

EXHIBIT 4

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8 Attorneys for Employer
9 MISSION AREA HEALTH ASSOCIATES dba
10 MISSION NEIGHBORHOOD HEALTH CENTER

11 NATIONAL LABOR RELATIONS BOARD, REGION 20

12 NATIONAL UNION OF
13 HEALTHCARE WORKERS,

14 Petitioner,

15 vs.

16 MISSION AREA HEALTH
17 ASSOCIATES DBA MISSION
18 NEIGHBORHOOD HEALTH CENTER,

19 Employer,

20 and

21 SERVICE EMPLOYEES
22 INTERNATIONAL UNION, UNITED
23 HEALTHCARE WORKERS-WEST,

24 Intervenor.

Case No.: 20-RC-85529

**POST-HEARING BRIEF BY
EMPLOYER MISSION AREA
HEALTH ASSOCIATES DBA MISSION
NEIGHBORHOOD HEALTH CENTER**

Date of Hearing: July 26, 2012
Hearing Officer: Lana Pfeifer, Esq.

1 **I. INTRODUCTION**

2 Employer MISSION AREA HEALTH ASSOCIATES (dba MISSION
3 NEIGHBORHOOD HEALTH CENTER, hereinafter "HEALTH CENTER") respectfully
4 submits this Post-Hearing Brief following the hearing on July 26, 2012.

5 Based on the evidence presented at the hearing and the governing law,
6 HEALTH CENTER contends: (1) the Board should not ignore position title changes and the
7 elimination of certain positions at HEALTH CENTER in defining the appropriate bargaining
8 unit for the election; (2) as the Board already properly recognized, a self-determination
9 ("Sonotone") election is proper and necessary because no such election has taken place to date
10 and the prior bargaining unit, under the long expired contract with Intervenor SEIU-HCW,
11 clearly includes professional employees including Nurse Practitioner and Physician Assistant;
12 and (4) the Pharmacist In Charge and the Charge Nurses must be excluded from the unit
13 because they are supervisors as defined under the National Labor Relations Act (the "NLRA"
14 or the "Act").

15 **II. ARGUMENT**

16 **A. The Events Leading To The Hearing, And The Board's Failure To Grant**
17 **HEALTH CENTER A Brief Continuance To Present Live Witness Testimony,**
18 **Denied HEALTH CENTER "Meaningful" Notice And Due Process Of Law.**

19 As an initial, but very important, matter, the record reflects that HEALTH
20 CENTER was denied "meaningful notice . . . and . . . [a] full and fair opportunity to litigate"
21 that are the fundamental requirements of procedural due process. *Lamar Advertising of*
22 *Hartford*, 343 NLRB 261, 266 (2004). To be "meaningful," the notice must provide a party
23 with a "clear statement" of the issues to address. *Id.* "It is axiomatic that a [party] cannot fully
24 and fairly litigate a matter unless it knows what the accusation is." *Champion Int'l Corp.*, 339
25 NLRB 672, 673 (2003).¹ Unfortunately, as the record reflects (*see attached electronic mail*

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27 ¹ It is also "axiomatic, of course, that the mere presence in the record of evidence relevant to an unstated accusation
28 'does not mean the [defending] party . . . had notice that the issue was being litigated.'" *Conair Corp. v. NLRB*, 721
F.2d 1355, 1372 (D.C. Cir. 1983).

1 messages from Board Agent dated July 19, 24 and 25, 2012, and Hearing Transcript at 70:3-
2 71:18, 74:5-84:20, 96:21-99:21), that did not occur here.

3 HEALTH CENTER was unable to bring all relevant witnesses to the hearing on
4 July 26, 2012 because the Board failed to provide proper and “meaningful” notice. *Id.* At all
5 times leading up to the date of the hearing, HEALTH CENTER actively communicated with
6 the Board regarding the scope of the *evolving* issues for the potential hearing. *Id.* Per the
7 Board’s specific request, HEALTH CENTER brought relevant job descriptions and a witness,
8 its Human Resources Director (Becky Hucke), to authenticate them and describe their job
9 duties. *Id.* Literally, at 5:48 p.m. on the evening before the 10:00 a.m. hearing, after HEALTH
10 CENTER had reasonably relied on its prior communications with the Board, HEALTH
11 CENTER received a final email from the Board stating: “As of *now*, it *appears* that we will be
12 meeting tomorrow, July 26, for a hearing on whether a *Sonotone* election is appropriate and
13 *possibly* with respect to the potential supervisory status of a few bargaining unit positions”
14 (italics added), listing new issues² and stating that it would be “very helpful” to have live
15 witness testimony. *Id.* (7/25/12 email sent at 5:48 p.m.). Such eleventh-hour notice is
16 obviously not “meaningful” and does not come close to satisfying procedural due process.

