

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

**GGNSC SPRINGFIELD LLC d/b/a
GOLDEN LIVING CENTER - SPRINGFIELD**

and

Case 26-CA-072684

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO**

**MOTION TO TRANSFER CASE TO THE BOARD
AND FOR SUMMARY JUDGMENT**

Counsel for the Acting General Counsel (“Acting General Counsel”), in order to effectuate the purposes of the Act, and to avoid unnecessary costs and unwarranted delays, respectfully moves pursuant to Section 102.50 of the Board’s Rules and Regulations that the case be transferred to the Board for final determination based on the pleadings. Acting General Counsel further respectfully moves, pursuant to Section 102.24, for summary judgment. As shown by the attached Index of Exhibits, copies of the charge, affidavit of service of the charge, complaint, affidavit of service of the complaint, and Golden Living Center - Springfield’s answer to the complaint are attached to this motion. Also attached are relevant documents from Case 26-RC-067840 and the instant case.

In support of this motion, Acting General Counsel respectfully shows as follows:

1.

On October 31, 2011, International Association of Machinists and Aerospace Workers, AFL-CIO (the “Union”), filed a petition in Case 26-RC-067840¹ seeking certification as the collective-bargaining representative of certain employees of Golden Living Center - Springfield (“Respondent”).

2.

On November 30, 2011, the Regional Director issued a Decision and Direction of Election in Case 26-RC-067840.²

¹ A copy of the petition in Case 26-RC-067840 is attached as Exhibit 1.

² A copy of the Decision and Direction of Election in Case 26-RC-067840 is attached as Exhibit 2.

3.

On December 12, 2011, Respondent filed a request for review of the Regional Director's Decision and Direction of Election.³

4.

On December 28, 2011, the Board issued an Order denying the request for review.⁴

5.

On December 29, 2011, an election was conducted among certain employees of Respondent. The tally of ballots dated December 29, 2011 disclosed that a majority of the valid votes had been cast for the Union.⁵

6.

On January 6, 2012, the Regional Director issued a certification of representative in Case 26-CA-067840.⁶

7.

On January 19, 2012, the Union filed a charge in Case 26-CA-072684 alleging that Respondent violated Section 8(a)(1) and (5) of the Act by refusing to bargain with the Union. The charge was served on Respondent on January 19, 2012.⁷

8.

On February 9, 2012, pursuant to Section 102.15 of the Board's Rules and Regulations, the Regional Director issued a complaint in Case 26-CA-072684 alleging that Respondent violated Section 8(a)(1) and (5) of the Act by its refusal to bargain.⁸

³ A copy of Respondent's request for review is attached as Exhibit 3.

⁴ A copy of the Board's Order dated December 28, 2011 is attached as Exhibit 4.

⁵ A copy of the tally of ballots dated December 29, 2011 is attached as Exhibit 5.

⁶ A copy of the certification of representative dated January 6, 2012 is attached as Exhibit 6.

⁷ A copy of the charge in Case 26-CA-072684 and the affidavit of service of the charge are attached respectively as Exhibits 7 and 8.

⁸ A copy of the complaint dated February 9, 2012 is attached as Exhibit 9, and a copy of the affidavit of service of the complaint is attached as Exhibit 10.

9.

On February 22, 2012, Respondent filed its answer to the complaint.⁹ In paragraph 7(b) of its answer, Respondent admits that the Board certified the Union as the exclusive collective-bargaining representative of the unit. In paragraph 8 of the answer, Respondent admits that by letter dated January 11, 2012, the Union requested that Respondent recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.¹⁰ In paragraph 9 of its answer, Respondent admits that it has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

10.

