

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

GRANE HEALTHCARE CO. and/or EBENSBURG  
CARE CENTER, LLC d/b/a CAMBRIA CARE  
CENTER, Single Employer

and

Case No. 6-CA-36791

LOCAL UNION NO. 1305, PROFESSIONAL and  
PUBLIC SERVICE EMPLOYEES OF CAMBRIA  
COUNTY a/w THE LABORERS' INTERNATIONAL  
UNION OF NORTH AMERICA

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GRANE HEALTHCARE CO. and/or EBENSBURG  
CARE CENTER, LLC d/b/a CAMBRIA CARE  
CENTER, Single Employer

and

Case No. 6-CA-36803

Case No. 6-CA-36915

SEIU HEALTHCARE PENNSYLVANIA,  
CTW, CLC.

**LIMITED EXCEPTIONS OF THE CHARGING PARTY,  
SEIU HEALTHCARE PENNSYLVANIA, CTW, CLC,  
TO THE DECISION AND RECOMMENDED ORDER  
OF ADMINISTRATIVE LAW JUDGE DAVID I. GOLDMAN**

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, 29 C.F.R. § 102.46, the undersigned attorneys for the Charging Party, SEIU Healthcare Pennsylvania ("SEIU"), herein files these exceptions to the Decision and Recommended Order of Administrative Law Judge David I. Goldman (hereinafter abbreviated as "Dec."), dated December 16, 2010.

SEIU's exceptions are directed specifically to the findings, conclusions and recommendations, or lack thereof, of the Administrative Law Judge ("ALJ") relating to

certain alleged violations by the Respondents of Section 8(a)(1) and (5) of the National Labor Relations Act (“Act”). SEIU’s exceptions are as follows:

1. The ALJ erred by failing to apply a presumption of majority support for SEIU as collective bargaining representative, giving rise to the Respondents’ obligation to recognize and bargain with SEIU, based on the certification of SEIU’s predecessor as a “meet and discuss” representative under Pennsylvania labor law. Dec. at 11-13. In particular, the ALJ erred by incorrectly finding and/or concluding as follows:

- (a) That “SEIU was not certified as, and did not act as, the bargaining unit’s ‘collective-bargaining representative.’” Dec. at 11.
- (b) That meet-and-discuss status is “an alternative to and distinct from collective bargaining. It is an effort to provide representation – but not collective-bargaining rights – to front line supervisory employees.” Dec. at 11.
- (c) That “no duty to collectively bargain was imposed upon the [predecessor] public employer....” Dec. at 11.
- (d) That by the terms of the applicable state statute, SEIU and the predecessor employer “could not enter into enforceable agreements....” Dec. at 11.
- (e) That SEIU and the predecessor employer had “no history of collective bargaining representational status....” Dec. at 12.
- (f) That there was no basis on which to presume majority support for collective bargaining for those employees employed in the SEIU unit. Dec. at 12, 13.

- (g) That SEIU unit employees of the predecessor did not vote for “collective-bargaining representation” and did not otherwise express support for collective-bargaining representation. Dec. at 12, 13.
- (h) That SEIU functioned “something like” a collective-bargaining representative for certain of the predecessor’s employees. Dec. at 12.
- (i) That SEIU’s representation of the predecessor’s employees, under state law, “explicitly and affirmatively did *not* involve representation for the purposes of collective bargaining....” Dec. at 13 (emphasis in original).
- (j) That the unit employees did not select the SEIU to act as their representative for “collective-bargaining” purposes. Dec. at 13.
- (k) That SEIU did not have “collective-bargaining representative status.” Dec. at 13.

SEIU’s certification by the Pennsylvania Labor Relations Board (JX-2 at ¶ 48; GCX-16) and its rights pursuant thereto fall within the scope of and are subsumed by collective bargaining rights under the Act, providing a legal basis for a presumption of majority support and, thus, the Respondents’ obligation to bargain with SEIU.

Additionally, the ALJ’s Decision strips employees of the representation they selected, a result which is absurd and repugnant to the Act.

2. The ALJ erred by failing to make factual findings that provide additional bases for a presumption of majority support for SEIU as collective bargaining representative and by failing to conclude based on those findings that the Respondents must recognize and bargain with SEIU. Dec. at 11-13. In particular, the ALJ failed to make the following findings and/or conclusions:

- (a) That the successorship provision of the Memorandum of Understanding between SEIU and the predecessor employer provided that, “should the County lease, sell, including a sale of assets only, transfer or privatize the Laurel Crest Rehabilitation and Special Care Center, the successor shall agree to recognize the Union and accept their Memorandum of Understanding.” (GCX-18 at 40.)
- (b) That the Respondents executed legal documents effecting the sales transaction with the predecessor employer in which they “acknowledg[ed] and accept[ed]” the “obligation” of “recogniz[ing] the Union and accept[ing] their Memorandum of Understanding.” (GCX-19 at 15, 29, Schedule 4.7(b).)
- (c) That the Respondents, by executing the documents in which they agreed to recognize SEIU and accept its Memorandum of Understanding with the predecessor employer, necessarily created a collective bargaining relationship under the Act.
- (d) That a petition signed by SEIU unit members and presented to both the predecessor and successor employers expresses actual majority support for SEIU as collective bargaining representative. (GCX-42; Tr. 598-99.)