17 Nevertheless, HEALTH CENTER in good faith presented live witness
18 testimony from its Director of Human Resources based on her personal knowledge of the
19 relevant job descriptions and duties. Hearing Transcript at pp. 21-56 & Employer’s Exhibits E-
20 1 – E-3(e). Although HEALTH CENTER met its burden of proving by a preponderance of the
21 evidence that the Pharmacist In Charge and Charge Nurses qualify as supervisors under the
22 Act, to the extent that additional live testimony matters, HEALTH CENTER was denied due
23 process, particularly as to those issues raised *sua sponte* by the Board – not HEALTH
24 CENTER – on the eve of and even during the hearing itself.

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27 _____
28 ² “As such, I wanted to put the parties *on notice* concerning a few things.” *Id.* (italics added).

1
2 **B. The Standard For Determining The Status Of An Employee At A Nonprofit**
3 **Hospital Is Unique.**

4 In determining professional employee status under Section 2(12) of the NLRA,
5 the Board should consider *National Lab. Rel. Bd. v. HMO International/Cal. Med. Group*
6 *Health Plan, Inc.*, 678 F.2d 806 (9th Cir. 1982); 29 U.S.C. § 152(11). In that case, the Ninth
7 Circuit discussed the fact that Congress amended the NLRA in 1974 to cover nonprofit
8 hospitals. *Id.* at 807. Congress sought to clarify the standards for determining health care
9 industry bargaining units. Specifically, both the House and Senate committee reports
10 admonished that “[d]ue consideration should be given by the Board to preventing proliferation
11 of bargaining units in the health care industry.” Moreover, although the Board typically
12 approaches unit definition under a community-of-interest analysis, cases of nonprofit hospitals
13 must be evaluated through a different lens. The Ninth Circuit directed the Board to consider a
14 “public interest factor” in the settling of disputes between a nonprofit hospital and union.

15 The Parties have stipulated to HEALTH CENTER’s status as a nonprofit
16 hospital. As such, the Board should refrain from overly broad unit definitions in determining
17 professional status of bargaining unit employees.

18 **C. A Sonotone Election Is Proper And Necessary.**

19 Where a union seeks to represent mixed units of both professional and non-
20 professional employees, a self-determination (“*Sonotone*”) election is required. *Sonotone*
21 *Corp.*, 90 NLRB 1236, 1240-41 (1950). In such elections, professional employees must vote
22 on whether they wish to be combined with the non-professional unit. *Id.* So long as HEALTH
23 CENTER provides sufficient evidence that: (1) there has been no prior *Sonotone* election; and
24 (2) it continues to employ both professional and non-professional employees, a *Sonotone*
25 election must occur. *Id.*

26 Ample evidence exists that HEALTH CENTER employs both professional and
27 non-professional employees. Notably, neither Petitioner NUWH nor HEALTH CENTER
28

1 disputes this fact; only the intervening union – Service Employees International Union United
2 Healthcare Workers West (“SEIU-UHW”) made the bald argument that all HEALTH CENTER
3 employees were non-professional in nature. Hearing Transcript at 120:6-9. Contrary to SEIU-
4 HCW’s conclusory contention, the Physician Assistant (“PA”), Nurse Practitioner and the On
5 Call Charge Nurse all qualify as professional employees under Section 2(12) of the NLRA.
6 Further, both the Pharmacist In Charge and the Charge Nurses, in addition to being excluded
7 supervisors under the Act (*see* discussion, *infra*), qualify as classic professional employees
8 under the Act.