Although Respondent denies certain allegations of the complaint, there are no material issues of fact warranting a hearing in this matter. In paragraph 6 of its answer, Respondent denies that an unnamed attorney is Respondent's agent under Section 2(13) of the Act. However, the Board has established that an attorney is an employer's agent when the employer's refusal to bargain is communicated to the union by its attorney. *Ohio Plate Glass Company*, 271 NLRB 694, fn.1 (1984); *Warren Unilube, Inc.*, 357 NLRB No. 9 (2011); *Lexus of Concord, Inc.*, 343 NLRB 851, 864 (2004). Here, Respondent's refusal to bargain was communicated to the Union in a January 17, 2012 email from Respondent's attorney and reiterated by the attorney in a January 19, 2012 letter.¹¹ By admitting in its answer that it has refused to recognize and bargain with the Union, Respondent has adopted and ratified the actions of its attorney. Thus, the issue of whether the Respondent's attorney is an agent within the meaning of Section 2(13) of the Act fails to raise a material issue of fact requiring the holding of a hearing.

Respondent further denies the allegations in paragraphs 7(a) and 7(c) in its answer and claims that the unit is inappropriate. However, Acting General Counsel submits that all issues relating to the propriety of the certification were, or could have been, raised in the underlying representation proceeding and that no litigable issues exist regarding the certification. *Pittsburg Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

In paragraph 10 of its answer, Respondent denies that its conduct constitutes a violation of Section 8(a)(1) and (5) of the Act. Acting General Counsel avers that Respondent, through its January 17 and 19, 2012 communications to the Union, has established its failure and refusal to recognize and bargain with the Union as the

⁹ A copy of Respondent's answer to the complaint is attached as Exhibit 11.

¹⁰ A copy of the Union's January 11, 2012 letter to Respondent is attached as Exhibit 12.

¹¹ A copy of the January 17, 2012 email from Respondent's attorney (Keith Jewell) to the Union and the January 19, 2012 letter from Respondent's attorney to the Union are attached collectively as Exhibit 13.

lawfully certified bargaining representative. In both communications, Respondent's attorney acknowledges that Respondent received the Union's January 11, 2012 bargaining request and rejects the request by replying that: "... the certification of the RNs should be tested because of their 2(11) supervisory status. Therefore, a technical refusal to bargain is procedurally required." In light of Respondent's email and letter to the Union and its answer to the complaint, there are no existing material issues of fact regarding Respondent's refusal to bargain.

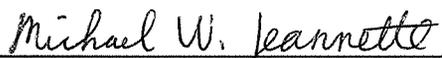
11.

Respondent also raises some "boilerplate" affirmative defenses in its answer. In its third affirmative defense, Respondent asserts that the allegations in the complaint are vague and must be dismissed as a matter of law. Respondent claims in its fourth affirmative defense that it intends to rely upon any other defenses which may become available and reserves the right to amend its answer to assert any such defense. None of these defenses is supported by any factual evidence or legal authority. As such, they fail to raise an issue necessitating a hearing in this matter.

12.

Accordingly, Acting General Counsel submits that there are no disputed issues of fact which would warrant a hearing and urges the Board to grant this motion and find that Respondent has violated Section 8(a)(1) and (5) of the Act as alleged in the complaint, and enter the appropriate remedial order.

Dated at Nashville, Tennessee this 28th day of February, 2012.



Michael W. Jeannette
Counsel for the Acting General Counsel
National Labor Relations Board
Nashville Resident Office
810 Broadway, Room 302
Nashville, TN 37203

Attachments

INDEX OF EXHIBITS

- Exhibit 1 Petition in Case 26-RC-067840, filed October 31, 2011.
- Exhibit 2 Decision and Direction of Election in Case 26-RC-067840, dated November 30, 2011.
- Exhibit 3 Respondent's Request for Review, dated December 12, 2011.
- Exhibit 4 Board's Order dated December 28, 2011.
- Exhibit 5 Tally of Ballots dated December 29, 2011.
- Exhibit 6 Certification of Representative dated January 6, 2012.
- Exhibit 7 Charge in Case 26-CA-072684, filed January 19, 2012.
- Exhibit 8 Affidavit of Service of Charge in Case 26-CA-072684.
- Exhibit 9 Complaint in Case 26-CA-072684, dated February 9, 2012.
- Exhibit 10 Affidavit of Service of the Complaint dated February 9, 2012.
- Exhibit 11 Answer to the Complaint filed by Respondent, dated February 22, 2012.
- Exhibit 12 Union's letter to the Respondent dated January 11, 2012.
- Exhibit 13 Respondent's January 17, 2012 email and January 19, 2012 letter to the Union.