In light of these facts, Board and judicial precedent require the presumption of majority support for SEIU as collective bargaining representative, giving rise to a bargaining obligation owed by the Respondents to SEIU. Additionally, the ALJ’s Decision strips employees of the representation they selected, a result which is absurd and repugnant to the Act.

3. The ALJ erred by failing to apply equitable estoppel to the Respondents' defenses that they had no legal obligation to bargain with SEIU. Dec. at 11-13. In particular, the ALJ erred by failing to find and/or conclude as follows:

- (a) That the Respondents' agreement to "acknowledge[] and accept" the "obligation" to "recognize the Union and accept their Memorandum of Understanding [with the predecessor]" (GCX-19 at 15, 29, Schedule 4.7(b)) establishes the knowledge and intent elements necessary for application of equitable estoppel.
- (b) That SEIU mistakenly believed the Respondents would recognize SEIU because of their agreements to do so. (JX-2 at ¶ 45; SEIUX-2.)
- (c) That SEIU was prejudiced by the Respondents' failure to recognize SEIU after having agreed to do so.
- (d) That the Respondents' express agreements to "recognize" SEIU and "accept" its Memorandum of Understanding with the County necessarily created a collective bargaining relationship under the Act.

Board law precludes the Respondents, having agreed to recognize SEIU and accept its agreement with the predecessor employer, from asserting that they have no bargaining obligation to SEIU, that the unit is not cognizable under the Act or that the unit is otherwise inappropriate. The Respondents knowingly and intentionally undertook an obligation to recognize and bargain with SEIU in order to consummate their purchase of the facility from the predecessor employer.

4. The ALJ erred by failing to conclude that the SEIU unit, which includes professional and nonprofessional employees, is appropriate for the purposes of collective

bargaining, and by failing to make the factual findings necessary to support that conclusion. Dec. at 13, n.15.

Pennsylvania labor law, like the Act, requires professional employees to consent to their inclusion in a unit with nonprofessional employees. A predecessor of SEIU was duly certified as representative of a unit found to be appropriate under Pennsylvania law. (JX-2 at ¶ 48; GCX-16 at 2.) The ALJ should have extended comity to this determination.

5. The ALJ erred by failing to conclude that the SEIU unit does not include supervisory positions and is therefore appropriate for the purposes of collective bargaining, and by failing to make the factual findings necessary to support that conclusion. Dec. at 13, n.15.

The record permits the Board to find the facts necessary to conclude that the unit does not include supervisors and is appropriate. (*See* Tr. 802-03, 805, 816, 977-79, 987-89, 992-95, 997-99, 1037; SEIUX-14.)

6. The ALJ erred by failing to conclude that the Respondents violated the Act by unilaterally implementing IV therapy training and beginning the process of adding IV therapy duties to the work regimen of licensed practical nurses (LPNs), and by failing to make the factual findings necessary to support that conclusion. Dec. at 13, n.15.

The record permits the Board to find the facts necessary to conclude that the Respondent implemented a unilateral change in violation of the Act. (*See* Tr. 631-33, 801-02.)

7. For the foregoing reasons, the ALJ erred by recommending that the allegations relating to the Respondents' refusal to recognize and bargain with SEIU should be dismissed. Dec. at 13.

8. For the foregoing reasons, the ALJ erred by failing to include as part of his Recommended Order and remedy, Dec. at 58-61, appropriate notice language, cease and desist mandates and affirmative actions required to fully remedy the Respondents' violations of Section 8(a)(1) and 8(a)(5) of the Act by failing to recognize and bargain with SEIU and by unilaterally changing the duties of SEIU-represented LPNs.

WHEREFORE, SEIU respectfully requests that the Board adopt the ALJ's findings of fact, conclusions of law and Recommended Order only to the extent consistent with the foregoing; make the factual findings necessary to conclude that the Respondents are obligated to recognize and bargain with SEIU and that the SEIU unit is appropriate for collective bargaining purposes; conclude that the Respondents are obligated to recognize and bargain with SEIU and that the SEIU unit is appropriate for collective bargaining purposes; and modify the ALJ's Recommended Order to require the Respondents to bargain in good faith with SEIU.

Respectfully Submitted,

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Counsel for Charging Party

Dated: January 28, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of January, 2011, I electronically filed the foregoing Limited Exceptions to the ALJ's Decision and Recommended Order and caused copies to be served upon the following:

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