

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

SODEXHO AMERICA, LLC

and

HOTEL, MOTEL & RESTAURANT  
EMPLOYEES & BARTENDERS  
UNION, LOCAL 471, AFL-CIO

Cases 3-CA-24263  
3-CA-24501  
3-CA-24665  
3-CA-24774

*Alfred M. Norek, Esq.*, for the General Counsel.  
*Stanley L. Goodman, Esq. (Grotta, Glassman  
and Hoffman)*, Roseland, New Jersey,  
for the Respondent.

DECISION

Statement of the Case

ARTHUR J. AMCHAN Administrative Law Judge. This case was tried in Plattsburgh, New York on May 25 and 26, 2004. The charges at issue were filed between May 2003 and May 2004. The most recent version of the Complaint was issued on May 10, 2004. The General Counsel alleges that Respondent, on a number of occasions, threatened and unlawfully interrogated employees in violation of Section 8(a)(1). He also alleges that Respondent violated Section 8(a)(3) and (1) by instituting new policies and changing employee Suzan King's work hours in retaliation for her distribution of union stickers.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

Findings of Fact

I. Jurisdiction

Respondent, Sodexho, LLC, a limited liability corporation, provides institutional food and beverage services nationwide, including at the facility at issue in this case, the State University of New York (SUNY) in Plattsburgh, New York. Sodexho purchases and receives goods valued in excess of \$50,000 directly from points located outside of the State of New York in conducting its business operations at SUNY Plattsburgh. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, the Hotel, Motel & Restaurant Employees & Bartenders Union, Local 471, is a labor organization within the meaning of Section 2(5) of the Act.

## II. Alleged Unfair Labor Practices

### *Background*

5           The Union began its campaign to organize Respondent's food service workers at the  
SUNY Plattsburgh campus in the winter and spring of 2002-2003. Respondent filed a petition  
with the Board seeking a representation election in March 2004. The Board declined to grant  
the petition on the grounds that the Union's demand for a neutrality/card check agreement did  
not raise a question of representation pursuant to the Board's decision in *The New Otani Hotel*  
10   & *Garden*, 331 NBLB 1078 (2000).<sup>1</sup>

### *The revocation of the settlement in Case No. 3-CA-24263*

15           The Union filed the charge in case 3-CA-24263 on May 28, 2003. The parties entered  
into a settlement agreement that was approved by the Regional Director on August 15, 2003,  
which was subsequently revoked. Complaint paragraphs VI (a)–(h) in the instant matter relate  
to allegations subject to the settlement agreement.

20           Pursuant to the settlement agreement, Respondent did not admit to violating the Act, but  
on September 2, 2003, it posted a notice at five of its locations on campus; the two residential  
dining halls (Clinton and Algonquin), the Sundowner café and snack bar, both of which are  
located at the College Center, and the commissary/bakery. That notice contained the following  
declarations, which relate to the instant matter as follows:

25           WE WILL NOT question our employees about their activities on behalf of Local  
471, Hotel, Motel & Restaurant Employees & Bartenders Union, AFL-CIO or any  
other union. This covers the allegations in the instant Complaint paragraphs (b),  
an alleged late March 2003 interrogation by production manager Rob Rocheleau,  
30           and (g) alleged interrogations on or about April 22, 2003 by unit manager Chris  
Rhoades. Interrogation allegations in Complaint paragraphs VI (a) and (h) were  
withdrawn at the instant trial.

35           WE WILL NOT unlawfully restrict the rights of employees to talk with one another  
about the Union while at work. This covers the allegations in Complaint  
paragraphs (e) and (f) that unit managers Mark Brothers and Chris Rhoades told  
employees they could not talk about the Union during working hours.

40           WE WILL NOT threaten employees with the loss of existing benefits during  
collective bargaining with the Union or tell them that negotiations will start at  
"zero." This covers the allegations in Complaint paragraphs VI (c) and (d)  
regarding general manager Patrick Spellman's speeches to employees on April  
4, 2003.