Exhibit

1

INTERNET
FORM NLRB-502
(2-00)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 26-RC-067840	Date Filed 10/31/11

INSTRUCTIONS: Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

1. PURPOSE OF THIS PETITION (if box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)
- RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
 - RM-REPRESENTATION (EMPLOYER PETITION) - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
 - RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
 - UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES) - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
 - UC-UNIT CLARIFICATION - A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees: (Check one) In unit not previously certified. In unit previously certified in Case No. _____
 - AC-AMENDMENT OF CERTIFICATION - Petitioner seeks amendment of certification issued in Case No. _____ Attach statement describing the specific amendment sought.

2. Name of Employer: Golden Living Center
Employer Representative to contact: Lori Chambers, Administrator
Tel. No.: 615-384-9565

3. Address(es) of Establishment(s) Involved (Street and number, city, State, ZIP code): 104 Watson Road, Springfield, TN 37172
Fax No.: 615-384-9580

4a. Type of Establishment (Factory, mine, wholesaler, etc.): Nursing home
4b. Identify principal product or service: Short term&long term nursing care
Cell No.:
e-Mail:

5. Unit involved (In UC petition, describe present bargaining unit and attach description of proposed clarification.)
Included: All full time and regular part time Registered Nurses.
Excluded: See attachment.
6a. Number of Employees in Unit:
Present: 9
Proposed (By UC/AC):
6b. Is this petition supported by 30% or more of the employees in the unit? Yes No
*Not applicable in RM, UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state).

7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Name of Recognized or Certified Bargaining Agent (If none, so state.):
Affiliation:
Address:
Tel. No.:
Cell No.:
Date of Recognition or Certification:
Fax No.:
e-Mail:

9. Expiration Date of Current Contract, if any (Month, Day, Year):
10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day and Year):

11a. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes No
11b. If so, approximately how many employees are participating?

11c. The Employer has been picketed by or on behalf of (Insert Name) _____, a labor organization, of (Insert Address) _____ Since (Month, Day, Year) _____

12. Organizations or individuals other than Petitioner (and other than those named in Items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. (If none, so state)

Name	Address	Tel. No.	Fax No.
		Cell No.	e-Mail

13. Full name of party filing petition (if labor organization, give full name, including local name and number): International Association of Machinists and Aerospace Workers, AFL-CIO

14a. Address (street and number, city, state, and ZIP code): 690 E. Lamar Blvd., Suite 580, Arlington, TX 76011
14b. Tel. No. EXT: 817-505-0100
14c. Fax No.: 817-459-0107
14d. Cell No.:
14e. e-Mail:

15. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization): International Association of Machinists and Aerospace Workers, AFL-CIO

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print): Ramon A. Garcia
Signature: *Ramon A. Garcia*
Title (if any): Grand Lodge Representative
Address (street and number, city, state, and ZIP code): 690 E. Lamar Blvd., Suite 580, Arlington, TX 76011
Tel. No.: 817-805-0100
Cell No.: 904-803-9996
Fax No.: 817-459-0107
eMail: rgarcia@iamaw.org

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Attachment

All Director of Nursing, Assistant Director of Nursing, Director of Clinical Education, Resident Nursing Assessment Coordinators, Medical Records Coordinator, Dietary Employees, Admissions Director, Activities Employees, Social Services, Contract Personnel, House Keeping, Maintenance, Office Clerical Employees, Professionals, Guards, and Supervisors as defined in the Act.

Exhibit

2

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

**GGNSC SPRINGFIELD LLC d/b/a
GOLDEN LIVING CENTER-SPRINGFIELD¹**
Employer

and

Case 26-RC-067840

**INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO**
Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer, Golden Living Center-Springfield, operates a long term skilled nursing facility in Springfield, Tennessee, herein called the Employer's facility, where it employs approximately 100 employees. The Petitioner, International Association of Machinists and Aerospace Workers, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act (the "Act") seeking to represent a unit of approximately 12 full-time and regular part-time registered nurses employed at the Employer's Springfield, Tennessee facility. A hearing was conducted before a hearing officer of the Board and both parties filed post-hearing briefs.

