

1 BRUCE A. HARLAND, Bar No. 230477  
2 MANUEL A. BOIGUES, Bar No. 248990  
3 WEINBERG, ROGER & ROSENFELD  
4 A Professional Corporation  
5 1001 Marina Village Parkway, Suite 200  
6 Alameda, California 94501  
7 Telephone (510) 337-1001  
8 Fax (510) 337-1023  
9 E-Mail: bharland@unioncounsel.net  
10 mboigues@unioncounsel.net

11 Attorneys for Intervenor/Union  
12 Service Employees International Union -  
13 United Healthcare Workers-West

14 UNITED STATES OF AMERICA  
15 NATIONAL LABOR RELATIONS BOARD  
16 REGION 32

17 BEVERLY HEALTHCARE CALIFORNIA,  
18 INC., dba GOLDEN LIVING CENTER-  
19 CLOVIS,

20 Employer,

21 and

22 PATRICK KRONYAK,

23 Petitioner,

24 SERVICE EMPLOYEES INTERNATIONAL  
25 UNION - UNITED HEALTHCARE WORKERS-  
26 WEST,

27 Intervenor/Union.

No. 32-RD-120481

**SEIU UNITED HEALTHCARE  
WORKERS – WEST’S REQUEST FOR  
REVIEW OF THE REGIONAL  
DIRECTOR’S DECISION AND  
DIRECTION OF ELECTION**

28 Pursuant to the provisions of Section 102.67 of the Board’s Rules and Regulations, SEIU  
United Healthcare Workers – West (“UHW”), hereby respectfully requests that the Board review  
the Regional Director’s Decision and Direction of Election (“Decision”) in the above-referenced  
matter. The Union’s request for review is based on the grounds that the Decision raises  
substantial questions of law and/or policy because of the absence of, and departure from, official  
Board precedent, and that there are compelling reasons for reconsideration of an important Board

1 rule and/or policy. Thus, UHW requests that the Board grant the Union's request for review and  
2 stay the election ordered by the Regional Director.

3 UHW hereby incorporates its post-hearing brief as is fully set forth herein. A copy of the  
4 brief is attached hereto as **Exhibit A**.

5 First, the Decision fails to address the Board's decision in Arrow Uniform Rental,  
6 300 NLRB 246 (1990), which was cited in UHW's post hearing brief in support of the argument  
7 that even if the Region were to find that Beverly Healthcare California, Inc. d/b/a Golden Living  
8 Center-Clovis ("Beverly") timely, sincerely, and permanently withdrew from multiemployer  
9 bargaining, the irrefutable almost decade-long bargaining history of a multi-facility single unit is  
10 significantly relevant to the question of the appropriate unit in which a decertification election  
11 may be ordered by the Region. This failure alone is sufficient basis for the Board to grant  
12 UHW's request for review.

13 Second, the Decision states that "[t]he Union contends" that Beverly "cannot unilaterally  
14 withdraw" from the multi-facility unit. (Decision, p. 2.) UHW's brief, however, made no such  
15 argument and the Board should grant the request for review in order to address UHW's arguments  
16 and the evidence in the record in support thereof.

17 UHW argued that the petition in this matter should be dismissed because:

18 (1) The irrefutable bargaining history and recognition of a single multi-facility unit is  
19 controlling here even if there were sufficient evidence in the record for the Region to find that  
20 Beverly timely, sincerely, and permanently withdrew from multiemployer bargaining, *see* Arrow  
21 Uniform Rental, 300 NLRB 246 (1990);

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1 (2) Beverly failed to present any evidence to meet its burden of proof on its position that  
2 the four facilities covered by the expired CBA are indeed separate employers and therefore a  
3 single facility unit is appropriate for the petitioned decertification election;<sup>1</sup>

4 (3) Beverly's notice of withdrawal from multiemployer bargaining was untimely because  
5 it was sent long after UHW had provided Beverly timely notice to reopen the contract, after UHW  
6 made an information request that Beverly had not responded to, and after UHW had demanded  
7 repeatedly that the employer meet;<sup>2</sup> and

8 (4) Even if timely, Beverly's notice of withdrawal was not a sincere and permanent  
9 withdrawal as evidenced by the *stipulated* bargaining history that occurred *after* Beverly sent the  
10 notice of withdrawal from multiemployer bargaining to UHW.<sup>3</sup>

11  
12 <sup>1</sup> In this regard, the Regional Director not only improperly shifted the burden to UHW to show  
13 that the four facilities Beverly does business as in California are indeed separate employers,  
14 (Decision, p. 4), but also failed to address the fact that the California Secretary of State has no  
15 record that any of the four facilities is registered as a corporation or limited liability  
16 company/partnership that is a separate legal entity from the only employer identified in the  
17 expired collective bargaining agreement, i.e., Beverly Healthcare-California, Inc. Thus, the  
18 Board should grant the request for review to address whether the Regional Director had sufficient  
19 evidence in the record to side with Beverly and find that the four facilities are indeed separate  
20 employers.

