NATIONAL LABOR RELATIONS BOARD

In the Matter of:

SUB ACUTE REHABILITATION CENTER AT KEARNY, LLC D/B/A BELGROVE POST-ACUTE CARE CENTER,
Employer

Case No.: 22-CA-093626 and 22-RC-080916

AND

DISTRICT 1199J, NUHHCE, AFSCME, AFL-CIO,
Petitioner,

SUB ACUTE REHABILITATION CENTER AT KEARNY, LLC D/B/A BELGROVE POST-ACUTE CARE CENTER' S RESPONSE TO THE NATIONAL LABOR RELATIONS BOARD NOTICE TO SHOW CAUSE AND IN OPPOSITION TO GENERAL COUNSEL'S MOTION FOR SUMMARY JUDGMENT

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TABLE OF CONTENTS

	Page(s)
TABLE OF CONTENTS	(ii)
TABLE OF CASES AND AUTHORITIES	(iii)
I. PRELIMINARY STATEMENT	1
II. STATEMENT OF THE FACTS	2
III. ARGUMENT	5
POINT I : SUMMARY JUDGMENT CANNOT BE GRANTED BECAUSE THERE HAS NOT BEEN A REFUSAL TO BARGAIN	5
A. The Board Cannot Rely Upon An Invalid Certification To Find A Refusal To Bargain	8
B. The Board Cannot Rely On A Charge That Was Improperly Served	
POINT II: BELGROVE HAS NOT REFUSED TO BARGAIN IN VIOLATION OF SECTIONS 8(a)(1) AND 8(a)(5)	8
POINT III: BOARD CANNOT GRANT SUMMARY JUDGMENT BECAUSE THE COMPLAINT IS ULTRA VIRES	10
POINT IV: THE BOARD CANNOT RELY ON RESULTS OF THE ELECTION	11
IV. CONCLUSION	12
V. APPENDIX A	

TABLE OF AUTHORITIES

	Page(s)
Cases	
Lifesource, 359 NLRB No. 45 (2012).	11
NLRB v. Noel Canning, -U.S.-, 134 S.Ct. 2550 (2014).	1, 3, 5, 6
Pittsburgh Plate Glass Co. v. NLRB, 313 NLRB 146, 162 (1941).	11
Sub-Acute Rehabilitation Center at Kearny, LLC d/b/a Belgrove Post Acute Care Center, 361 NLRB No. 118 (2014).	1, 3-4, 5, 9
Sub-Acute Rehabilitation Center at Kearny, LLC d/b/a Belgrove Post Acute Care Center, 359 NLRB No. 57 (2013).	2
Trinity Steel Company, Inc., 103 NLRB 1470 (1954).	6
Statutes	
Section 151 of the National Labor Relations Act, 29 U.S.C.§ 151 et. seq.	1
Sections 8(a)(1) and (5) of the National Labor Relations Act ("Act"), 29 U.S.C.§§158(a)(1) and (5)	8-9
Section 2(11) of the National Labor Relations Act, 29 U.S.C. § 152(11)	2, 9
Regulations	
Board Rules and Regulations Section 102.67(b)	11, 12
Board Rules and Regulations Section 102.182	11, 12

I. PRELIMINARY STATEMENT

On November 25, 2014, the National Labor Relations Board ("Board") in Sub-Acute Rehabilitation Center at Kearny, LLC d/b/a Belgrove Post Acute Care Center, 361 NLRB No. 118 (2014) issued a decision regarding the representation issues raised in this case. The Board affirmed the initial decision by the Board, which was made when the Board did not have a lawfully constituted quorum, denying the Sub-Acute Rehabilitation Center at Kearny, LLC, d/b/a Belgrove Post-Acute Care Center's ("Belgrove" or "Respondent")[1] Request for Review of the Regional Director's Decision and Direction of Election ("DD&E") requiring an election among Licensed Practical Nurses ("LPNs"). On September 19, 2012, the Board, through the Regional Director, certified District 1199J, National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO ("District 1199J" or "Union") as the collective bargaining unit of LPNs. In its decision on November 25th, the Board also held that Belgrove must show cause why General Counsel's motion for summary judgment regarding Belgrove's refusal to bargain should not be granted.