9 Section 2(12) of the NLRA defines a professional employee as:

10 (a) any employee engaged in work (i) predominantly intellectual and
11 varied in character as opposed to routine mental, manual, mechanical, or
12 physical work; (ii) involving the consistent exercise of discretion and
13 judgment in its performance; (iii) of such character that the output
14 produced or the result accomplished cannot be standardized in relation to a
15 given period of time; (iv) requiring knowledge of an advanced type in a
16 field of science or learning customarily acquired by a prolonged course of
17 specialized intellectual instruction and study in an institution of higher
18 learning or a hospital, as distinguished from a general academic education
19 or from an apprenticeship or from training in the performance of routine
20 mental, manual, or physical processes; or

21 (b) any employee, who (i) has completed courses of specialized
22 intellectual instruction and study described in clause (iv) of paragraph (a),
23 and (ii) is performing related work under the supervision of a professional
24 person to qualify himself to become a professional employee as defined in
25 paragraph (a).

26 The Nurse Practitioner Job Description (Exhibit 3(c)) indicates that it qualifies
27 as a professional under Section 2(12) of the Act. The Nurse Practitioner is “responsible for the
28 primary and urgent health care of a diverse patient population.” Nurse Practitioners also
engage in preventive care strategies and counseling to patients and collaborate with
multidisciplinary teams including case management, therapists and psychiatry. Furthermore,
their specialized instruction notably exceeds that of even an RN. Moreover, in addition to
having all the duties of an RN, they have had additional training for prescribing medications.
Hearing Transcript at 52:12-15. Their training also is designed for becoming a Nurse

1 Practitioner under the direction of a physician. *Id.* at 51:23-52:7. Finally, their qualifications
2 in the Job Description require them to provide a furnishing license – to write prescriptions –
3 and a Nurse Practitioner license. All of these qualifications and others outlined in the job
4 description provide ample evidence that a Nurse Practitioner qualifies as a professional. Not
5 allowing them to vote in a *Sonotone* election would constitute clear error, and would be
6 grounds to set aside the election.

7 **D. The Pharmacist In Charge Qualifies As Both A Supervisor And A Professional**
8 **Employee.**

9 Although the burden rests on HEALTH CENTER to prove supervisor status,
10 this burden is a mere preponderance of the evidence. *See NLRB v. Kentucky River Community*
11 *Care*, 532 U.S. 706, 711-12 (2001); *accord In re Croft Metals, Inc.*, 348 NLRB 717, 721
12 (2006). The Board provided important clarifications of the definition of supervisor on
13 September 29, 2006, when it issued three opinions, known as the *Kentucky River* decisions, in
14 compliance with the U.S. Supreme Court’s decision in *NLRB v. Kentucky River Community*
15 *Care*, 532 U.S. 706 (2001). A supervisor is defined as:

16 Any individual having the authority, in the interest of the
17 employer, to hire, transfer, suspend, layoff recall, promote,
18 discharge, assign, reward, or discipline other employees, or
19 responsibly to direct them, or to adjust their grievances, or to
20 effectively recommend such action, if in connection with the
21 foregoing the exercise of such authority is not of a merely routine
22 or clerical nature, but requires the use of independent judgment.

23 29 U.S.C. § 152(11). In *Kentucky River*, the Board established a “three-part test for
24 determining supervisory status.” *Kentucky River*, 532 U.S. at 712-13. Supervisor status exists
25 under the NLRA if the employee: (1) has the authority to engage in any one of the 12
26 enumerated supervisory actions; (2) uses “independent judgment” in exercising that authority;
27 and (3) holds that authority “in the interest of the employer.” 29 U.S.C. § 152(11); *accord*
28 *Kentucky River*, 532 U.S. at 713. The second requirement of “independent judgment” requires
that an individual act “or effectively recommend action, free of the control of others and form
an opinion or evaluation by discerning and comparing data.” *In re Oakwood Healthcare, Inc.*,

1 348 NLRB 686, 692-93 (2006). In applying the factors listed, one may then distinguish
2 between a “true supervisor” from a “straw boss.”