21 <sup>2</sup> The Regional Director's summary dismissal of this question based solely on the date of the  
22 withdrawal letter, without analysis or consideration of these facts, warrants a review by the  
23 Board. UHW requests respectfully that the Board address whether Board policy and the policies  
24 of the Act are consistent with a finding that an employer's withdrawal from multiemployer  
25 bargaining is "timely" even where prior to sending the notice of withdrawal the employer:  
26 (1) made no effort to reopen the contract; (2) failed to respond to the union's pending information  
27 requests for information that is necessary and relevant to bargaining; and (3) ignored the union's  
28 repeated requests to meet for several months. As the Board can appreciate from the Decision  
here, approval of this conduct allows an employer to effectively aid a decertification petitioner to  
seek an election in a unit other than a historically recognized multi-facility or multiemployer unit.

<sup>3</sup> In this regard, the Regional Director gave "little weight" to the bargaining proposals submitted  
into the record by Beverly itself and to the accepted *stipulation* submitted by Beverly and UHW  
about the proposals exchanged in their January 14 and 15, 2014 bargaining sessions by Beverly's  
Vice President and the Union's chief negotiator. The Region chose not to postpone the hearing to  
obtain testimony and accepted the stipulation. Thus, the Regional Director's subsequent refusal  
to accept the stipulated facts and documents raises an issue that warrants review, especially  
because the Decision charges that "the Union presented no evidence that any employers other  
than the Employer were present at the January 14 and 15, 2014 bargaining sessions." (Decision,  
p. 7.) This charge is not supported by the record. To the contrary, the stipulated facts and  
documents in the record show that Beverly's single set of bargaining proposals applied to all four  
facilities and, for example, rather than propose separate contracts for separate employers,  
Beverly's proposals state only that "[t]he *company* at the conclusion of negotiations would like a  
separate TA for each Living Center." (See, e.g., Employer Exhibit 4, p. 1, emphasis added.)

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For these reasons, UHW respectfully requests that the Board review the Regional Director's Decision and stay the election pending a decision on this review.

Dated: February 21, 2014

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By:           /s/ MANUEL A. BOÍGUES            
          MANUEL A. BOIGUES

Attorneys for Intervenor/Union  
Service Employees International Union -  
United Healthcare Workers-West

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# **EXHIBIT A**

STEWART WEINBERG  
DAVID A. ROSENFELD  
WILLIAM A. SOKOL  
BLYTHE MICKELSON  
BARRY E. HINKLE  
CHRISTIAN L. RAISNER  
JAMES J. WEBBER  
THEODORE FRANKLIN  
ANTONIO RUIZ  
MATTHEW J. GAUGER  
ASHLEY K. IKEDA  
LINDA BALDWIN JONES  
PATRICIA A. DAVIS  
ALAN G. CROWLEY  
KRISTINA L. HILLMAN \*\*  
EMILY P. RICH  
BRUCE A. HARLAND  
CONCEPCIÓN E. LOZANO-BATISTA  
CAREN P. SENCER  
ANNE I. YEN  
KRISTINA M. ZINNEN  
JANNAH V. MANANSALA  
MANUEL A. BOIGUES \*\*\*  
KERANNIE R. STEELE \*\*  
GARY P. PROVENCHER  
EZEKIEL D. CORDER \*\*\*\*  
MONICA T. GUIZAR  
SHARON A. SEIDENSTEIN  
LISE R. DUNCAN

**WEINBERG, ROGER & ROSENFELD**  
**A Professional Corporation**  
1001 Marina Village Parkway, Suite 200  
Alameda, CA 94501  
TELEPHONE (510) 337-1001  
FAX (510) 337-1023

JORDAN D. MAZUR  
JACOB J. WHITE  
SEAN D. GRAHAM  
DANIEL S. BROME  
JOLENE KRAMER  
STEPHANIE L. MARN\*  
ANTHONY J. TUCCI  
ROBERT E. SZYKOWNY

VINCENT A. HARRINGTON, Of Counsel  
PATRICIA M. GATES, Of Counsel  
ROBERTA D. PERKINS, Of Counsel  
NINA FENDEL, Of Counsel  
ANA M. GALLEGOS, Of Counsel

\* Admitted in Hawaii  
\*\* Also admitted in Nevada  
\*\*\* Also admitted in Illinois  
\*\*\*\* Also admitted in New York

February 6, 2014

**E-FILED**

Mr. George Velastegui  
NLRB Regional Director  
National Labor Relations Board, Region 32  
1301 Clay Street, Room 300N  
Oakland, CA 94612