This brief is submitted in opposition to General Counsel's motion for summary judgment and/or to the Board's show cause notice as to why General Counsel's motion for summary judgment should not be granted. For all the reasons raised heretofore by Belgrove, which are incorporated herein, in opposition to General Counsel's motion for summary judgment and for the reasons stated below, summary judgment cannot be granted. If the Board were to grant summary judgment, the Board's ruling would be contrary to the National Labor Relations Act, 29 U.S.C.§ 151 et. seq, the Board's Rules and Regulations, the United States Supreme Court's decision in NLRB v. Noel Canning, -U.S.-, 134 S.Ct. 2550 (2014), and years of Board case law. To grant summary judgment the Board would have to find a violation for a refusal bargain based upon a

[1] The doing business as has been changed to "Alaris Health at Belgrove."

certification that was invalidated by a ruling of the United States Supreme Court. Since General Counsel has not alleged that the Union made a demand to bargain after November 25th, the date of certification, there can be no violation for a refusal to bargain and summary judgment must be denied.

II. STATEMENT OF THE FACTS

District 1199J filed a petition, 22-RC-080916, to represent LPNs working at the Respondent. Belgrove asserted that the petition must be dismissed because the LPNs are supervisors under Section 2(11) of the National Labor Relations Act, 29 U.S.C. § 152(11) (hereinafter referred to as "Section 2(11)").

A hearing was held on May 30, 2012 and June 1, 2012. The Regional Director ("RD") issued a Decision and Direction of Election ("DD&E") on June 26, 2012. The RD found that the LPNs were not supervisors.

The Respondent filed a Request for Review with the Board. On August 24, 2012, the Board denied the Request for Review.

An election was held on July 26, 2012. The Union was certified as the collective bargaining representative on September 19, 2012.

A complaint was issued regarding Belgrove's alleged refusal to bargain. Belgrove answered the complaint. General Counsel then filed a motion for summary judgment.

On March 13, 2013, the Board granted General Counsel's motion for summary judgment. Sub-Acute Rehabilitation Center at Kearny, LLC d/b/a Belgrove Post Acute Care Center, 359 NLRB No. 57 (2013). The Board ordered Belgrove to bargain with District 1199J.

The Board petitioned for enforcement in the Third Circuit of the Board's decision finding that Respondent had unlawfully refused to bargain. Belgrove cross-petitioned for review to the Third Circuit.

On June 26, 2014, the Supreme Court issued its decision in NLRB v. Noel Canning, holding that Board members had been improperly appointed and that the Board lacked a quorum to issue decisions. Based upon the Supreme Court's decision, the Board had lacked a quorum to issue decisions both on Belgrove's Request for Review and General Counsel's motion for summary judgment. The Third Circuit remanded the Board's decision regarding Belgrove's refusal to bargain to the Board.

The Board issued a decision on November 25, 2014 on the representation issues raised by Belgrove in this case. Sub-Acute Rehabilitation Center at Kearny, LLC d/b/a Belgrove Post Acute Care Center, 361 NLRB No. 118 (2014). The Board denied Belgrove's Request for Review of the Regional Director's DD&E and affirmed the Regional Director's DD&E .Id. With respect to one of the issues raised by the Respondent in Request for Review regarding the LPNs adjustment of grievance, the Board stated in footnote 2 that the Regional Director had found LPNs not to be supervisors because of the nature of the grievances adjusted. The Board, however, found that the LPNs were not supervisors because the LPNs did not use independent judgment in resolving the grievances.

The Board in its decision also found that it could rely upon the results of the election even though the decision to hold the election was invalid because the Board did not have a quorum. This determination was made without any input or notice to the Belgrove or District 1199J. The Board concluded that the "decision of the Board" to issue decisions did not affect the outcome of the election." Id. "Thus, the timing of the election was not affected by the issuance of a decision

of a Request for Review, and we find the decision of the Regional Director to open and the count the ballots was appropriate and in accordance with Section 102.182" Id.

In denying the Request for Review and in relying upon the results of the election, the Board issued "the appropriate certification." Id.

The Board further stated that the Respondent had to show cause why the General Counsel's motion for summary judgment finding that the Respondent had unlawfully refused to bargain should not be granted. General Counsel's motion for summary judgment had been based upon the prior invalid decision of the Board to deny the Request for Review and the invalid certification that followed thereafter. The Board also gave General Counsel the option to file an amended complaint. General Counsel did not file an amended complaint.

