



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 13  
209 S LA SALLE ST STE 900  
CHICAGO, IL 60604-1443

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (312)353-7570  
Fax: (312)886-1341

March 23, 2012

[REDACTED]

[REDACTED]

ST. BERNARD HOSPITAL AND  
HEALTH CARE CENTER  
326 W 64TH ST  
CHICAGO, IL 60621-3114

Re: St. Bernard Hospital and Health Care Center  
Case 13-CA-074311

Dear [REDACTED]

The Region has carefully considered the charge alleging that ST. BERNARD HOSPITAL AND HEALTH CARE CENTER violated the National Labor Relations Act. As explained below, I have decided that further proceedings on the charge should be handled in accordance with the deferral policy of the National Labor Relations Board as set forth in *Collyer Insulated Wire*, 192 NLRB 837 (1971), and *United Technologies Corp.*, 268 NLRB 557 (1984). This letter explains that deferral policy, the reasons for my decision to defer further processing of the charge, and the Charging Party's right to appeal my decision.

**Deferral Policy:** The Board's deferral policy provides that the Board will postpone making a final determination on a charge when a grievance involving the same issue can be processed under the grievance/arbitration provision of the applicable contract. This policy is partially based on the preference that the parties use their contractual grievance procedure to achieve a prompt, fair, and effective settlement of their disputes. Therefore, if an employer agrees to waive contractual time limits and process the related grievance through arbitration if necessary, the Board's Regional Office will defer the charge.

**Decision to Defer:** Based on our investigation, I am deferring further proceedings on the charge in this matter to the grievance/arbitration process for the following reasons:

1. The Employer and SEIU HEALTHCARE IL/IN have a collective-bargaining agreement currently in effect that provides for final and binding arbitration.

2. The allegation that on or about September 13, 2011 the Employer terminated [REDACTED] because he engaged in protected concerted activities is encompassed by the terms of the collective bargaining agreement.

3. The Employer is willing to process a grievance concerning the issues in the charge, and will arbitrate the grievance if necessary. The Employer has also agreed to waive any time limitations in order to ensure that the arbitrator addresses the merits of the dispute.

4. Since the issues in the charge appear to be covered by provisions of the collective-bargaining agreement, it is likely that the issues may be resolved through the grievance/arbitration procedure.

**Further Processing of the Charge:** As explained below, while the charge is deferred, the Regional office will monitor the processing of the grievance and, under certain circumstances, will resume processing of the charge.

***Charging Party's Obligation:*** Under the Board's *Collyer* deferral policy, the Charging Party has an affirmative obligation to file a grievance, if a grievance has not already been filed. If the Charging Party fails either to promptly submit the grievance to the grievance/arbitration process or declines to have the grievance arbitrated if it is not resolved, I will dismiss the charge.

***Union/Employer Conduct:*** If the Union or Employer fails to promptly process the grievance under the grievance/arbitration process; declines to arbitrate the grievance if it is not resolved; or if a conflict develops between the interests of the Union and the Charging Party, I may revoke deferral and resume processing of the charge.

***Charged Party's Conduct:*** If the Charged Party prevents or impedes resolution of the grievance, raises a defense that the grievance is untimely filed, or refuses to arbitrate the grievance, I will revoke deferral and resume processing of the charge.

***Monitoring the Dispute:*** Approximately every 90 days, the Regional Office will ask the parties about the status of this dispute to determine if the dispute has been resolved and if continued deferral is appropriate. However, at any time, a party may present evidence and request dismissal of the charge, continued deferral of the charge, or issuance of a complaint.

***Notice to Arbitrator Form:*** If the grievance is submitted to an arbitrator, please sign and submit to the arbitrator the enclosed "Notice to Arbitrator" form to ensure that the Region receives a copy of an arbitration award when the arbitrator sends the award to the parties.

