

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

UPMC and its subsidiaries
UPMC Presbyterian Shadyside and
Magee-Womens Hospital of UPMC,
Single Employer, d/b/a Shadyside Hospital
and/or Presbyterian Hospital and/or
Montefiore Hospital and/or
Magee-Womens Hospital

and

Case 06-CA-081896

SEIU Healthcare Pennsylvania,
CTW, CLC

UPMC and its subsidiary
UPMC Presbyterian Shadyside,
Single Employer, d/b/a Shadyside Hospital
and/or Presbyterian Hospital and/or
Montefiore Hospital

and

Cases 06-CA-086542
06-CA-090063
06-CA-090133 and
06-CA-090144

SEIU Healthcare Pennsylvania,
CTW, CLC

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENT
UPMC'S MOTION FOR SUMMARY JUDGMENT**

Now comes Counsel for the Acting General Counsel, pursuant to Sections 102.24 and 102.26 of the Board's Rules and Regulations, Series 8, as amended, and states the following.:

1. On January 4, 2013, Respondent UPMC filed a Motion for Summary Judgment requesting that the single employer allegations in the Consolidated Complaint be dismissed and

that Respondent UPMC be dismissed from the case.¹ In support of its Motion, Respondent UPMC relies upon assertions contained in eight numbered paragraphs.

2. Rule 56(c)(2) of the Federal Rules of Civil Procedure provides that summary judgment may only be granted if “the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” It is submitted that Respondent UPMC has failed to show that no genuine issues of material fact exist.

3. Respondent UPMC contends in paragraphs 1, 2, 3, 4, 6, 8(a) and 9(a) of its short Motion that that it is a holding company, that it has no employees, conducts no operations, engages in no business other than holding certain ownership interests, does not employ any person mentioned in the Consolidated Complaint, and holds complete ownership interest in the other named parties to the Consolidated Complaint. These contentions, rather than indicating that it is not a single employer with the other named Respondents, demonstrate common ownership, one of the factors considered by the Board in determining the single employer status of respondents. In *Massey Energy Company*, 358 NLRB No. 159 at 11 (2012), the Board found that common ownership was established where Massey, a holding company which did not perform any of the functions performed by its subsidiaries, owned, “either directly or indirectly, all of the stock of numerous operating subsidiary corporations....”²

4. Respondent UPMC contends in its paragraph 5 that “UPMC’s Board of Directors has delegated practically all policy making functions to certain officials of UPMC Presbyterian-Shadyside.” By this contention, Respondent UPMC admits that it has not delegated all of its policy making functions. Moreover, by delegating some of its policy making authority to one of its subsidiaries, to create policies for all of its subsidiaries, Respondent UPMC establishes a

¹ Oddly, Respondent UPMC’s Motion does not seek dismissal of the single employer allegations contained in Cases 06-CA-090063, 06-CA- 090133 and 06-CA-090144.

² See also *Penntech Papers, Inc. v. NLRB*, 706 F.2d 18, 26 (1st Cir. 1983), cert. denied 464 U.S. 892 (1983).

second factor of the single employer criteria; that of interrelated operations. *Massey*, supra at 11.

5. Respondent UPMC also contends in paragraph 5 of the Motion that it engages in no employee or industrial relations activities. This contradicts paragraph 7 of the Motion in which Respondent UPMC admits that “the Ethics and Compliance Committee of the UPMC Board does review and approve of the Code of Conduct” which is applied to employees of its subsidiaries including Respondents UPMC Presbyterian-Shadyside and Magee Womens Hospital of UPMC. By retaining the power to approve these policies, under which employees can be disciplined, Respondent UPMC admits to another factor establishing centralized control of labor relations, “the most critical factor in the single employer analysis.” *Massey*, supra at 11-12 citing *Mercy Hospital of Buffalo*, 336 NLRB 1282, 1284 (2001).

6. Based on the above, Counsel for the Acting General Counsel asserts that Respondent UPMC’s Motion and its attached affidavit do not resolve any of the issues raised by the Consolidated Complaint or the Amended Consolidated Complaint. Rather, they confirm three of the legs which Counsel for the Acting General Counsel will use to establish the single employer status of all of the named Respondents. If there is any doubt left that the named entities constitute a single employer, further documentary evidence will be presented at trial showing the web of relationships among all of the Respondents which will make it perfectly clear that they constitute a single employer under established Board law.

WHEREFORE, as Respondent UPMC has failed to establish “that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law”

it's Motion for Summary Judgment and/or dismissal of allegations should be denied in its entirety.

Dated at Pittsburgh, Pennsylvania, this 11th day of January 2013.



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