

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

**THE VOORHEES CARE AND
REHABILITATION CENTER a/k/a
THE PINES AT VOORHEES REHABILITATION
& HEALTHCARE CENTER, LLC a/k/a
THE LAKEWOOD OF VOORHEES
OPERATOR, LLC**

and

Case 04-CA- 219938

**DISTRICT 1199C, NATIONAL UNION
OF HOSPITAL AND HEALTH CARE
EMPLOYEES, AFSCME, AFL-CIO**

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S
MOTION TO STRIKE PORTIONS OF RESPONDENT'S POST-HEARING BRIEF
TO THE ADMINISTRATIVE LAW JUDGE**

Counsel for the Acting General Counsel (CGC) hereby moves to strike Respondent's argument in its Post-Hearing Brief (dated January 19, 2020) that the Charging Party "engaged in frivolous litigation" and that Respondent should be awarded attorney's fees and costs as a result for "erroneously defending this matter." Specifically, CGC asks that Your Honor strike the last sentence on page 1 and all of page 18 of Respondent's Brief.

Respondent's request for attorney's fees and costs is improper and contrary to Board procedures for several reasons. First, the statutory vehicle for seeking reimbursement of attorneys' fees in an NLRB proceeding is against the Government, not the Charging Party, and it cannot be justified by any conduct on the Charging Party's part. That said, after four days of hearing, Respondent has failed to produce any evidence that the Charging Party acted inappropriately in

pursuing or amending the charges. To the contrary, all of the credible evidence demonstrated that it was Respondents' actions (and inactions) which necessitated the amendments to the pleadings in this matter.

Second, Respondent can only be awarded attorney's fees if and when it prevails against the General Counsel and demonstrates that the Government's position was not substantially justified. Lastly, Respondent may be eligible for attorney's fees only if it meets the eligibility requirements set forth in the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504, and complies with the procedures in Sections 102.143-102.152 of the Board's Rules and Regulations. Respondent has not established that it meets those requirements. Accordingly, it is respectfully submitted that the above-designated portions of Respondent's Brief should be stricken.

Dated: January 26, 2021

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