The Employer contends that all registered nurses are supervisors as defined in Section 2(11) of the Act, and therefore the petition must be dismissed. The Petitioner asserts that the registered nurses are not supervisors and that the

¹ The Employer's name appears as corrected at the hearing.

petitioned-for unit is appropriate. At the hearing, the Petitioner acknowledged that it would proceed to an election in the unit determined to be appropriate.

At the hearing, the Employer called three witnesses to testify: Executive Director Lori Chambers, Assistant Director of Nursing (ADON) Karen Price, and Division Manager of Human Resources Colleen Morris. The Petitioner called two witnesses to testify: Licensed Practical Nurse (LPN) Elizabeth Blair and Registered Nurse (RN) Vicki Jones.

I have considered the evidence presented at the hearing, the parties' briefs, the relevant case law, and the arguments advanced by the parties. As discussed below, I find that the RNs are not supervisors within the meaning of Section 2(11) of the Act and the petitioned-for unit is appropriate. To provide a context for my decision and discussion of these issues, I will first provide an overview of the Employer's operations followed by a review of the applicable legal standards for determining supervisory status, followed by a discussion of the facts and my analysis of those facts as it pertains to the petitioned-for employees.

I. OVERVIEW OF THE EMPLOYER'S OPERATIONS

The Employer operates a 120-bed state-licensed nursing home facility in Springfield, Tennessee. It has operated this facility for approximately the past two years. The Employer's facility is a single story building with an East Wing and a West Wing. Each wing houses approximately 60 patients and has its own nurse's station. The patients in the Employer's facility include both short-term and long-term patients and patients who are alert and ambulatory and those who are not.

Executive Director Lori Chambers oversees the entire facility. Reporting to Chambers are various department heads, including Sonya Crain, the director of nursing (DON). There are also two assistant directors of nursing (ADON): Karen Price and Jennifer Wilkinson. Other nurse managers, who are stipulated to be supervisors under Section 2(11) of the Act, include the director of clinical education and three resident nursing assessment coordinators (RNAC). The executive director and the DON generally work Monday through Friday, 7:00 a.m. to 6:00 p.m., but remain on call at all other times. The ADONs generally work Monday through Friday, 8:00 a.m. to 4:00 p.m. and may also work weekends and evenings if needed to cover staffing shortages.

The Employer employs 12 employees classified as RNs, 10 LPNs and 46 certified nursing assistants (CNAs). The RNs and LPNs (who the Employer also refers to as "charge nurses") work 12½-hour shifts (6:45 a.m. to 7:15 p.m. and 6:45 p.m. to 7:15 a.m.), while the CNAs are assigned to work one of three 8-hour shifts (7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m. and 11:00 p.m. to 7:00 a.m.).

The facility's daily assignment sheet shows the nursing staff assigned to each wing on a daily basis. There are generally two "charge nurses" assigned to each wing on each 12-hour shift, each of whom are responsible for approximately 30 patients. The number of charge nurses assigned to a wing on a given 12-hour

shift may vary from 1 to 3. These charge nurses may be either LPNs or RNs.²

The number of CNAs assigned to each wing may vary from 2 to 6.

The only RN identified as not working a 12-hour shift is Misty Wilmot, who works Monday through Friday, 3:00 p.m. to 11:00 p.m. Wilmot did not testify at the hearing. She was identified by other witnesses as the "supervisor" for the 3:00 p.m. to 11:00 p.m. shift. Witnesses testified that Wilmot performs primarily administrative duties, patient admissions and dining duty.

Another RN, Patsy Meadows, was identified as being on leave at the time of the hearing. Executive Director Chambers identified Meadows as the "weekend supervisor," prior to the time she went on leave.