45           The Board has long held that a settlement agreement may be set aside and unfair labor  
practices found based on presettlement conduct if there has been a failure to comply with the

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50           <sup>1</sup> The Board majority in *The New Otani Hotel & Garden* held that a demand for a  
neutrality/card check agreement does not constitute a *present* demand for recognition, but  
merely a demand that the employer remain neutral in the organizing campaign and agree to  
recognize the union if and when the union is able to show that it has obtained authorization  
cards from a majority of unit employees.

provisions of the settlement agreement or if postsettlement unfair labor practices have been committed. *Tower City Concrete*, 317 NLRB 1313 (1995). Whether to give effect to or rescind a settlement agreement cannot be determined by a mechanical application of rigid *a priori* rules but must be determined by the exercise of sound judgment based upon all the circumstances of each case, *Nations Rent, Inc.*, 339 NLRB No. 101 (July 29, 2003) (slip opinion at page 2) and cases cited therein.

Thus, a threshold issue herein is whether it was appropriate to rescind the settlement agreement and litigate the allegations covered by that agreement. This is not a case presenting an issue of whether Respondent complied with the agreement, but rather whether revocation is warranted by virtue of the alleged postsettlement unfair labor practices. In this regard, the Board has held that insubstantial or isolated postsettlement unfair labor practices may not warrant revocation, *Wooster Brass Co.*, 80 NLRB 1633, 1635 (1948); *Porto Mills*, 149 NLRB 1454, 1470 (1964); *Coopers International Union*, 208 NLRB 175 (1974).

Given the fact that the only remedy for the previously settled allegations would be a notice posting, it is initially necessary to consider the allegations of postsettlement unfair labor practices in order to determine whether the presettlement violations should be subjected to the litigation process.<sup>2</sup>

*Complaint paragraphs VI (i) and (j): alleged threats by Service Manager Jason Dezan*

Timothy Lemieux, who worked for Respondent as a cashier between October 1999 and December 2003, testified that at about 5:15 p.m. on October 3, 2003, he was talking to his girlfriend and Union Organizer Andrea Calver, in the courtyard outside the college snack bar. He was on a 15-minute break. Lemieux stated that shortly after he returned to work, Service Manager Jason Dezan asked to speak with him. According to Lemieux, Dezan told him that “we don’t like it when you talk to people like her on company time” and that there could be consequences if Lemieux did so. Then, as Lemieux turned to walk away, Dezan told him to “never mind...don’t worry about it...I’ll take care of it.” At some point in the conversation, Lemieux told Dezan that he was on his break when talking to the union organizer. Lemieux denies that Dezan’s comment “not to worry about it” immediately followed his statement that he was on break.

Dezan testified that he saw Lemieux talking with the union organizer and his girlfriend outside of his work area after 5:00 p.m. Dezan testified that he merely asked Lemieux what he was doing and that Lemieux told him he was on his break. Dezan denies that he told Lemieux that he didn’t like him talking to the union representative on company time, or mentioned possible consequences. He stated that employees normally took their breaks earlier and that he merely told Lemieux that if he was going to take his break that late to let Dezan know about it.

I dismiss these complaint allegations. Considering the plausibility of Lemieux and Dezan’s conflicting testimony, I make the following credibility determinations. I credit Dezan’s testimony that he asked Lemieux what he was doing after he saw him talking to the union organizer outside of the snack bar. I also find that Dezan told Lemieux that he shouldn’t be

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<sup>2</sup> When a settlement is not revoked, presettlement unfair labor practices may be considered as background evidence in determining the motive or object underlying a respondent’s postsettlement conduct, *Laborer’s Local 185 (Joseph’s Landscaping)* 154 NLRB 1384 fn. 1 (1965).

talking to union organizers while he was on company time and that by doing so Dezan did not violate the Act. Further, I find that when Lemieux told Dezan he was on break, Dezan told him “not to worry about it.”

5 *Complaint paragraphs VI (k) and VII (a)-(c): Supervisor Timothy Surpitski’s alleged threats and retaliation against pro-union employees.*

10 On October 8, 2003, employee Suzan King, a cashier at the snack bar at the College Center, took her break and went to the Sundowner cafe, another of Respondent’s facilities in the same building, and passed out union stickers to employees. Mark Brothers, the retail unit manager, observed her and asked King if she was on break; she answered affirmatively. Later in the day, Brothers approached King at her workstation and asked for her assistance in getting employees to wear the stickers on their lapels, instead of other places he deemed less appropriate.