While the Board stated that it was only deciding the representation issues, the Board in footnotes 1 and 2 ruled on issues involving the General Counsel's motion for summary judgment. In footnote 1, the Board rejected the Respondent assertion, which was made in opposition to the motion for summary judgment, that the complaint should be dismissed because of the improper service of the charge. The Board in footnote 2 also rejected the Respondent's argument that the complaint should be dismissed because the Acting General Counsel was improperly appointed.

Belgrove asserts that General Counsel's motion for summary judgment cannot be granted. The first and fundamental reason why it cannot be granted is that there has been no refusal to bargain. The prior certification was invalid. There could not have been any obligation to bargain prior to the Board's certification on November 25th, even assuming that there is an obligation to bargain in this unit now, There also is no evidence of any demand to bargain since November 25th. In addition, summary judgment also cannot be granted for all the reasons previously stated in this case in Belgrove's opposition to the General Counsel's motion for summary judgment and

incorporated herein. The motion also should not be granted because the election results cannot be relied upon.

III. ARGUMENT

POINT I: SUMMARY JUDGMENT CANNOT BE GRANTED BECAUSE THERE HAS NOT BEEN A REFUSAL TO BARGAIN

A. The Board Cannot Rely Upon An Invalid Certification To Find A Refusal To Bargain

As part of its decision on November 25th certifying the Union as the collective bargaining representative, the Board has ordered the Respondent to show cause why General Counsel's motion for summary judgment should be granted finding that the Respondent has refused to bargain. The Board cannot grant summary judgment because such a holding would be based upon a prior invalid certification. Moreover, there has not even been a demand made to bargain by the Union after the November 25th certification. If the Board were to grant the motion, the Board's decision would be contrary to seventy years of case law, the Supreme Court's ruling in NLRB v. Noel Canning, the Act, and the Board's Rules and Regulations. The Board must revoke the order to show cause or find there is cause to deny General Counsel's motion.

The refusal to bargain could only be found if the Board bases its determination on the certification on September 19, 2012, which is clearly invalid. After the Board's certification on September 19, 2012 through the Regional Director, the Union made a request to bargain. It was based upon this request that General Counsel issued the complaint and then moved for summary judgment.

The Supreme Court in NLRB v. Noel Canning denied enforcement of the Board's decision in that case, holding that the Board was unlawfully constituted and did not have a quorum when it decided that case. This Supreme Court's decision made the Board's certification on September

19th invalid because the Board was improperly constituted when it denied the Request for Review, resulting in a certification on September 19th.

Since there was no proper and valid determination of the Request for Review and proper certification on September 19, 2012 by the Board in this case, perforce Belgrove had no obligation to bargain with the Union prior to the Board's certification on November 25, 2014. It is beyond peradventure that the obligation to bargain can only arise after the determination by the Board of the Request for Review and then proper certification. Trinity Steel Company, Inc., 103 NLRB 1470 (1954). In other words, for about seventy years, the Board has held that there can be obligation to bargain until there has been a **lawful determination through the appropriate process through certification that there is an obligation to bargain.** Id. Thus, the Board cannot find Belgrove refused to bargain based upon a demand to bargain that was predicated upon an unlawful certification on September 19, 2012.

Moreover, in attempting to find potentially that the Respondent refused to bargain in this case, the Board is acting in direct violation of the Supreme Court's holding in NLRB v. Noel Canning. The Board is seeking to find a violation for a refusal to bargain based upon the Board's actions (the denial of the Request for Review and the prior certification on September 19, 2012) which cannot be valid because the Board was improperly constituted and did not have a quorum. Simply stated, any finding by the Board that Belgrove refused to bargain, predicated upon a demand made under an invalid and unenforceable certification, cannot be and will not be enforceable.

Besides the motion for summary judgment being denied because it is based upon an invalid certification, the motion should be denied because it contradicts years of practice, procedure and case law on when there can be a refusal to bargain and how such cases should be handled when

there is an allegation of refusal to bargain. There can be no dispute that to find a violation for a refusal to bargain, there must be a demand to bargain. That is what is required by the Act as well as years of case law. Thus, Belgrove cannot be held to have refused to bargain until there is a demand made by the Union to bargain.