Patient Care

When a charge nurse reports to work he or she first obtains a report from the nurse being relieved on the prior shift and will consult the daily assignment sheet to see how many CNAs are assigned to that wing for the upcoming shift. Each morning a daily group assignment form is completed which shows the patient rooms each CNA is responsible for on each shift. This group assignment form also lists appointments and schedules tasks such as showers and snacks. The group assignments may be adjusted throughout the day. The charge nurse will then inventory and stock the medication cart, check and calibrate equipment and begin dispensing medicines to the patients. The charge nurse will also review all physicians' orders and update the patients' records. The CNAs periodically

² The LPNs and RNs have identical charge nurse duties.

measure the vital signs of patients and report this information to the charge nurse, who documents it in the patient records.

The two charge nurses assigned to each wing are responsible for administering all medications and documenting patient records. The CNAs are responsible for incontinence care, feeding, bathing and turning or repositioning patients. The CNAs periodically obtain vital sign measurements of the patients and report them to the charge nurse.

If a CNA detects a medical problem with a patient, such as a skin tear or a patient having difficulty breathing, they will notify the charge nurse who assesses the situation and determines if a doctor needs to be notified.

Scheduling and Assignments

The daily assignment sheet identifies the charge nurses for each wing on each 12-hour shift and also the CNAs scheduled to work on each wing over the three 8-hour shifts. There was no testimony that this daily assignment sheet is prepared by RNs. A group assignment form is also prepared daily which details the specific patient room assignments for each CNA. Assignments for snack distribution, patient bathing and other daily events are reflected on this group assignment form. ADON Karen Price testified that one of the charge nurses prepares this form each morning. Other nurses indicated that the assignments are routine from day-to-day and that when a change is needed the CNAs usually adjust their duties among themselves.

If a CNA or charge nurse has to work through lunch, the charge nurse will sign a time clock adjustment form for the employee. This form simply confirms that the adjustment claimed is accurate and is prepared after the event (such as working through lunch) has occurred. The charge nurse has no further involvement with approving or disapproving overtime other than signing this form. There is no evidence of a charge nurse refusing to sign a time clock adjustment form. A charge nurse can sign off on another charge nurse's time adjustment form. LPNs will sign this form for a RN, and vice versa.

If an employee fails to report to work as scheduled, DON Crain is notified and determines if it is necessary to call someone in to work that shift. During normal business hours, Scheduling Clerk Cat Stevens will contact employees to maintain adequate shift coverage. Charge nurses working the night shift will be instructed by Crain to either make do with the current staff or to call in an additional employee.

If a shift is short-staffed and a CNA agrees to work overtime, such overtime needs to be approved by DON Crain. Likewise, charge nurses cannot authorize an employee to leave early.

Directing the Work of the CNAs

CNAs have routine patient care responsibilities which require little instruction or oversight by the charge nurse. The charge nurse is basically responsible for insuring that various patient care tasks, such as baths and snack distribution, are completed by the CNAs in a timely manner. LPN Blair and RN

Jones both testified that they generally have little interaction with the CNAs apart from receiving periodic vital sign reports for patients. If an unusual event occurs, such as a fall by a patient, the CNA reports the incident to the charge nurse and the charge nurse is responsible for addressing the medical needs of the situation.

A charge nurse has authority to temporarily adjust the job duties of a CNA based on the needs of that particular shift. Such adjustments may include equalizing staff by assigning a CNA to the other wing or bathing a patient who is not scheduled for a bath. There is no evidence that such transfers or duty assignments are permanent.

Discipline

Charge nurses document misconduct and work deficiencies of CNAs and other charge nurses. Their involvement is limited to completing portions of a disciplinary form, including a factual account of the misconduct and submitting it to the DON. The level of progressive discipline to be imposed is left blank on the form, as the nurses do not have access to employee personnel files and do not know whether there is prior discipline in the employee's file.

Evaluation of CNAs

Charge nurses, RNs and LPNs have prepared annual performance appraisals for CNAs prior to the past year or so. Both nurses who testified indicated that they are no longer responsible for these annual evaluations, as they are all now done by RN Misty Wilmot. RN Jones testified that around February or March of this year, she was asked by Wilmot to assist her in completing the CNA

evaluations, and Jones completed a few of them. Jones testified that Wilmot told her that the evaluation should reflect that “everybody is on plan.” Jones was not certain whether raises were based on these evaluations or not.