15 That evening when she arrived at her residence, King retrieved a voice mail message from her supervisor, Timothy Surpitski, telling her to clock in for work at 9:00 a.m. the next day, as opposed to 8:30, which had been her starting time for several weeks. The General Counsel alleges that King’s starting time was changed in retaliation for her distribution of the stickers the day before and that the change violates Section 8(a)(3) and (1).

25 On the next day, October 9, Snack Bar Supervisor Timothy Surpitski held a meeting with a number of snack bar employees, including King, Fay Loope and Loren Nephew. He told the employees that they should not be talking to visitors while working in the snack bar. King testified that Surpitski told employees they would have to sign out and sign back in to talk to visitors and when going on break. Surpitski testified that he merely told employees to talk to visitors outside of their work area and to notify him when they were going on break. King and Loope testified that he announced that employees would no longer be allowed to enter his office and store their coats, purses and other personnel items there. Surpitski contends that he made this announcement several weeks later.

30 Surpitski testified that he told pro-union employee Loren Nephew that Nephew would be working in the snack bar for 8 hours that day. King and Nephew testified that Surpitski indicated that Nephew would be working 8 hours a day in the snack bar indefinitely. Prior to October 9, Nephew had performed a variety of tasks outside the snack bar, including driving a van 4–6 hours a day.<sup>3</sup>

40 Surpitski concedes that when looking at King he said she was “under house arrest.” King testified that when she asked him why, Surpitski replied, “for that stunt you pulled yesterday”—referring to her distribution of union stickers. Surpitski denies this and testified that the “house arrest” remark was not specifically directed to King. He testified that when King asked him why he was implementing changes, he replied that it was “because we have some problems with employees not being where they’re supposed to be (Tr. 262).” Surpitski testified that when he told employees that they must talk with visitors outside their work area, he told them that if they were going to talk to union organizers they must do so during non-working time.

50 I credit King’s testimony that Surpitski referred to “that stunt you pulled” and that both understood this to mean her distribution of the stickers. I find that the remark was directed at

<sup>3</sup> The change in Nephew’s tasks was not alleged as a violation in the Complaint.

King and that there would have been no reason for Surpitski to single her out except for the sticker distribution the day before. Approximately a week later, Mark Brothers, Surpitski's supervisor, called King into his office and apologized for Surpitski's choice of words. The Union had already included this incident in an unfair labor practice charge filed with the Board.<sup>4</sup>

5 Brothers testified that he was not aware that a charge had already been filed.

Surpitski and Mark Brothers provided Respondent's explanation for the meeting on October 9. Brothers testified that on several occasions prior to October 9, he was not able to find employees where they were supposed to be while walking through the snack bar. He testified that he instructed Surpitski to take action to correct this situation. Brothers and Surpitski testified that the October 9 meeting was a result of this instruction and had nothing to do with Suzan King's distribution of union stickers the day before. I credit their testimony to this effect.

15 *The change in Suzan King's hours*

Suzan King had been working from 9:00 a.m. to 5:00 p.m. on weekdays until September 2003, when she asked Surpitski for permission to come in a half-hour earlier to assist in the preparation of premade sandwiches called "Java Joe's." King's weekday hours reverted to a 9 – 5 schedule on only four days; Thursday, October 9, Monday October 13, Wednesday October 15 and Thursday October 16. Afterwards, she began her workday at 8:30 again.<sup>5</sup>

Surpitski proffered a nondiscriminatory explanation for each weekday King began work at 9:00 a.m., which I credit. On October 9, he had King cover a shift at the *Freshen's* ice cream parlor to fill in for employee Tina Hemingway. On October 13, she started at 9 due to the anticipated slow volume of business during the Columbus Day academic break. On October 15 and 16, King worked at *Freshen's* because Tina Hemingway had to fill in for another absent employee. In conclusion, I find that the General Counsel has not established that King's hours were changed in order to retaliate for her union activities. I therefore dismiss Complaint paragraph VII (c).

