph 7(c) is particularly egregious. That Paragraph alleges that certain wrongful conduct occurred “at a nurses’ station,” without specifying the particular area, unit, or even building where this nursing station is located. There are many hundreds of nursing stations throughout the various buildings, towers, and facilities on Respondent’s vast Royal Oak Hospital campus. Assuming the allegation in Complaint Paragraph 7(c) pertains to the Hospital’s Emergency Center (since the other allegations in Complaint Paragraph 7 involve the Emergency Center), as noted above the Emergency Center is a vast complex that covers more than 125,000 square feet with 20 different nursing stations scattered throughout the 9 main Areas. Again, without specificity as to where the alleged wrongdoing is alleged to have occurred, Respondent has little chance to gather information or mount a defense.

Similarly, Complaint Paragraph 15 alleges wrongdoing occurring at some unspecified location in “9 South.” 9 South occupies 55,000 square feet of space on the 9th floor of the South Tower and includes 114 beds. Based on the nature of the allegation, the alleged wrongdoing could have occurred at a nurses’ station, in a patient room, in a waiting area, or somewhere else on the floor. Again, this lack of specificity essentially precludes Respondent from gathering information necessary to mount a defense.

For these reasons, the ALJ should order a Bill of Particulars requiring the General Counsel to identify the specific location of the alleged unlawful conduct in Complaint Paragraphs 7(c), 10(a), 10(b), 10(c), 11(b), 12(a), 12(b), 12(c), 14, and 15.

3. The Complaint Lacks Any Allegations Concerning Three Named Individuals

Complaint Paragraph 6(a) alleges that Michael Dixon, Maureen Cooper, and Bridget Reaume “have been supervisors of Respondent within the meaning of Section

2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act.” However, nowhere in the Complaint are there any allegations of any conduct, unlawful or otherwise, attributed to these individuals.

By naming Mr. Dixon, Ms. Cooper, and Ms. Reaume in the Complaint, the Region necessarily implied that they were either involved in, or witness to, some alleged unlawful activity. Yet by failing to identify any such alleged activity, Respondent is left to guess as to what involvement these individuals may have had, if any. This clear lack of specificity precludes Respondent from gathering information and evidence necessary to meet the Region’s allegations concerning these individuals at the Hearing. Without a Bill of Particulars as to the specific allegations or events involving these individuals, Respondent may have to seek a continuance of the Hearing after the General Counsel’s and Union’s presentation of their evidence regarding these individuals so it can respond the Region’s claims and gather necessary evidence.

For these reasons, the ALJ should order a Bill of Particulars requiring the General Counsel to identify with specificity any allegations directed at or involving Mr. Dixon, Ms. Cooper, and Ms. Reaume.

III. CONCLUSION

The Region’s Complaint allegations lack the requisite specificity and deny Respondent its procedural due process rights to defend against such allegations. Such a result would be pure trial by ambush. The lack of specificity also seriously prejudices Respondent by giving Counsel for the General Counsel and the Union leeway to change their legal theories as the case develops over the course of the Hearing. For example, a witness could change his or her testimony during the Hearing and it would still fall within the ambiguous and broad conclusory Complaint allegations. Respondent merely seeks

the specificity it is entitled to under the law to defend itself against the unfair labor practice allegations.

For all the above reasons, Respondent respectfully requests the Complaint's vague and conclusory allegations be dismissed, or alternatively, that a Bill of Particulars issue.

Dated: August 14, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on August 14, 2020, the foregoing document was filed via electronic filing with the Division of Judges and served via e-mail upon:

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