

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION THIRTEEN**

<b>STAFFING DIMENSIONS OF</b>	)	
<b>LIBERTYVILLE, LLC,</b>	)	
	)	
Employer,	)	
	)	
and	)	<b>Case 13-RD-95653</b>
	)	
<b>MATTHEW MEILLER</b>	)	
	)	
Petitioner,	)	
	)	
and	)	
	)	
<b>AFSCME COUNCIL 31, LOCAL 2452,</b>	)	
	)	
Union.	)	

**STAFFING DIMENSIONS OF LIBERTYVILLE, LLC'S REQUEST FOR REVIEW OF  
REGIONAL DIRECTOR'S DECISION TO HOLD PETITION IN ABEYANCE**

Pursuant to Section 102.71(b) of the Board's Rules and Regulations, the Company submits its request for review of the Regional Director's decision to hold the above-captioned decertification petition in abeyance and requests that the Board immediately commence the further processing of the petition.

**I. STATEMENT OF FACTS**

**A. Background**

The Company employs certain employees who work at Winchester House, a 224-bed, 24-hour skilled nursing facility that provides long-term health care, intermediate care and rehabilitation services to residents in Lake County, Illinois. While the County of Lake is the licensed operator of the Winchester House facility, the Company employs Winchester House personnel. The Company provides on-site administration and direct supervision of nursing, support, and administrative personnel, including their hiring, assignment, scheduling, evaluation, discipline and discharge. The

Company is responsible for the establishment of employee work rules and the payment of employee salaries and benefits.

**B. December 1, 2011 Transition to the Company and Bargaining with the Union**

The Company has provided its services at Winchester House since on or about December 1, 2011. Prior to that date, and for many years, the County of Lake managed the day to day operations at Winchester House, employing County workers to perform nursing, support, and administrative duties. During that time, the American Federation of State, County and Municipal Employees, Council 31, Local 2452 (the Union) served as the exclusive representative of two separate bargaining units of County employees at Winchester House. As a result of the County's decision to contract out resident care services, the Company became the employer of Winchester House employees effective December 1, 2011.

Before this transition, the Company met with and extended opportunities to County employees to be considered for employment with the Company. As part of this process, employees who were interested in continuing employment at Winchester House were required to complete an application form and background check authorization form. At this same time, the Company also submitted on-line hiring postings externally for positions at Winchester House.

On November 30, 2011, the Union requested that the Company recognize it as the exclusive representative of the Company's employees and demanded to bargain. As of December 2, 2011, over 140 former County employees were employed by and working for the Company at Winchester House. On December 2, 2011, the Company notified the Union that it acknowledged that it was a successor employer under the Act and the parties thereafter commenced negotiations regarding a collective bargaining agreement. The Company does not dispute that it is a successor employer and the parties remain in negotiations to date.

**C. Case 13-CA-094169**

On December 4, 2012, the Union filed an unfair labor practice charge (the Charge) in Case 13-CA-094169 alleging that the Company violated Sections 8(a)(1) and (3) of the National Labor Relations Act, 29 U.S.C. §§151-169 (the Act), when it refused to interview or hire John Jenkins and when it refused to allow him on the Company's premises on August 9, 2012. The Union claims that the Company discriminatorily refused to hire Mr. Jenkins, the local Union president, after he submitted an application for employment to the Company in August 2012. The Union further claims that on one particular date—August 9, 2012—the Company unlawfully restricted his access to Winchester House.

**D. Case 13-RD-95653**

On December 31, 2012, Matthew Meiller (the Petitioner) filed a petition seeking to decertify the Union as the exclusive representative of one of the bargaining units of employees employed by the Company. A hearing on this petition was held on January 11, 2013 before a Hearing Officer of the National Labor Relations Board (the Board). On January 18, 2013, the parties submitted post-hearing briefs pursuant to the prior order of the Hearing Officer at the hearing. On that same day, January 18, 2013, the Regional Director notified the parties that he had decided to hold further processing of the decertification petition in abeyance, stating simply that if the unfair labor practice allegation(s) raised by the Charge “are true, until remedied, they could affect the free choice of employees in an election, were one to be conducted.”

**II. DISCUSSION AND ANALYSIS**

The Regional Director's decision to hold the instant decertification petition in abeyance raises a substantial question of law and policy because it departs from the Board's official blocking charge precedent and is arbitrary and capricious on its face, and as a result the Company's request for review should be granted. *See* Board Rules and Regulations, §102.71(b)(1)(i), (3).