30 *Changes in the break and visitation policy and Surpitski's banishment of employees from his office.*

35 I credit the testimony of Mark Brothers and Timothy Surpitski and find that the changes in policy regarding breaks and visitors was implemented to assure that employees were where they were supposed to be and that it was not motivated by anti-union animus.

40 Surpitski provided a somewhat confusing explanation for forbidding employees to store their coats and other personal items in his office. His reliance on the need to keep employees out of the office when cash was counted makes little sense in view of the fact that the door could be locked when cash was outside of his office safe. Nevertheless, I am unable to draw a connection between this change and Suzan King's distribution of union stickers or any other union activities. I therefore dismiss paragraphs VII (a) and (b).

50 <sup>4</sup> The charge doesn't specifically refer to the "house arrest" remark, it includes allegations regarding restrictions on employees' union activities.

<sup>5</sup> The snack bar was closed on Tuesday, October 14, 2003; King did not work.

*Surpitski's statement to Suzan King that she was under "house arrest."*

5 In *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978) the Board set forth the circumstances under which a Respondent may relieve itself of liability by repudiating unlawful conduct. The repudiation must be timely, unambiguous, specific and free from other coercive conduct. Furthermore, there must be adequate publication of the repudiation to the employees involved and there must be no prescribed conduct on the employer's part after the repudiation. Finally, such repudiation or disavowal of coercive conduct should give assurances to employees that in the future their employer will not interfere with the exercise of their Section 7 rights, Also  
10 see, *Campbell Electric Company*, 340 NLRB No. 93 (September 30, 2003); *Branch International Services*, 310 NLRB 1092, 1105 (1993).

15 Mark Brothers' apology to Suzan King is insufficient to avoid liability for Surpitski's "house arrest" remark. Other employees were present at the October 9 meeting and there is no evidence that Brothers' apology was disseminated to the other employees who heard Surpitski's "house arrest" remark. Therefore, I find that Respondent, by Timothy Surpitski, violated Section 8(a)(1) in telling Suzan King that she was under "house arrest" on October 9, 2003.

*Complaint paragraphs VI (l) and (m) alleged threats and unlawful interrogation by Service Manager Doreen Roach*

20 Kevin Brooks worked for Respondent as a dishwasher/utility employee at the Sundowner Cafe in the College Center from September 2003 until the end of February 2004, when he left voluntarily. Brooks testified that on February 18, 2004, Service Manager Doreen  
25 Brooks asked him how he felt about the Union and suggested that if employees successfully organized Respondent, they would no longer get benefits such as free food. Brooks testified that he had indicated his support for the Union by wearing a union button about a week prior to this incident.

30 Roach testified that on February 18, in the presence of several employees, including Brooks, she, "brought up when I had worked with this exact same union or another union, I had to pay for my meals and a percentage of...like a meal allowance was taken out of our checks...(Tr. 183)."<sup>6</sup> Roach testified that her remark was precipitated by Brooks' expressed concerns that he was not going to be fed. However, Roach testified that when she made this  
35 remark Brooks was in the process of getting his free dinner. Roach denies questioning Brooks about his support for the Union.

40 I credit Roach's denial regarding Brooks' testimony regarding interrogation. Moreover, I would find that her inquiry would not violate Section 8(a)(1) in as much as Brooks had openly demonstrated his support for the Union previously.

45 On the other hand, I find that Respondent, by Roach, violated Section 8(a)(1) in intimating that employees would lose benefits such as free food if they chose to be represented by the Union. There was no reason for Roach to bring up the Union or unions apart from suggesting that employees would lose this benefit.

<sup>6</sup> Roach's testimony on cross-examination at Tr. 206-07 was more innocuous. I deem her testimony on direct examination to be a more accurate account of what she said. For one thing, her testimony on direct is more consistent with the testimony of Respondent's witness Jason Dezan. "I don't remember her [Roach] saying anything about [the Union] coming into  
50 Plattsburgh. I remember her talking about her old job and when it was unionized. (Tr. 217)."