General Counsel has not presented any evidence that a demand to bargain was made by the Union after November 25th. In fact, Belgrove is unaware of any demand to bargain being made after the Board's certification on November 25th. (Paragraph 2 of the Affidavit in Opposition To Motion for Summary Judgment. The d//b/a changed after September 19, 2012.)

Further, if there is an allegation of a refusal to bargain, General Counsel would have to investigate the refusal to bargain and at least determine if there was a refusal to bargain. There is not even a charge pending on any refusal to bargain based upon the November 25th certification for General Counsel to investigate. This procedure outlined in this paragraph must be followed based upon the Board's Rules and Regulations and innumerable cases. It is after this procedure is followed that the General Counsel would decide whether to continue with or make a motion.

In the case at bar, if the Board were to grant summary judgment, the Board would have skipped the fundamental steps that there must be a demand for bargaining and an investigation and determination by General Counsel that there was a refusal to bargain. While a lot of time has passed from the filing of the petition, the passage of time cannot be used by the Board as the predicate for skipping important provisions and steps, for not following the Act and case law by requiring a bargaining demand, and for not following the procedures on how a case should be litigated before the Board by General Counsel.

In sum, the Board must not grant summary judgment because there has been no violation based upon a refusal to bargain.

B. The Board Cannot Rely On A Charge That Was Improperly Served

The Respondent incorporates and re-alleges arguments made herein in its opposition (dated January 15, 2013) to General Counsel's motion for summary judgment. In response to the Board's request that Respondent show cause why General Counsel should not be granted summary judgment, Belgrove incorporates, repeats and re-alleges all arguments put forward by Belgrove in the opposition (which was dated January 15, 2013) filed by Belgrove to said summary judgment motion, and any other arguments made to Board by Belgrove in the opposition to summary judgment. Belgrove also incorporates herein all the arguments and the proceedings in the Third Circuit, including the Court's remand to the Board. In its opposition to the General Counsel's motion for summary and/or in response to the Board that the Respondent show cause why General Counsel's motion should not be granted, Belgrove further desires to preserve all arguments for review by the Courts that were raised by Belgrove.

While Board held in its decision on November 25th in footnote 1 that the "technical defects" will not invalidate service, the Board fails to appreciate and understand that service cannot and should not be made on attorneys who state that they are not authorized to receive service of the charge. Sub-Acute Rehabilitation Center at Kearny, LLC d/b/a Belgrove Post Acute Care Center, 361 NLRB No. 118 (2014). Moreover, General Counsel was told that service could not be made and that the Respondent should be served. The Board should again review this issue and dismiss the complaint and/or have a hearing regarding service of the complaint.

POINT II: BELGROVE HAS NOT REFUSED TO BARGAIN IN VIOLATION OF SECTIONS 8(a)(1) AND 8(a)(5)

Belgrove has not refused to bargain in violation of Sections 8(a)(1) and (5) of the

National Labor Relations Act ("Act"), 29 U.S.C.§§158(a)(1) and (5). Belgrove is not obligated to bargain in the unit that the Board certified of LPNs because all the LPNs in the unit are supervisors under Section 2(11) of the Act, 29 U.S.C.§152(11).

Belgrove asserts that the certification issued on November 25th (as well as the prior certification) is invalid. In response to the Board's request that Respondent show cause why General Counsel should not be granted summary judgment and in contesting certification, Belgrove incorporates the record in the representation proceeding in 22-RC-080916, repeats and re-alleges all arguments put forward by Belgrove in the representation proceeding, including that Belgrove incorporates by reference, as though fully set forth herein, all the arguments made by Belgrove in Belgrove's Request for Review (Exhibit "7" of General Counsel's Motion for Summary Judgment filed on December 21, 2012), all the arguments made by Belgrove in the opposition (which was dated January 15, 2013) filed by Belgrove to said summary judgment motion, and any other arguments made to Board by Belgrove in the representation proceeding and the opposition to summary judgment. Belgrove incorporates herein all the arguments and the proceedings in the Third Circuit, including the Court's remand to the Board. In its opposition to the General Counsel's motion for summary and/or in response to the Board that the Respondent show cause why General Counsel's motion should not be granted, Belgrove further desires to preserve all arguments for review by the Courts that were raised by Belgrove as to why the LPNs are supervisors and the unit is inappropriate in 22-RC-080916, specifically including the arguments raised in its Request for Review and in 22-CA-093626 and which are incorporated herein in this response to the Board's request that Belgrove show cause why General Counsel's motion should not be granted as well as in Opposition to General Counsel's Motion for Summary Judgment. In addition, for the reasons stated in Respondent's opposition (which was dated January