3 As applied here, the Pharmacist In Charge actively supervises four other
4 employees – Pharmacy Technicians. Employer’s Ex. 3(b), bullet point 10; Hearing Transcript
5 at 46:17-48:2 (“I speak to the pharmacists in charge. I have had conversations with them.”).
6 The Pharmacist In Charge’s duties in actively supervising the Pharmacy Techs include: (1)
7 conducting performance reviews; (2) setting schedules; (3) involvement in the hiring and firing
8 process; (4) discipline; (5) evaluating pharmacy employees; (6) providing guidance and
9 direction to the pharmacy staff; (7) assigning any other tasks to the pharmacy staff through
10 independent judgment; and (8) the Pharmacist In Charge is the designated go-to person should
11 the pharmacy techs have leave-of-absence or terms-of-employment issues. It is also telling that
12 the Pharmacist In Charge reports directly to the Medical Director of HEALTH CENTER. As
13 for the job description requirements, a Pharmacist In Charge must be licensed in the state of
14 California as a registered pharmacist and hold a bachelor’s degree. Further, they are
15 responsible for any pharmaceutical purchases for the pharmacy, instructing patients as to
16 potential drug interactions – including possible side effects, storage information and
17 instructions on how to use the medication.

18 The Pharmacist In Charge performs these supervisory duties in the best interests
19 of HEALTH CENTER. For example, the Pharmacist In Charge imposed disciplinary action
20 against a Pharmacy Tech. After consulting the HR Department with a recommended course of
21 action, the Pharmacist In Charge disciplined the employee accordingly. Hearing Transcript at
22 61:15-25, 112:12-113:10, 116:8-117:10. The fact that the Human Resources Director reviewed
23 and concurred with the Pharmacist In Charge’s discipline recommendation does not diminish
24 his supervisory status, as HR often reviews even senior management’s discipline decisions for
25 appropriateness, consistency and legality.

26 Finally, the Pharmacist In Charge should be excluded from a *Sonotone* election
27 because of his supervisory status. Only employees have the right to unionize and bargain
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1 collectively under the NLRA. 29 U.S.C. § 157. Further, the NLRA defines “employee” so as
2 to exclude “any individual employed as a supervisor.” *Id.*; 29 U.S.C. 152(3).

3 **E. The Charge Nurses Qualify As Both Excluded Supervisors And Professional**
4 **Employees.**

5 The Charge Nurses at HEALTH CENTER are tasked with responsibilities such
6 that not only qualify them as professionals, but that in their professional capacity they function
7 as statutory supervisors as well. Charge Nurses at HEALTH CENTER are all Registered
8 Nurses and must furnish such licenses upon employment with HEALTH CENTER. With
9 respect to the Charge Nurse job description, each is responsible for the triage of patients, “with
10 appropriate attention to acuity and the availability of medical providers for urgent care
11 evaluation.” The Charge Nurse is also responsible for supervising the preparation of patients
12 for medical evaluation, “including an assessment that patients are correctly vitalized and
13 monitors availability of charts, labs and forms.” They are also the key person involved in in the
14 work of the Medical Assistants who they supervise, as they are their direct supervisors. In
15 doing so, they must provide leadership, evaluations and direct supervision to the medical
16 assistants. This includes involvement in the collective hiring and firing of Medical Assistants,
17 scheduling and written performance evaluations. In sum, the Charge Nurse is the focal point
18 for the Medical Assistant in almost every aspect at HEALTH CENTER on a daily, weekly and
19 monthly basis.

20 Finally, in addition to setting the agenda for monthly department meetings, the
21 charge nurses are tasked with supervising “effective participation in Quality Improvement
22 activities related to maintenance of various logs and registries” for a detailed list of duties.
23 Significantly, the Charge Nurses report only to the Director of Nursing and Quality
24 Management and they work closely with the Women’s Clinic Clinical Chief, the COO and the
25 Medical Director of HEALTH CENTER. Because the duties of the Charge Nurse not only
26 encompass mostly professional responsibilities, their tasks are of such supervisory nature that
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1 they actually actively supervise the staff who are in the bargaining unit. Hearing Transcript at
2 37:7-14. As such, they are excluded from the unit under the Act.

3 The Board must apply the relevant factors in a case-by-case analysis. A recent
4 “charge nurse” case, *Frenchtown Acquisition Company v. National Labor Relations Board*, 193
5 F.3d 444 (6th Cir., June 20, 2012), is factually distinguishable. In *Frenchtown*, the bargaining
6 unit at issue consisted of a much larger 43 charge nurses working alongside 45 nursing aides to
7 care for residents. *Frenchtown* operated on a larger scale than HEALTH CENTER and
8 consequently was able to much more narrowly tailor the job descriptions to their needs.
9 Aspects such as hiring, firing, disciplining and assigning were sporadic one-two case examples
10 at best.