*The postsettlement violations herein do not warrant revocation of the August 2003 settlement.*

5 I find that the postsettlement violations by Timothy Surpitski and Doreen Roach, both relatively low-ranking supervisors, are insufficient to warrant revocation of the August 2003 settlement. I conclude that the violations are both sufficiently isolated and insufficiently substantial to warrant revocation. Another factor that cuts against revocation is the relatively small number of employees to whom the threats were communicated, the nature of the threats themselves and the apology by Brothers to Suzan King.

10 Nevertheless, in the event that a higher authority disagrees with me on the revocation issue, I deem it necessary to determine the validity of the presettlement charges.

*Complaint paragraph VI (b)*

15 Melody Vassar, an employee at the Clinton dining hall, testified that in March 2003, Robert Rocheleau, a production manager and her immediate supervisor, interrogated her as to whether union representatives had visited her home. Vassar testified that it was not until several weeks later that she openly demonstrated support for the Union. Rocheleau denied making any such inquiry. There is simply no basis on which I can determine whether it is 20 Vassar or Rocheleau who is telling the truth. For example, there is no corroboration for Vassar's account; it is simply her word versus Rocheleau's. Finding them equally credible, I will dismiss this complaint item because the General Counsel has the burden of proving the violation by the preponderance of the evidence.

25 *Complaint paragraphs VI (c) and (d)*

30 These complaint items concern speeches given by Respondent's General Manager, Patrick Spellman, to groups of employees on April 4, 2003. Several employees testified that Spellman told them that if they selected the Union as their collective bargaining representative that bargaining would begin at zero and that he specifically mentioned benefits they had been receiving, such as Christmas hams, turkeys and gift certificates. From this testimony, I infer Spellman was indicating to employees that such benefits could be lost in collective bargaining negotiations.

35 Spellman testified that he gave four speeches to employees in different production units on that date. He testified further that he stated, "possibly they could start from ground zero" and that "you could lose what you possibly have now, i.e., hams and turkeys and a gift certificate (Tr. 158, 168)." I credit the employees' accounts of the speeches, although I don't think it makes a material difference whether Spellman stated the negotiations would start at ground zero or could 40 start at ground zero.

45 The standard for determining whether statements of this type violate Section 8(a)(1) of the Act is set out in *Taylor-Dunn Mfg. Co.*, 252 NLRB 799, 800 (1980), enfd. 810 F.2d 638 (9<sup>th</sup> Cir. 1982), as follows:

50 It is well established that "bargaining from ground zero" or "bargaining from scratch" statements by employer representatives violate Section 8(a)(1) of the Act if, in context, they reasonably could be understood by employees as a threat of loss of existing benefits and leave employees with the impression that what they may ultimately receive depends upon what the union can induce the employer to restore. On the other hand, such statements are not violative of the

Act when other communications make it clear that any reduction in wages or benefits will occur only as a result of the normal give and take of negotiations.

5 I find that Spellman's remarks indicating that benefits would, or could start from zero could reasonably have been understood as a threat of loss of existing benefits. Spellman made no other statement regarding the normal give and take of collective bargaining negotiations. Accordingly, Spellman's remarks violated Section 8(a)(1) of the Act, *Lear-Siegler Management Service*, 306 NLRB 393 (1992); *Alamo Rent-A-Car*, 338 NLRB No. 31 (2002).

10 *Complaint paragraph VI (e): alleged restrictions on talking about the Union during working hours*

15 Renee Gauthier, an employee at the Sundowner Café, testified that on or about April 16, 2003, Unit Manager Mark Brothers called her into his office and told her not to talk about the Union during working hours and that Gauthier could be disciplined if she did so. Brothers denies that he said any such thing, as does Production Manager Holly Brunnell, who was present during the conversation between Gauthier and Brothers. Brothers and Brunnell testified that the conversation concerned a complaint from another employee that Gauthier had removed an anti-union button from his clothing. According to Brothers and Brunnell, Gauthier admitted she had removed the button, and Brothers told her that she should not be removing buttons from other employees.

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25 Gauthier admits to removing another employee's button and concedes that Brothers discussed this incident with her. However, she maintains the button incident occurred months after the conversation referred to in the Complaint. Gauthier also concedes that since April 2003 she has continued to discuss the Union while working and has never been disciplined. On balance, I find Brothers and Brunnell's testimony at least as credible as Gauthier's and thus dismiss this item of the Complaint since the General Counsel has not met his burden of proving a violation.