15, 2013) to General Counsel's Motion for Summary Judgment, the Respondent believes that there are special circumstances requiring the Board to reconsider its decision in its November 25th decision certifying the unit. While the Respondent has incorporated these arguments herein in response to the Board's order to show cause on November 25th as well as General Counsel's motion for summary judgment, the Respondent believes that these issues again are important to highlight to the Board. Belgrove has attached Point III of its opposition (dated January 15, 2013) to General Counsel's motion for summary judgment because it presents these important issues that the Board should reconsider as Appendix "A."

POINT III: THE BOARD CANNOT GRANT SUMMARY JUDGMENT BECAUSE THE COMPLAINT IS ULTRA VIRES

While the Board held in footnote 2 in its November 25th decision that the Acting General Counsel was properly appointed. Belgrove asserts that he was not properly appointed. Belgrove asserts that the complaint by Acting General Counsel was unlawful.

In response to the Board's request that Respondent show cause why General Counsel should not be granted summary judgment, Belgrove incorporates, repeats and re-alleges all arguments put forward by Belgrove in the opposition (which was dated January 15, 2013) filed by Belgrove to said summary judgment motion, and any other arguments made to Board by Belgrove in the opposition to summary judgment. Belgrove also incorporates herein all the arguments and the proceedings in the Third Circuit, including the Court's remand to the Board. In its opposition to the General Counsel's motion for summary and/or in response to the Board's order that the Respondent show cause why General Counsel's motion should not be granted, Belgrove further desires to preserve all arguments for review by the Courts that were raised by Belgrove.

POINT IV: THE BOARD CANNOT RELY ON RESULTS OF THE ELECTION

The Board stated that it could rely on the election results in issuing a certification. In so holding, the Board indicated that, when the Board had two members, the Board had decided to not to issue decisions and to allow the Regional Director to schedule elections and to count the ballots. The Board further stated that, while the Board's Rules and Regulations Section 102.67(b) provides for an election and the ballots to be impounded while a request for review is pending, this section does not apply when there is not a quorum of Board members. Further, the Board stated that the Board's Rules and Regulations Section 102.182 allows suspension of the automatic impounding of the ballots and all the processing of the petitions through certification. Based upon these regulations, the Board then concluded that the "decision of the Board to continue to issue decisions did not affect the outcome of the election." Id. The Board's reasoning and conclusion ignores that the election was not conducted in accordance with the Board's Rules and Regulations.

While the Board's policy is to find that the employer cannot raise representation issues that could have been litigated in the representation case in a challenge to certification, citing frequently Pittsburgh Plate Glass Co. v. NLRB, 313 NLRB 146, 162 (1941), the Respondent should be allowed both to raise and litigate the issue of whether the Board could rely on the election results. The Board will allow issues to be raised and litigated where there are special circumstances that would require the Board to re-examine its decision. Lifesource, 359 NLRB No. 45 (2012).

This case presents one of the special circumstances. The Respondent had no opportunity to raise or litigate the issue of whether the Board could rely on the results of the election. The Board issued this decision without any input from the parties and without notifying the parties that it was examining this issue.

With respect to relying on the results of the election, the Board disregards that the election was not conducted in accordance with the Board's Rules and Regulations. The Board provides for a request for review of the Regional Director's DD&E and for the impounding of ballots while the review is pending. Section 102.67(b). In the case at bar, there could not have a review of the DD&E because there was no properly constituted Board. In addition, the ballots were opened based upon the denial of the Request for Review by a Board which had no authority to decide the DD&E.

Further, the Board's reliance on Section 102.182 for its finding that the ballots could have opened is wrong. Subpart X, of which Section 102.182, is entitled 'SPECIAL PROCEDURES WHEN THE BOARD LACKS A QUORUM." This subpart clearly applies to the instance where there are less than three members of the Board. This subpart has nothing to do with what happens when the Board has a quorum but the quorum is improperly constituted and issuing decisions. Moreover, the results of an election clearly could influence or could be perceived to have an influence on the outcome of a decision on whether to grant a request for review or to certify a unit.

