

February 13, 2014

BY E-FILE

Mr. Gary Shinnors  
Executive Secretary, National Labor Relations Board  
1099 14<sup>th</sup> Street, N.W.  
Washington D.C. 20570

Re: Bluefield Hospital Company, LLC d/b/a Bluefield Regional  
Medical Center, Case No. 10-CA-093042, consolidated with  
Greenbrier VMC, LLC d/b/a Greenbrier Valley Medical Center,  
Case No. 10-CA-093065 .....

Dear Mr. Shinnors:

I represent Bluefield Hospital Company, LLC d/b/a Bluefield Regional Medical Center (hereafter, at times, “Bluefield”) and Greenbrier VMC, LLC d/b/a Greenbrier Valley Medical Center (hereafter, at times, “Greenbrier”), as the Respondents (hereafter, at times, collectively, the “Hospitals”) in the above-referenced, consolidated cases. I have reviewed the letter that Ms. Lawhon submitted to you on February 5, 2014 on behalf of the Charging Party, the National Nurses Organizing Committee (hereafter, the “Union”), and now that the Union is done scolding the National Labor Relations Board (hereafter, the “Board”) for “unconscionable delay,” and dictating to the Board what “needs to happen” and when, I wish to respond as follows.

At the outset, I note that Ms. Lawhon’s letter was submitted to the Board *ex parte*. Aside from the fact that a party is obligated to serve all other parties with virtually *any* submission to the Board (see Board Rules and Regulations, Section 102.126[a]), the Hospitals had a particularly compelling interest in knowing about Ms. Lawhon’s letter, which, obviously, is not simply a request that the Board accelerate the agency’s processing of the case, but rather, a self-serving opportunity for the Union to engage in a gratuitous tirade against the Hospitals. Far from being a stranger to the Board’s procedures, the Union frequently appears in proceedings before the Board (as a Charged Party, as well as a Charging Party) and is represented by experienced attorneys who are well-versed in the Board’s procedures. Accordingly, I submit that you have every reason to view the

Mr. Gary Shinnors  
February 13, 2014  
Page 2

Union's failure to provide the Hospitals with notice of Ms. Lawhon's letter as a calculated act of bad faith, and lest there be no consequence for the Union's misconduct, the Hospitals request that the Board apply the sanctions set forth by Section 102.133(a) of the Board's Rules and Regulations.

Putting aside for the moment the Union's violation of the agency's rules on *ex parte* communications, I turn now to the substance of the letter. For the most part, Ms. Lawhon's letter merely serves the purpose of attacking Community Health Systems (hereafter, the "CHS"), which is a non-starter. The cases now before the Board involve two, and only two, employers, specifically, Bluefield and Greenbrier. In the underlying representation proceedings, the Union entered into separate Consent Election Agreements, one for Bluefield (Case No. 10-RC-087616) and one for Greenbrier (Case No. 10-RC-087613), and neither one of these Agreements make any reference to CHS. Similarly, the Certifications of Representative issued by the Regional Director identify Bluefield and Greenbrier as the employers. Lastly, the unfair labor practice charges filed by the Union, identify only Bluefield and Greenbrier as the employers. In sum, the Board's role here, respectfully, is to decide only the question of whether Bluefield's and Greenbrier's respective refusals to recognize and bargain with the Union are unlawful.

In connection with the Hospitals' refusal to recognize and bargain with the Union, Ms. Lawhon's letter refers to, and then, predictably, maligns the Hospitals' affirmative defense that, due to the Union's affiliation with the National Union of Healthcare Workers, the Hospitals were relieved of any duty to recognize and bargain with the Union. The reasons why the Hospitals did not provide the Region with evidence related to the affirmative defense have been set forth by one of the Hospitals' prior submissions to the Board and would likely be the subject of a further submission in the event the Board does not deny the General Counsel's Renewed Motion for Summary Judgment, and instead, issues a Notice to Show Cause. See Board Rules and Regulations, Section 102.24(b). In terms of the Union's observation that other employers have raised the very same affirmative defense with no success, as the Union recognizes, these employers have filed Exceptions with the Board. In these Exceptions, the employers have argued

Mr. Gary Shinnors  
February 13, 2014  
Page 3

that, due largely to the Union's refusal to comply with various subpoenas properly served upon the Union, they did not enjoy any fair or full opportunity to prove the defense. In any case, irrespective of whether or not these other employers had a sufficient opportunity to establish the affirmative defense, Bluefield and Greenbrier are entitled to an opportunity of their own to prove the defense.

Lastly, the Union's claim of "ongoing unfair labor practices" by Bluefield and Greenbrier is a prime example of the Union's proclivity to play fast and loose with the facts. True, an Administrative Law Judge recently found Greenbrier violated Section 8(a)(3) of the Act by placing an employee on a performance improvement plan and making a related change to his schedule. However, Greenbrier intends to pursue a variety of Exceptions before the Board, which, of course, ultimately resolves the question of whether any violation of the Act has taken place. The simple fact of the matter is that the Board has never concluded that Bluefield or Greenbrier has violated the Act in any way. The Union's allegations are precisely that – allegations – and while the Union may pine for a world in which the Hospitals would have no due process rights, the Hospitals do have every right, and here, every intention, to defend these allegations and show that no violations of the Act have taken place.

In summary, due to the *ex parte* nature of the Union's submission, the Hospitals urge you to reject and disregard Ms. Lawhon's letter. Alternatively, should Ms. Lawhon's letter be entitled to any consideration on the "merits," for want of a better description, the Hospitals submit the Union has only presented the Board with a wandering complaint about an entity that has no connection to the procedural history of the above-referenced cases, and proffered no good reason why these cases should "leapfrog" over countless other cases of equal moment now pending before the Board. Ultimately, however, while the Union would claim the right to manage the Board's affairs, the Hospitals defer to the Board as to how these cases should be processed by the agency.

Mr. Gary Shinnars  
February 13, 2014  
Page 4

Respectfully submitted,

/s/ \_\_\_\_\_

Bryan T. Carmody

cc: Shannon Meares, Esq., Counsel for the General Counsel  
Jane Lawhon, Esq., Counsel for the Charging Party