

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

**NATIONAL NURSES ORGANIZING
COMMITTEE-TEXAS/NATIONAL NURSES
UNITED (BAY AREA HEALTHCARE GROUP,
LTD. D/B/A CORPUS CHRISTI MEDICAL
CENTER AN INDIRECT SUBSIDIARY OF HCA
HOLDINGS, INC.)**

Respondent

and

Case 16-CB-225123

ESTHER MARISSA ZAMORA, an Individual

Charging Party

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

Pursuant to Section 102.46 of the Board's Rules and Regulations, series 8, as amended, Counsel for the General Counsel files the following exceptions to the Decision and Recommended Order of Administrative Law Judge Keltner W. Locke (JD-29-20) dated June 24, 2020¹ in the captioned matter:

1. The ALJ's factual findings and conclusions of law that:

The credited evidence fails to establish that any term or condition of employment of bargaining unit employees was determined, controlled, or affected by any agreement entered into by the Respondent other than the collective bargaining agreement between the Respondent and the Employer, together with the "side letters" and memorandum of understanding it references. The record further fails to establish that any other agreement or document related to, affected, or was affected by the Respondent's exercise of its authority and/or discharge of its duties as the employees' exclusive bargaining representative. The Respondent's refusal to provide to a bargaining unit employee a copy of another document, not shown to relate to terms and conditions of employment or its responsibilities as the

¹ Counsel for the General Counsel contemporaneously files a Brief in Support of Exceptions.

exclusive bargaining representative, did not violate Section 8(b)(1)(A) of the Act.

(JD slip op. at 1)²

2. The ALJ's factual findings and conclusions of law that Respondent did not violate the Act in any manner alleged in the Complaint and order dismissing the Complaint. (JD slip op. at 27, LL. 26-34).

3. The ALJ's factual findings and conclusions of law supporting the dismissal of paragraph 8(a) of the Complaint that because the neutrality agreement does not pertain to or affect the Respondent's representation of bargaining unit employees, Respondent's failure to furnish a copy of it to the Charging Party does not breach its duty of fair representation. (JD slip op. at 25, LL. 13-30).

4. The ALJ's factual findings and conclusions of law that supporting the dismissal of paragraph 8(b) of the Complaint because Respondent's reply letter to the Charging Party's July 11, 2018 information request was unambiguous, does not mislead the Charging Party and was not arbitrary and/or in bad faith. (JD slip op. at 26, LL. 23-38; 27, LL. 1-4).

5. The ALJ's factual findings and conclusions of law that Respondent's Answer to the Complaint satisfied Section 102.20 of the Board's Rules and Regulations because Respondent effectively has denied the allegations raised in paragraph 8 of the complaint, as amended. (JD slip op. at 5-6, LL. 32-3).

6. The ALJ's decision to reject, as hearsay, the Charging Party's testimony regarding statements made by Michael Lamond (HCA labor liaison)(deceased). (JD slip op. at 9, LL. 9-15; 21, LL. 6-11).

² Citations to the Judge's Decision are "JD slip op. at __; LL. __" to indicate page(s), line number(s).

7. The ALJ's credibility resolutions with regard to Charging Party Esther Marissa Zamora. (JD slip op. at 10-11, LL. 5-19).

8. The ALJ's factual findings that the record does not establish that a privilege to post notices on a locked bulletin board was a condition of employment enjoyed by bargaining unit employees. (JD slip op. at 12, LL. 40-44).

9. The ALJ's failure to consider and impose sanctions upon Respondent for misleading the tribunal and/or failing/refusing to comply with the General Counsel's and/or Charging Party's subpoena duces tecum for a copy of the neutrality agreement. (JD slip op. at 21, C. 30-42).

10. The ALJ's finding that *Electrical Energy Services, Inc.*, 288 NLRB 925 (1988), prohibits subpoena production of the at-issue document in a request for information case even when the existence and substance of the document is dispositive of other case issues. (JD slip op. at 19-20).

11. The ALJ's failure to find that, as a matter of law, employees are presumptively entitled to review the neutrality agreements to which their unions are party. (JD slip op. at 24-25, LL. 44-30).

12. The ALJ's sue sponte attribution of a confidentiality interest in the neutrality agreement to Respondent where Respondent failed to acknowledge the existence of the neutrality agreement, let alone assert its own confidentiality interest in it. (JD slip op. at 20, LL. 10-19).

13. The ALJ's reliance on legal conclusions in the Employer's position statement regarding the terms of the neutrality agreement. (JD slip op. at 21-22, LL. 43-2).

14. The ALJ's failure to make credibility determinations with regard to Respondent Labor Representative Bradley Van Waus. (JD slip op. at 1-27).

DATED at Fort Worth, Texas this 2nd day of September 2020.

/s/ Roberto Perez

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing General Counsel's Exceptions the Decision of the Administrative Law Judge has been electronically filed and served this 2nd day of September 2020 upon each of the following:

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