**Re: Union: SEIU United Healthcare Workers - West**  
**Employer: Golden Living Centers Clovis**  
**Petitioner: Patrick Kronyak**  
**NLRB Case No. 32-RD-120481**

Dear Mr. Velastegui:

SEIU, United Healthcare Workers – West (“UHW”), the Intervenor in this matter, submits this post-hearing brief and respectfully requests that the Regional Director dismiss the decertification petition filed by Patrick Konyak because the petition seeks an election in a unit other than the historically recognized multi-facility unit in the CBA between UHW and the employer, Beverly Healthcare-California, Inc.<sup>1</sup>

As the NLRB Case Handling Manual notes, “[t]he general rule is that the bargaining unit in which a decertification election is held must be coextensive with the certified or recognized unit.” (*See* CHM Section 7-320.) “Thus...when the long, continuous pattern of bargaining between the union and the employer had brought about an effective merger of the individually certified units into a multiplant contractual unit, the Board dismissed a petition for a decertification election in one of the originally certified units.” (*Ibid.*) Moreover, it is also well-settled that the historical bargaining evidence is relevant and sufficient for the Region to find that a multi-facility unit is appropriate in a decertification election even where there is evidence that an employer has effectively withdrawn from a multiemployer association. *See Arrow Uniform Rental*, 300 NLRB 246 (1990).

<sup>1</sup> The petition originally included nurses and failed to include several classifications in the CBA. At the hearing, the Petitioner agreed on the record to amend the petition to conform it to the unit in the CBA. The Petitioner’s amendment substantially enlarges the character and size of the unit and the number of employees covered by the petition. Thus, the Region should dismiss the petition unless the showing of interest is sufficient support for the historically recognized multi-facility unit.

Here, neither the parties nor the Region was able to offer into the record evidence of the originally certified unit.<sup>2</sup> Nonetheless, the record in this matter reveals very clearly that the expired collective bargaining agreement contains an agreement by the employer to recognize UHW as the representative of a single bargaining unit consisting of employees at four facilities owned by Beverly Healthcare-California, Inc. (See Employer Exhibit (“ERX”) No. 3) This same single bargaining unit has been recognized in at least the two predecessor CBAs. (See ERX Nos. 1 & 2.) Notably, the recognition of a single multi-facility unit appears to have been embodied in the first (if not the second) CBA between UHW and Beverly Healthcare-California, Inc. (See Union Exhibit (“UX”) No. 3.) This bargaining history is irrefutable.

The historical unit recognized in Union Exhibit 3 is significant here because the recognition was granted by the same employer that is named in every successor CBA, i.e., Beverly Healthcare-California, Inc. The employer’s only witness at the hearing, Kristin Williams, conceded that Beverly Healthcare is a wholly-owned subsidiary of her employer, GGNSC.<sup>3</sup> Ms. Williams has been the Area VP of Operations since September 2013.<sup>4</sup> From 2001 to 2006 Ms. Williams was the Executive Director of Beverly Healthcare. In June 2006, Ms. Williams became an HR Consultant and held that position until September 2013. Ms. Williams’s testimony about her current and historical duties for the four facilities in the CBA provides further support for the appropriateness of the multi-facility unit that has been historically recognized for nearly a decade.

The bargaining history evidence in the record weighs heavily against the employer’s argument that a decertification election is appropriate in a single facility unit. The basis for the employer’s argument is a letter that Scott D. Norton mailed to UHW’s President on October 31, 2013 and which was delivered to UHW’s Oakland office on November 4, 2013. (See ERX No. 5.) UHW’s Coordinator for the Central Valley Nursing Homes, Al Green, testified that she received the letter on November 11, 2013 and replied via email that UHW had no objection to the request for separate negotiations for each facility, (see ERX No. 6), because it would be easier for bargaining team members to attend bargaining if the

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<sup>2</sup> UHW believes that the unit at issue here was recognized by the employer during the existence of the “Alliance” pursuant to a card check process, but a witness with first-hand knowledge of that historical evidence was not available to UHW at the time of the hearing.

<sup>3</sup> Although Ms. Williams testified that she believes the four facilities in the recognition language are separate LLCs, the Region can and should take administrative notice of the fact that the California Secretary of State has no record of a registered corporation, LLC, or LLP, with any of the d/b/a names that are listed in the recognition language of the CBA, i.e., Golden Living Center-Fresno, Golden Living Center-Clovis, Golden Living Center-Galt, and Golden Living Center-Hy-Pana. (See <http://kepler.sos.ca.gov>.) On the other hand, Beverly Healthcare-California, Inc. is registered with the California Secretary of State.