11 Here, in part due to the size and nature of the Employer’s business, HEALTH
12 CENTER’s Charge Nurses must exercise significant independent decision-making, judgment
13 and discretion, including in actively supervising the Medical Assistants at its facility. Further,
14 in stark contrast to the charge nurses in *Frenchtown*, HEALTH CENTER’s Charge Nurses are
15 involved in every interview for Medical Assistants, not only in the initial interview but as a
16 relevant part of a group that determines whether to interview and whether to hire an applicant.
17 Finally, where *Frenchtown’s* charge nurses are explicitly prohibited from disciplining the
18 nursing aids, HEALTH CENTER’s Charge Nurses regularly evaluate and discipline Medical
19 Assistants on a daily, weekly and monthly basis. HEALTH CENTER’s Charge Nurses thus
20 clearly satisfy the criteria for supervisor status under *Kentucky River* and Section 2(12) of the
21 Act.

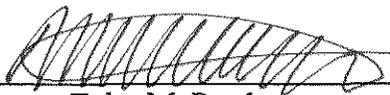
22 **III. CONCLUSION**

23 For the reasons set forth above, and based on the evidence presented at the July
24 26, 2012 hearing, the Board should find that: (1) a *Sonotone* election is proper and necessary
25 for the clear professional employees (Nurse Practitioner, Physician Assistant); and (2) the
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1 Pharmacist In Charge and Charge Nurses are properly excluded supervisors who must be
2 excluded from the bargaining unit self-determination election.

3 Dated: August 2, 2012

HARTNETT, SMITH & PAETKAU

4
5 By 

6 Tyler M. Paetkau
7 Attorneys for Employer
8 MISSION AREA HEALTH ASSOCIATES dba
9 MISSION NEIGHBORHOOD HEALTH CENTER
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Tyler Paetkau

From: Pfeifer, Lana [Lana.Pfeifer@nlrb.gov]
Sent: Wednesday, July 25, 2012 5:48 PM
To: 'Yuri Gottesman'; Tyler Paetkau; Ben Siegel
Cc: 'Latika Malkani'; 'Manuel Boigues'
Subject: RE: Mission Neighborhood Health Center
Attachments: Hearing STIPULATION-MNHC.doc

Dear Everyone,

As of now, it appears that we will be meeting tomorrow, July 26, for a hearing on whether a *Sonotone* election is appropriate and possibly with respect to the potential supervisory status of a few bargaining unit positions.

As such, I wanted to put the parties on notice concerning a few things.

Sonotone Election Matter

NUHW and the Employer have previously told me that their positions included finding at least some of the below positions to be professional employees.

- 1) Staff RN
- 2) RN (On Call)
- 3) Nurse Practitioner
- 4) Physician Assistant
- 5) Pharmacist

The Employer believes the Nutritionist position would be a professional employee, and NUHW is uncertain of the professional status of this position.

SEIU's position is that a *Sonotone* election is not appropriate for any of the positions involved with the petition.

In light of the above dispute as to whether or not any of the bargaining unit positions would be considered professional employees, it would be very helpful to have the below at the hearing concerning the asserted professional employees.

- 1) Firsthand witness testimony from the asserted professional employees
- 2) Job descriptions for the asserted professional employees
- 3) Job applications of the asserted professional employees
- 4) Any evidence that the Region has conducted a *Sonotone* election previously concerning the Employer's bargaining unit employees at issue.

Potential Supervisory Status Issue

In speaking with Employer Counsel earlier today, he mentioned that there might be a potential supervisory status issue regarding the positions of RN, LVN and Pharmacist. There is also a question as to whether the positions Asst Intake Service Supervisor and Med Records Supervisor Asst are supervisory positions under the meaning of Section 2(11) of the Act or whether these positions just happen to have the title "supervisor" in their name but they don't in fact rise to the level of being a supervisor within the meaning of the Act.

With respect to any sort of statutory exclusions, such as Section 2(11) supervisory status, please be aware that the party seeking to exclude employees on this basis bears the burden of proof. You must present specific, detailed evidence in support of your position; general conclusionary statements by witnesses will not be sufficient.