Simply stated there should be one set of rules in conducting an election. When the rules are no followed, like in this case, there cannot be a valid election and there can be no certification of the results.

Thus, the Board should revoke the certification. The election should be conducted in accordance with the Board's Rules and Regulations.

CONCLUSION

The Board must revoke the Union's certification. The Board also must deny General

Counsel's motion for summary judgment and grant such other relief as the Board may deem just and proper.

Dated: January 8, 2015
New York, New York

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appropriate Court of Appeals should the Board grant General Counsel's Motion for Summary Judgment.

POINT III: BELGROVE HAS NOT REFUSED TO BARGAIN IN VIOLATION OF SECTION 8(a)(1) and (5)

The Company asserts it has not violated section 8(a)(1) and (5) of the Act by refusing to bargain. As set forth in Belgrove's answer to the Complaint, the Certification of Representation (Exhibit "10" of General Counsel's Motion for Summary Judgment) issued by the Board is invalid because the unit consists of supervisors as defined under Section 2(11) of the Act. Belgrove is not obligated to bargain in the unit that the Board certified of LPNs because all the LPNs in that unit are supervisors under Section 2(11) of the Act. The unit is inappropriate. General Counsel's Motion for Summary Judgment should be denied.

Belgrove asserts that it does not have to bargain because the certification is invalid. In contesting the certification and in opposition to this Motion for Summary Judgment, Belgrove incorporates herein the record in the representation proceeding in 22-RC-080916. Belgrove repeats and re-alleges all the arguments put forward by Belgrove in the representation proceeding, including that the Company incorporates by this reference, as though fully set forth herein, all the arguments in the Company's Request for Review to the Board in its opposition to the Motion for Summary Judgment. (Exhibit "7" of General Counsel's Motion for Summary Judgment) In its opposition to the Motion for Summary Judgment, Belgrove further desires to preserve all the arguments for review by the courts that were raised by Belgrove before as to why the LPNs are supervisors and the unit is inappropriate in 22-RC-080916 and which are incorporated herein in this Response and Opposition to General Counsel's Motion for Summary Judgment, specifically including the arguments raised in the Request for Review.

The Company is aware that the Board's policy is not to review the issues that were raised in representation proceeding unless there is newly discovered evidence that was unavailable or special circumstances that would require the Board to re-examine its decision. Lifesource, 359 NLRB No. 45 (2012). The Board's policy is to find that the employer cannot raise representation issues that are properly litigable in unfair labor practice cases, usually citing Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Id.

In the case at bar, the Company acknowledges that the Board is unlikely to review the issues raised in the representation proceeding based upon prior Board decisions. However, if the Board were to overrule these cases or to consider this case a special circumstance because the nature of the supervisory issues involving nurses requires a close scrutiny as suggested by the dissent in Leisure Chateau Care Center, 340 NLRB 346 (2000), the Board must find that the LPNs are supervisors. The Board's holding that the LPNs are not supervisors is inconsistent with prior Board decisions, including Oakwood Healthcare, Inc., 348 NLRB 686 (2006), and court decisions, including NLRB v. Attleboro Associates, LTD, 176 F.3d 154 (3rd Cir. 1999). The LPNs are supervisors because:

(a) they assign work. (See Point A (1) under VI Argument in the Request for Review in Exhibit "7" of General Counsel's Motion for Summary Judgment which is in incorporated herein.)

(b) they direct work. (See Point A (2) under VI Argument in the Request for Review in Exhibit "7" of General Counsel's Motion for Summary Judgment which is in incorporated herein.)

(c) they discipline employees or have authority to discipline employees. (See Point B under VI Argument in the Request for Review in Exhibit "7" of General Counsel's Motion for Summary Judgment which is in incorporated herein.)

(d) they have authority to suspend employees. (See Point B under VI Argument in the Request for Review in Exhibit "7" of General Counsel's Motion for Summary Judgment which is in incorporated herein.)

(e) they adjust grievances. (See Point C under VI Argument in the Request for Review in Exhibit "7" of General Counsel's Motion for Summary Judgment which is in incorporated herein.)