It is well established that the NLRB's blocking charge policy is not an automatic *per se* rule. Instead, it is discretionary, and there are situations that impel the holding of elections notwithstanding the existence of pending unfair labor practices and the absence of a request to proceed or a waiver. *See, e.g., Columbia Pictures Corp.*, 81 NLRB 1313 (1949); *see generally*, NLRB Casehandling Manual, Part Two, Representation Proceedings, §11731.2. In these instances, the Board generally considers the following factors:

- (a) The character, scope, and timing of the conduct alleged in the charge, and the conduct's tendency to impair the employees' free choice;
- (b) The size of the work force relative to the number of employees involved in the events or affected by the conduct alleged in the charge;
- (c) Whether the employees were bystanders to or the actual targets of the conduct alleged in the charge;
- (d) The entitlement and interest of the employees in an expeditious expression of their preference regarding representation;
- (e) The relationship of the charging parties to labor organizations involved in the representation case;
- (f) The showing of interest, if any, presented in the representation case by the charging party; and
- (g) The timing of the charge.

These factors weigh heavily against a finding that the Charge should block the instant decertification petition, and as a result the Regional Director's decision should be vacated. The Charge concerns a lone former Winchester House employee—John Jenkins—and the conduct alleged is limited to the County's refusal to hire him in August 2012, and its purported refusal to permit him access to Winchester House on a single occasion in August 2012. Thus, the sum total of the allegations are narrowly confined to one individual and allege two isolated, discrete incidents of Company conduct, both of which allegedly occurred in August 2012, four months before the filing of the decertification petition.

In contrast, the Winchester House employee complement approximates at least 140 former County employees who were represented by the Union, and a number of management staff, virtually all of whom were hired more than a year ago by the Company. Further, none of these employees

were bystanders to or the actual subjects of either of the isolated incidents alleged in the Charge. Indeed, because the Charge allegations are confined to a lone individual who has not been employed at Winchester House for more than a year, and because the allegations are limited to management's decision regarding that individual's employment application as well as his access to Company premises on a single occasion, it is highly unlikely that any bargaining unit employees are even aware of the allegations contained in the Charge.<sup>1</sup>

The right of bargaining unit employees to vote on whether they wish to continue to be represented by the Union, or not be represented at all, is paramount. No allegation contained in the Charge indicates that any unlawful conduct occurred after early August 2012. The decertification petition was filed on December 31, 2012, more than four months later. Delaying the decertification election for another significant period of time while the Charge is litigated would not satisfy the interests of the bargaining unit employees in expressing their representational wishes.<sup>2</sup> Given the limited nature and narrow scope of the conduct alleged in the Charge, and given the timing of the conduct relative to the filing of the petition, it is clear that a free and fair election may indeed be held and that an immediate election will effectuate the purposes of the Act. As a result, the Charge should not block the processing of the decertification petition and the Regional Director's decision to the contrary should be vacated.

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<sup>1</sup> We understand the Union's Charge to be a "Type I" blocking charge, as opposed to a "Type II" blocking charge. Compare NLRB Casehandling Manual, Part Two, Representation Proceedings, §§11730.2 and 11730.3. Even if viewed as a Type II charge, however, no evidence supports blocking the petition here. For example, the Union does not allege supervisory taint regarding the petition or that the Company has failed to bargain in good faith, nor does the Union allege that there is a causal relationship between the alleged violations and employee disaffection with the Union. See *id.*, §§11730.3(a), (b) and (c). The relevant facts belie any "Type II" activity. The Company always has acknowledged its successor status. It has bargained (and continues to bargain) with the Union since at least March 2012, during which time it has met with the Union 19 times, reached scores of tentative agreements with the Union, and otherwise unquestionably has satisfied its duty to bargain in good faith.

<sup>2</sup> The Petitioner filed a decertification petition in March 2012. The Region dismissed it on successor bar grounds.

### III. CONCLUSION

The Regional Director's decision to hold this decertification petition in abeyance misconstrues the Board's blocking charge policy and was erroneous. The Company, therefore, respectfully requests that the Board vacate the Regional Director's decision and immediately continue the processing of the decertification petition as expeditiously as possible.

Respectfully submitted,

Staffing Dimensions of Libertyville, LLC

By:   
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Dated: February 1, 2013

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that he caused a copy of the foregoing **STAFFING DIMENSIONS OF LIBERTYVILLE, LLC'S POST-HEARING BRIEF** to be served upon the following, via electronic filing and e-mail, on February 1, 2013:

**VIA ELECTRONIC FILING:**

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