Commerce/Jurisdiction

As for jurisdiction, I've attached the following document to address this portion of the hearing. Please try to review it with your respective clients.

The hearing process is slated to begin at **10:00 a.m. on July 26 at the EVS Robbins Courtroom, 901 Market St, Suite 300 (not at the Regional Office's Courtroom on the 4th floor), SF, CA.**

We'll begin the hearing process by doing a pre-hearing conference to try to narrow down issues and come to some stipulations for the hearing.

Thanks,
Lana

From: Pfeifer, Lana
Sent: Wednesday, July 25, 2012 11:25 AM
To: 'Latika Malkani'; 'Manuel Boigues'; 'Yuri Gottesman'; 'Tyler Paetkau'
Subject: RE: Mission Neighborhood Health Center

Hey All,

Well, I've heard back from NUHW about the bargaining unit, and it believes that it would be appropriate to do a *Sonotone* election in the present matter. The positions from the existing unit would likely constitute professional employees include:

- 6) Staff RN
- 7) RN (On Call)
- 8) Nurse Practitioner
- 9) Physician Assistant
- 10) Pharmacist

The other positions that might be designated as professional employees are:

- 1) Family Planning Counselor
 - 2) Nutritionist
 - 3) Family Health Worker
 - 4) Registration Specialist
- (3 and 4 are recent additions to this list)

Please let me know the Employer's and SEIU's positions as to whether the above positions would be considered professional employees. Also, let me know if any other positions would constitute professional employee status.

The Agency's Outline of Law and Procedure in Representation Cases, 18-100 Professional Employees, 18-110 The Statutory Mandate provides the following.

Section 9(b)(1) provides that professional employees may not be included in a bargaining unit with nonprofessionals unless they vote in favor of such inclusion. The term "professional employee" is defined in Section 2(12), as follows:

- (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or
- (b) any employee, who (i) has completed courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

In *Leedom v. Kyne*, 249 F.2d 490 (D.C. Cir. 1957), the District of Columbia Court of Appeals construed the limitation in Section 9(b)(1) as intended to protect professional employees and held that the professionals' right to this benefit does not depend on Board discretion or expertise and that denial of this right must be deemed to result in injury. The United States Supreme Court (358 U.S. 184 (1958)) affirmed this ruling.

Where the Board has sufficient information to put it on notice that there is an issue as to professional status of employees, it must conduct an inquiry and cannot rely on the failure of the parties to raise the issue. *Pontiac Osteopathic Hospital*, 327 NLRB 1172 (1999).

Hence, the above case law leads us to consider having a *Sonotone* election.

In the event we could avoid a hearing, election proposals would be nice, such as an election date, time, place and a defined unit but obviously we're still working on the unit.

If it would work to schedule a conference call with Counsel for all parties later today, July 25, I'm all for it.

Alternatively, if any party believes it might be beneficial to postpone the hearing to next week in attempts to get a stipulated election agreement on the matter, let me know.

Please get back to me about the present matter as soon as you can.

Thanks,
Lana
415.356.5187

From: Pfeifer, Lana
Sent: Thursday, July 19, 2012 5:27 PM
To: 'Latika Malkani'; 'Manuel Boigues'; 'Yuri Gottesman'; 'Tyler Paetkau'
Subject: RE: Mission Neighborhood Health Center

Dear Everyone,

I've yet to receive the new petition, but given that it's essentially the same as the old one in terms of the bargaining unit, I thought I'd reach out to you all about the bargaining unit matters that I noticed in relation to the original petition and that I'd like the parties to address.

First off, in receiving the initial petition, I noticed that the list of employee classifications comprising the bargaining unit appears to include classifications of a professional employee nature, such as RNs, Pharmacists, etc. As such, the Region would like to know the parties' positions as to possibly having the professional employees vote in a self-determination election known as a *Sonotone* election (*Sonotone Corp.*, 90 NLRB 1236 (1950); see the Agency's Outline of Law and Procedure in Representation Cases, 21-400 Professional Employees). A little info as to how SEIU initially gained recognition as the collective-bargaining representative of the bargaining unit at hand would be helpful as well. For instance, was recognition granted voluntarily or pursuant to certification by the Board? If it was the latter, perhaps we've already done a *Sonotone* election. Though, in a cursory review of the Employer's name in our case tracking system, I see no prior petition filed regarding the Employer.