(f) they transfer employees. (See Point D under VI Argument in the Request for Review in Exhibit "7" of General Counsel's Motion for Summary Judgment which is in incorporated herein.)

The LPNs exercise independent judgment in performing these functions. In addition, they are supervisors because they act as unit managers and house supervisors, who are supervisors. (See Point E under VI Argument in the Request for Review in Exhibit "7" of General Counsel's Motion for Summary Judgment which is in incorporated herein.) The Board must review this response and opposition to the Motion for Summary Judgment as well as the Request for Review (Exhibit "7" of General Counsel's Motion for Summary Judgment) and deny the Board's Motion for Summary Judgment because the LPNs are supervisors. The certification is invalid because the unit consists of supervisors.

Moreover, while the Board should find that LPNs are supervisors for the foregoing reasons and review the Request for Review (Exhibit "7" of General Counsel's Motion for Summary Judgment), the Board should also include in its review its findings in footnote 1 of its

Order where it denied the Company's Request for Review (Exhibit 8 of General Counsel's Motion for Summary Judgment) that LPNs are not supervisors because they do not exercise independent judgment. The Board in footnote 1 found that even if the LPNs assign work, they are not supervisors because they did not exercise independent judgment. As indicated in Point A (1) under VI Argument in the Request for Review, the LPNs clearly assign work to certified nurses aides ('CNAs"). This includes, but is not limited to, assigning CNAs to patients, moving CNAs, and determining which CNAs are assigned to patients as they enter the facility. Moreover, the record clearly and unequivocally states that these assignments by LPNs are made using their independent judgment. The finding is inconsistent with the record, applicable law and requires a re-examination.

Further, the Board's finding in footnote 1 of its decision that it does not have to determine whether the LPN adjustment of grievances is for only minor disputes because the LPNs do not exercise independent judgment. However, it is beyond peradventure in the record that LPNs exercise independent judgment in adjusting the grievances. (See Point C under VI Argument in the Request for Review in Exhibit "7" of General Counsel's Motion for Summary Judgment which is in incorporated herein.) Thus, if a CNA has a problem with a resident, the LPN can re-assign the CNA to another resident.

Regardless of whether the Board re-examines the record and its determination that LPNs are supervisors because it will not review issues that were raised in representation proceedings, Belgrove again reiterates, refers to and incorporates by this reference all the arguments that it has made in 22-RC- 080916, including Belgrove's Request for Review, and that it makes now to the Board as to why the LPN are supervisors and why the General Counsel's Motion for Summary Judgment should be denied. Should General Counsel's Motion for Summary Judgment motion be

granted by the Board, Belgrove wishes to preserve for review by the courts its arguments that the unit is not appropriate, that the LPNs are supervisors under Section 2(11), and that the Certification of Representation is invalid.

In sum, Belgrove has not violated the Act by refusing to bargain with the union because the unit is inappropriate. The LPNs are supervisors under Section 2(11).

NATIONAL LABOR RELATIONS BOARD
REGION 22

In the Matter of:

SUB ACUTE REHABILITATION CENTER AT KEARNY, LLC D/B/A BELGROVE POST-ACUTE CARE CENTER,
Employer

Case No.: 22-CA-093626

AND

AFFIRMATION OF SERVICE

DISTRICT 1199J, NUHHCE, AFSCME, AFL-CIO,
Petitioner,

STUART WEINBERGER, declares pursuant to 28 U.S.C. Section 1746, as follows:

I am not a party to this action and reside in Westchester, New York. On January 8, 2015 I served the response required by the National Labor Board Relations to show cause why General Counsel's motion for summary judgment should not be granted upon by e-mailing the post-hearing response to

(1) Arnold Cohen, Esq. of Oxfeld Cohen, P.C., 60 Park Place, 6th Floor, Newark, New Jersey 07102 at the e-mail address of asc@oxfeldcohen.com, which is the address designated by him.

(2) David Leach, Regional Director Region 22, 20 Washington Place, 5th Floor, Newark, NJ 07102 at the e-mail address of david.leach@nlrb.gov, which is the address designated by him.

I declare under the penalty of perjury that the foregoing is true and correct. Executed on the 8th day of January 8, 2015.

/s/ Stuart Weinberger
Stuart Weinberger