

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, SUBREGION 11

BLUEFIELD HOSPITAL COMPANY, LLC, D/B/A
BLUEFIELD REGIONAL MEDICAL CENTER

and

Case 10-CA-093042

NATIONAL NURSES ORGANIZING COMMITTEE,
AFL-CIO (NNOC)

GREENBRIER VMC, LLC, D/B/A
GREENBRIER VALLEY MEDICAL CENTER

and

Case 10-CA-093065

NATIONAL NURSES ORGANIZING COMMITTEE,
AFL-CIO (NNOC)

To the Honorable, the Members of the
National Labor Relations Board Franklin
Court Building
1099 14th Street, NW
Washington, DC 20570-0001

**REQUEST FOR PARTIAL REMAND AND REPLY TO RESPONDENTS'
RESPONSE TO BOARD'S NOTICE TO SHOW CAUSE/RESPONDENTS'
OPPOSITION TO COUNSEL FOR THE ACTING GENERAL COUNSEL'S
MOTION FOR SUMMARY JUDGMENT**

I. Introduction

In their Response to the Board's Notice to Show Cause, Respondents continue to attempt to relitigate issues surrounding their objections to the elections and raise, for the first time, a defense to their continued refusal to recognize and bargain by asserting that the identity of the NNOC has been altered by its affiliation with a second union. In addressing these two

arguments, Counsel for the Acting General Counsel herein requests that the Board find that Respondents are prohibited from relitigating matters relating to the September 25, 2012, certifications of the NNOC as the exclusive collective-bargaining representative of unit employees at Bluefield Regional Medical Center and at Greenbrier Valley Medical Center, and further requests that the Board remand to the Region for further investigation Respondents' newly-raised defense attacking the continuity of the NNOC following an alleged affiliation with another union in early January 2013. See *George Lithograph*, 305 NLRB 168 (1992).

II. The Certifications

With regard to Respondents' attempt to challenge the certifications by relitigating their objections to the elections, the record establishes, and Respondents admit, that after they filed objections to the elections, they failed to present any evidence in support of their objections. (See Section 102.69 of the Board's Rules and Regulations). Instead, Respondents argue that they had a side-bar agreement with the Union to resolve any objections and were precluded from producing support for their objections to the Board.

In accord with Section 101.19 (a)(4) and (5) the Board's Rules and Regulations, the resolution of objections in a consent election is clearly and solely within the jurisdiction of the Regional Director. Thus, notwithstanding Respondents' repeated references to an alleged side-bar agreement, Respondents were obligated to abide by the Board's Rules and Regulations and to submit evidence in support of their objections. Therefore, following Respondents' failure to support their objections with evidence, the Acting Regional Director properly certified the Union as the representative of Respondents' employees.

In challenging the certifications in their Response to the Motion to Show Cause, Respondents raise the same issues as those raised in the underlying representation proceeding

and fail to present any newly-discovered evidence or previously unavailable evidence or special circumstances that would cause reconsideration of the Certifications of Representative that issued on September 25, 2012. Accordingly, as there are no representation issues which are properly litigable in this unfair labor practice proceeding, it is respectfully requested that the Board find that Respondents are prohibited from litigating these issues in any future or pending unfair labor practice proceedings, and that the certifications that issued on September 25, 2012, are valid. *George Lithograph*, 305 NLRB at 1090.

III. The Newly-Asserted Affiliation Issue

In an attempt to justify their continued refusal to recognize and to bargain with the NNOC, Respondents, for the first time in their response to the Board's Order to Show Cause, assert that they learned through a January 3, 2013, press release that NNOC was affiliating with another union. Respondents appear to argue that this affiliation resulted in changes so significant as to alter the identity of the bargaining representative. See *Raymond F. Kravis Center for the Performing Arts*, 351 NLRB 143 (2007). In *Kravis*, the Board found that in determining whether there is a lack of continuity of representation after a merger or affiliation, the Board, considering the totality of the circumstances, will look to see if the merger or affiliation resulted in a "sufficiently dramatic" change to alter the union's identity. *Id.* at 147, 148. Because Respondents' defense raises issues of fact that have not been investigated by the Region, it is respectfully requested that the Board remand this issue to the Region for further investigation and processing.

IV. Conclusion

While Respondents' test of the September 25, 2012, certifications of the NNOC as the exclusive collective-bargaining representative of employees is without merit, their subsequent

attempt to obviate their continued duty to recognize and bargain must be investigated and processed, in accord with the Board's Rules and Regulations. Accordingly, it is respectfully requested that the Board: 1) prohibit Respondents from relitigating the September 25, 2012, certifications; and 2) remand the case back to the Region for further processing on the issue of whether the Respondents' duty to recognize and bargain has been altered by the NNOC's affiliation with another union.

Dated this 22nd day of January 2013.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Request for Partial Remand and Reply to Respondents' Response to Board's Notice to Show Cause/Respondents' Opposition to Counsel for the Acting General Counsel's Motion for Summary Judgment have this date been served electronically upon the following parties:

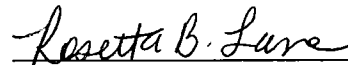
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Dated at Winston-Salem, North Carolina, January 22, 2013.

Respectfully submitted,



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