Secondly, along with some other documentation, the Employer submitted a list of the bargaining unit classifications, and by ten (10) of these, the Employer wrote in "does not exist". These classifications include X-Ray Aide, Typist, Clerk Typist, Janitor, OB/GYN Receptionist, Asst Intake Service Supervisor, Laboratory Aide or Tech (?), Health Ed Aide, Med Records Supervisor Asst, and Utility Worker. Thus, I wanted to check with the parties as to their positions on inclusion of these classifications in the bargaining unit.

I'll actually be away from the office tomorrow, July 20, and Monday, July 23. However, I'll be back on Tuesday morning, July 24, and can continue to work on the petition then.

In the meantime, please figure out your respective party's position as to the above two (2) bargaining unit matters. Please also be ready to identify any other bargaining unit matters or issues by Tuesday morning. If anyone needs to contact the Region in my absence, please reach out to either Daniel Owens, Supervisor (415.356.5166) or Tim Peck, Assistant to the Regional Director (415.356.5152).

Thanks,
Lana

From: Pfeifer, Lana
Sent: Thursday, July 19, 2012 9:02 AM
To: 'Latika Malkani'; 'Manuel Boigues'; 'Yuri Gottesman'; 'Tyler Paetkau'
Subject: Mission Neighborhood Health Center

Dear All,

Just wanted to let you know that the original petition (20-RC-85246) in the above-referenced matter has been withdrawn, and soon you will see a new petition. Given that a new petition has been filed the hearing slated for tomorrow, July 20, has been cancelled. The new petition's hearing date will be **Thursday, July 26**. I will be in touch with all of the parties soon to discuss whether or not a hearing is necessary and some bargaining unit matters.

Thanks,

Lana Pfeifer, Board Agent
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103
T: 415.356.5187
F: 415.356.5156

Tyler Paetkau

From: Pfeifer, Lana [Lana.Pfeifer@nlrb.gov]
Sent: Tuesday, July 24, 2012 2:28 PM
To: Tyler Paetkau
Subject: RE: Mission Neighborhood Health Center

Hi Tyler,

For more info about *Sonotone* elections, please see the Agency's Outline of Law and Procedure in Representation Cases as cited below.

NUHW believes that it would be appropriate to do a *Sonotone* election in the present matter, and it appears that the positions from the existing unit would constitute professional employees

- 1) Staff RN
- 2) RN (On Call)
- 3) Nurse Practitioner
- 4) Physician Assistant
- 5) Pharmacist

The other positions that might be designated as professional employees are:

- 1) Family Planning Counselor
- 2) Nutritionist

Please let me know the Employer's position as to whether the above positions would be considered professional employees. Also, let me know if any other positions would constitute professional employee status.

Please also let me know what the Asst Intake Service Supervisor and Med Records Supervisor Asst positions do?

Please get back to me about the above inquiries as soon as possible.

Thanks,
Lana

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Sent: Thursday, July 19, 2012 5:27 PM
To: 'Latika Malkani'; 'Manuel Boigues'; 'Yuri Gottesman'; 'Tyler Paetkau'
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Dear Everyone,

I've yet to receive the new petition, but given that it's essentially the same as the old one in terms of the bargaining unit, I thought I'd reach out to you all about the bargaining unit matters that I noticed in relation to the original petition and that I'd like the parties to address.

First off, in receiving the initial petition, I noticed that the list of employee classifications comprising the bargaining unit appears to include classifications of a professional employee nature, such as RNs, Pharmacists, etc. As such, the Region would like to know the parties' positions as to possibly having the professional employees vote in a self-determination election known as a *Sonotone* election (*Sonotone Corp.*, 90 NLRB 1236 (1950)); see the Agency's Outline of Law and Procedure in Representation Cases, 21-400 Professional Employees). A little info as to how SEIU initially gained recognition as the collective-bargaining representative of the bargaining unit at hand would be helpful as well. For instance, was recognition granted voluntarily or pursuant to certification by the Board? If it was the latter, perhaps we've already done a *Sonotone* election. Though, in a cursory review of the Employer's name in our case tracking system, I see no prior petition filed regarding the Employer.