

**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 REPLY TO COUNSEL FOR THE GENERAL
COUNSEL’S OPPOSITION TO 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, submits this Reply to Counsel for the General Counsel’s Opposition to Respondent’s Motion to Dismiss or Alternatively For a Bill of Particulars.

The vast majority of Counsel for the General Counsel’s submission misrepresents or misconstrues Respondent’s arguments and Board precedent. For example, Counsel for the General Counsel labels Respondent’s reliance on the Board’s five-factor test in *Rossmore House*, 269 NLRB 1176 (1984), *afd. sub nom HERE Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985) establishing the pleading standard for coercive interrogation as “absurd on its face.” Yet, Counsel for the General Counsel concedes that multiple recent decisions “utilized the Rossmore House five-factor test” as the pleading standard. See, *e.g., Abramson, LLC*, 345 NLRB 171, 172 (2005); *Temp Masters, Inc.*, 344 NLRB 176

(2005); *Toma Metals, Inc.*, 342 NLRB 787 (2004). While Counsel for the General Counsel attempts to salvage his argument by asserting “there is no indication in the decisions of those cases that Counsel for General Counsel made any more detailed allegations in those complaints than what is alleged in the instant Complaint,” the inverse is also true. Much as Counsel for the General Counsel attempts to avoid it, the salient point is that the *Rossmore House* standard applies to pleadings, and the Complaint Allegations fail to meet that standard.

As discussed in Respondent’s initial Motion, Complaint Paragraphs 7(a), 8(d), 9(b), 11(a), 13, 16, 17, and 18 all assert that various managers and supervisors of Respondent “coercively interrogated its employees.” That statement is a legal conclusion that Counsel for the General Counsel aims to prove – it is not “a clear and concise description of the acts which are claimed to constitute unfair labor practices” that the Board’s Rules and Regulations require. NLRB Rules and Regulations, §102.15. Further, since the Complaint fails to provide any facts about any specific actions or statements by Respondent’s managers and supervisors that underlie the purely legal conclusion of “coercive interrogation,” Respondent cannot prepare to meet those allegations.

The same deficiency plagues Complaint Paragraphs 7(c), 8(a), 8(b), 8(f), 10(a), 10(b), 10(c), 12(a), 14, and 15, which allege that Respondent, through various actors, “threatened employees with loss of favorable working conditions.” Again, this is a legal conclusion that Counsel for the General Counsel must prove, not a recitation of the underlying facts, the lack of which undeniably prejudices Respondent. In opposing Respondent’s Motion, Counsel for the General Counsel underscores this point. Thus, Counsel for the General Counsel allows that “Respondent is free to posit an 8(c) defense at trial and/or its post-hearing brief,” but conveniently ignores that without information as

to the actual factual basis of the “threats” alleged to violate the Act, Respondent cannot actually prepare such a defense for trial.

Ultimately, the Complaint itself proves Respondent’s point. Complaint Allegations 19 and 20, and their various subparts, allege that Respondent violated the Act by promulgating and maintaining various rules. Those Complaint Allegations, while otherwise flawed for reasons detailed in Respondent’s initial Motion, at least identify and quote specific statements in each rule that Counsel for the General Counsel contends violate the Act. Respondent is entitled to the same specificity and clarity for all of the otherwise purely conclusory allegations in the Complaint.

Respondent seeks only information concerning what “Respondent’s supervisors or agents are allegedly to have said or done” and the context surrounding the conclusory Complaint Allegations. This information is necessary to put Respondent on notice of the facts at issue and to allow Respondent to meet these allegations and mount a defense. If Counsel for the General Counsel cannot provide that basic information, the offending Complaint Allegations should be dismissed.

Dated: August 18, 2020

Respectfully submitted,

/s/ Jonathan E. Kaplan

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CERTIFICATE OF SERVICE

The undersigned certifies that on August 18, 2020, the foregoing document was filed via electronic filing with the Division of Judges and served via e-mail upon:

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