***Review of Arbitrator's Award or Settlement:*** If the grievance is arbitrated, the Charging Party may ask the Board to review the arbitrator's award. The request must be in writing and addressed to me. Under current Board law, the request should analyze whether the arbitration process was fair and regular, whether the unfair labor practice allegations in the charge were considered by the arbitrator, and whether the award is consistent with the Act. Further guidance on this review is provided in *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955) and *Olin Corp.*, 268 NLRB 573 (1984). These Board decisions are available on our website, [www.nlr.gov](http://www.nlr.gov). However,

the current standard for review may change. The General Counsel's position is that the Board should modify its approach in Section 8(a)(1) and (3) cases and should not defer to an award unless the party urging deferral demonstrates that: (1) that the contract had the statutory right incorporated in it or the parties presented the statutory issue to the arbitrator; and (2) that the arbitrator correctly enunciated the applicable statutory principles, and applied them in deciding the issue. The General Counsel is also taking the position that the Board should not defer to a pre-arbitral-award grievance settlement in Section 8(a)(1) and (3) cases unless the parties intended the settlement to also resolve unfair labor practice issues.

**Charging Party's Right to Appeal:** The Charging Party may appeal my decision to defer this charge by filing an appeal with the General Counsel of the National Labor Relations Board, through the Office of Appeals. An appeal may be filed by submitting the enclosed Appeal Form (form NLRB-4767), which is also available at [www.nlrb.gov](http://www.nlrb.gov). However, we encourage the Charging Party to submit a complete statement setting forth the facts and reasons why the decision to defer the charge is incorrect.

**Means of Filing:** An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax. To file an appeal electronically, go to the Agency's website at [www.nlrb.gov](http://www.nlrb.gov), click on **File Case Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570-0001.

**Appeal Due Date and Time:** The appeal is due on **April 6, 2012**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If the appeal is mailed or sent by a delivery service, it must be received by the General Counsel in Washington, D.C. by the close of business at **5:00 p.m. Eastern Time** or be postmarked or given to the delivery service no later than **April 5, 2012**. If the appeal is not received when due, it will not be processed.

**Extension of Time to File Appeal:** The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before April 6, 2012**. The request may be filed electronically through the **File Case Documents** link on our website [www.nlrb.gov](http://www.nlrb.gov), by fax to (202) 273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after **April 6, 2012, even if it is postmarked or given to the delivery service before the due date**. If you file a request for an extension of time by fax, by mail, or by delivery service, please send a copy of the request for extension of time to me.

**Confidentiality:** We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those

prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

Peter Sung Ohr  
Regional Director

Enclosures

cc GENERAL COUNSEL  
OFFICE OF APPEALS  
FRANKLIN COURT BUILDING  
NATIONAL LABOR RELATIONS  
BOARD  
1099 14<sup>TH</sup> STREET, NW  
WASHINGTON, DC 20570

  
ST. BERNARD HOSPITAL AND  
HEALTH CARE CENTER  
326 W 64TH ST  
CHICAGO, IL 60621-3114

  
SEIU HEALTHCARE ILLINOIS  
INDIANA  
209 W JACKSON BLVD., STE 200  
CHICAGO, IL 60606-6907



UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
NOTICE TO ARBITRATOR

TO: \_\_\_\_\_  
(Arbitrator)

\_\_\_\_\_  
(Address)

\_\_\_\_\_

NLRB Case Number  
**13-CA-074311**

NLRB Case Name: St. Bernard Hospital and Health Care Center

A determination has been made by the Regional Director of Region 13 of the National Labor Relations Board to administratively defer to arbitration the further processing of the NLRB charge in the above matter. Further, both parties to the NLRB case have agreed to proceed to arbitration before you in order to resolve the dispute underlying the NLRB charge.

So that the Regional Director can be promptly informed of the status of the arbitration, the undersigned hereby requests that a copy of the arbitration award be sent to Regional Director, Region 13, 209 S LA SALLE ST STE 900, CHICAGO, IL 60604-1443 at the same time that it is sent to the parties in the arbitration.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**APPEAL FORM**

To: General Counsel  
Attn: Office of Appeals  
National Labor Relations Board  
Room 8820, 1099 - 14th Street, N.W.  
Washington, DC 20570-0001

Date:

I am appealing the action of the Regional Director in deferring the charge in

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Case Name(s).

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Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

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*(Signature)*