<sup>4</sup> Ms. Williams testified that she assisted with negotiations of predecessor CBAs, but she had insufficient recollection of the negotiations to provide any relevant evidence about the bargaining history regarding the recognition. Curiously, the employer chose not to present testimony from any of its chief negotiations despite the fact that at least some, if not all, are still employed by the employer or its parent company.

sessions were held near each facility rather than at one location as it had been done in prior bargaining cycles. Ms. Green also testified that she had been contacting the employer by phone and email about bargaining dates prior to and subsequent to the October 31, 2013 letter. (*See also* UX Nos. 1 & 2.) More importantly, the record also contains evidence that UHW had contacted the employer in late September 2013 to demand bargaining for a successor CBA, much earlier than the employer's alleged withdrawal from multiemployer bargaining.

Thus, the employer's notice, even if the facilities were really "separate employers," was untimely because it was not sent to UHW prior to the date set in the CBA for modification. *See Retail Associates*, 120 NLRB 388, 394 (1958). Moreover, even if there had been a timely notice from the employer, a multi-facility unit remains appropriate here based on the irrefutable bargaining history dating back to at least 2004. *See Arrow Uniform Rental*, 300 NLRB 246 (1990).

Not only was the employer's October 31, 2013 letter untimely, notably, there is also no evidence in the record that the four Beverly Healthcare facilities had ever actually formed a "multiemployer" association or group for the purpose of bargaining with UHW.<sup>5</sup> The historical bargaining evidence in the record shows only that an employee of Beverly Healthcare or its parent company, GGNSC, bargained one contract on behalf of the four commonly-owned facilities. This bargaining history is significantly relevant in the context here. *See Arrow Uniform Rental*, 300 NLRB 246 (1990).

Furthermore, not only is the employer's claim that the four facilities are "separate employers" contradicted both by the records of the Secretary of State and the testimony Ms. Williams provided regarding central control over labor relations and the employer's hierarchy, but even if there had been a timely notice it is clear from the bargaining that has occurred subsequent to October 31, 2013 that there was no sincere and permanent intent by Beverly Healthcare to withdraw from any alleged multiemployer association and bargain separate CBAs for the four facilities, at least not permanently. *See Retail Associates*, 120 NLRB 388, 394 (1958) ("The element of good faith is a necessary requirement in any such decision to withdraw, because of the unstabilizing and disrupting effect on multiemployer collective bargaining which would result if such withdrawal were permitted to be lightly made.").

Indeed, the bargaining history subsequent to October 31, 2013 evidences that the employer had no intent to bargain a successor CBA as "separate employers" and appears to be maintaining that position only for the purpose of assisting the Petitioner in this matter. UHW certainly has not consented to any changes to the recognized multi-facility unit. *First*, at the bargaining sessions on January 14 and January 15, 2014, the employer had one chief negotiator for all four facilities, i.e., Scott Norton, the employer's Vice President of Labor Relations. *Second*, just as was the case when Ms. Green bargained with the employer for the predecessor CBA, the terms and conditions for the employees at all four facilities are being negotiated at one table and based on a single proposal from the employer. *Third*, the employer's proposals across the table on January 14 and January 15 refer to the "employer" and the "company" in the singular. (*See ERX No. 4.*) *Finally*, although the employer made a proposal to change the historical recognition of a multi-facility unit to a single-facility unit, that proposal was not accepted by the Union. Instead, the Union made a counter-proposal that was rejected by the employer.

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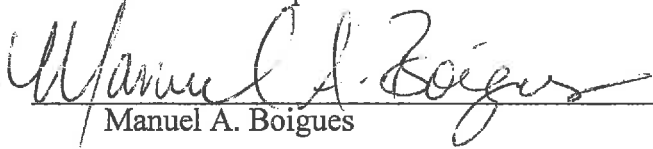
<sup>5</sup> The references to "multi-employer" bargaining in the CBA are of little help to the employer because they are based on a dubious claim that the four facilities are "separate employers."



Mr. George Velastegui  
February 6, 2014  
Page 4

For these reasons, the petition in this matter must be dismissed.

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By:   
Manuel A. Boigues

MAB:ja  
opeiu 3 afl-cio(1)

cc: Via Email  
Keith Jewell, Employer's attorney  
Patrick Kronyak, Petitioner  
Paloma Loya, Hearing Officer

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**PROOF OF SERVICE**

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On February 24, 2014, I served the following documents in the manner described below:

**SEIU UNITED HEALTHCARE WORKERS – WEST’S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR’S DECISION AND DIRECTION OF ELECTION**

(BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Parcel Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.

On the following part(ies) in this action:

Mr. Keith R. Jewell  
Golden Living  
1000 Fianna Way  
Fort Smith, AR 72919

Mr. Patrick Kronyak  
1151 S. Chestnut, #166  
Fresno, CA 93702

(  
Regional Director  
National Labor Relations Board, Region 32  
1301 Clay Street, Room 300N  
Oakland, CA 94612-5224

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 24, 2014 at Alameda, California.

/s/ J. L. Aranda  
J. L. ARANDA