30 *Complaint paragraphs VI (f) & (g)*

35 Melody Vassar testified that on or about April 22, 2003, Unit Manager Christopher Rhoades conducted a meeting for employees working in the Clinton Dining Hall. She stated that Rhoades told the employees that they were not to talk about the Union while working. Employees were allowed to discuss other non-work related subjects.

40 Diane Deso, a cook at the Clinton Dining Hall, testified that on or about the same date, Rhoades asked her whether anyone had been to her house. Deso understood Rhoades to be asking about visits from union organizers. Deso testified that at the time of this inquiry she had not openly displayed support for the Union, although she told a Board agent that she had a hunch that Rhoades knew she was on the in-house organizing committee.

45 At trial, Rhoades denied making any such inquiry of Diane Deso. Finding Rhoades' testimony at least as credible as that of Deso, I dismiss Complaint paragraph VI (g).

50 With regard to Vassar's allegations, Rhoades concedes that he held a meeting in the spring of 2003 with about 10-12 employees. He further testified that he conducted the meeting after being informed of an argument between two sisters who worked in the dining hall, Diane Deso and Cheryl Turner, concerning the Union. Rhoades stated he was angry at the meeting and told the employees that he would not tolerate any bickering and what he considered to be the resulting decline in service.

After initially testifying that he didn't recall mentioning the Union, Rhoades, on cross-examination, conceded that the subject of the Union came up (Tr. 194, 198). He testified that he did not recall whether or not he told employees to talk about the Union on their own time and not on company time. I credit Vassar's testimony that he did so.

5 While an employer may prohibit the discussion of non work-related topics during working time, it cannot limit such a prohibition to unions or other protected subjects, *Willamette Industries*, 306 NLRB 1010, 1017 (1992); *Orval Kent Food Co.*, 278 NLRB 402, 407 (1986); *Altorfer Machinery Co.*, 332 NLRB 130, 133 (2000); *Jensen Enterprises*, 339 NLRB No. 105  
10 (2003). Respondent allowed employees to discuss a variety of non work-related topics. Therefore, I find that Respondent, by Chris Rhoades, violated Section 8(a)(1) in telling employees that they could not discuss the Union on work time, as alleged in Complaint paragraph VI (f).

### 15 *Summary of Conclusions of Law*

1. Respondent's postsettlement violations were isolated and insufficiently substantial to warrant revocation of the settlement of August 15, 2003. Therefore, the settlement is not  
20 revoked.
2. Respondent, by Timothy Surpitski violated Section 8(a)(1) of the Act in telling employee Suzan King that she was under "house arrest" for "the stunt she pulled yesterday," referring to King's distribution of union stickers.
- 25 3. Respondent, by Doreen Roach, violated Section 8(a)(1) in threatening employees with a loss of a job benefit, free food, if they selected the Union as their collective bargaining representative.

### 30 Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

35 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>7</sup>

### ORDER

40 The Respondent, Sodexho America, LLC, Plattsburgh, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from  
45 (a) Threatening employees with "house arrest" for engaging union activities;

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50 <sup>7</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Threatening employees with a loss of benefits if they select the Union as their collective bargaining representative;

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(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

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(a) Within 14 days after service by the Region, post at its SUNY Plattsburg, New York facilities copies of the attached Notice marked "Appendix."<sup>8</sup> Copies of the Notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where Notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the Notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the Notice to all current employees and former employees employed by the Respondent at any time since October 9, 2003.

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(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

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Dated, Washington, D.C., August 6, 2004.

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Arthur J. Amchan  
Administrative Law Judge

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<sup>8</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

WE WILL NOT threaten to place employees under "house arrest" for engaging in union activities.

WE WILL NOT threaten employees with a loss of benefits, such as free food, if they select the Hotel, Motel & Restaurant Employees & Bartenders Union, Local 471, or any other union as their collective bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

SODEXHO AMERICA, LLC

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

111 West Huron Street, Federal Building, Room 901, Buffalo, NY 14202-2387

(716) 551-4931, Hours: 8:30 a.m. to 5 p.m.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (716) 551-4946.