Manager of Human Resources Morris testified that annual wage adjustments are determined in part by the employee’s most recent appraisal in the personnel file, as well as other factors.

II. APPLICABLE LEGAL STANDARD AS TO SUPERVISORY STATUS

Section 2(11) of the Act defines “supervisor” as “any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” To qualify as a supervisor, it is not necessary that an individual possess all of the powers listed in Section 2(11). Rather, the possession of any one of them is sufficient to establish supervisory status, provided the exercise of authority involves the use of independent judgment and is not merely routine or clerical in nature. *Mountaineer Park, Inc.*, 343 NLRB 1473, 1474 (2004), citing *Arlington Masonry Supply, Inc.*, 339 NLRB 817, 818 (2003). The burden of proving supervisory status rests on the party alleging such status. *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001). In enacting Section 2(11)’s definition of “supervisor,” Congress stressed that only individuals invested with

“genuine management prerogatives” should be considered supervisors, as opposed to “straw bosses, leadmen...and other minor supervisory employees.” *Id.* at 102 (quoting S.Rep.No. 105, 80th Con., 1 Sess. 4 (1947)). The Board’s long recognition that purely conclusory evidence is not sufficient to establish supervisory authority is still viable. The Board requires evidence that the individual actually possesses supervisory authority. *Golden Crest Healthcare Center*, 348 NLRB 727, 729 (2006).

III. FACTS AND ANALYSIS RELATING TO RN CHARGE NURSES

The Employer contends that RNs are supervisors because they responsibly assign and direct work, effectively recommend promotions, transfers and discipline, including suspensions and terminations, and adjust grievances.³ Each of those factors, as well as evidence that is considered secondary indicia of supervisory authority, is discussed below.

A. Assignment and Direction of Work

In *Oakwood Healthcare, Inc.*, 348 NLRB 686, 684 (2006), the Board interpreted the Section 2(11) term “assign” to mean the act of “designating an employee to a place (such as a location, department, or wing), appointing an individual to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee.” To “assign” for purposes of Section 2(11) “refers to the ... designation of significant overall duties to an employee, not to the ... ad hoc instruction that the employee perform a discrete task.” *Golden Crest*

³ The Employer acknowledged at the hearing that the charge nurses do not possess or exercise authority relating to the hire, layoff or recall of employees.

Healthcare Center, supra at 728-729, citing *Oakwood Healthcare*, supra at 689 (2006).

The first question presented is whether the Employer has met its burden to establish that its charge nurses have the authority to “assign” employees under the foregoing definition. As explained below, I find that the Employer has not met this burden.

The evidence demonstrates that charge nurses on the night shift may, on occasion, need to contact CNAs to come in from home or request that a CNA stay past the end of their shift. This is only done, however, after such action is authorized by DON Crain or another nurse manager. Thus, in this context, the true supervisory mandate is held by admitted supervisors, not the RNs carrying out the directive. See *Golden Crest*, supra at 729.

The Employer also contends that the charge nurses exercise supervisory authority by altering CNAs’ work assignments to compensate for absent employees or to balance workloads. The record establishes, however, that in such circumstances the decision of how to redistribute the workloads is often made by the CNAs themselves, not by the charge nurses. In any event, the occasional transfer due to short staffing does not amount to more than switching tasks among employees and has been held insufficient to confer supervisory status. See *Croft Metals, Inc.*, 348 NLRB 717, 721-722 (2006). Similarly, the *ad hoc* assignment of discrete tasks to CNAs (such as to bathe a patient who is not scheduled for a bath on that shift) does not confer supervisory status. *Id.*

Responsibly to Direct

The Board has held that for direction to be “responsible,” the person directing and performing the oversight of the employee must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly. This interpretation of “responsibly to direct” is consistent with *post-Kentucky River* Board decisions that considered an accountability element for “responsibly to direct.” See, e.g., *Oakwood Healthcare, Inc.*, *supra* at 691-692.

Thus, to establish accountability for purposes of responsible direction, it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. It also must be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps. In the instant case, the Employer failed to demonstrate that this requisite accountability exists in connection with the RN charge nurses who oversee the work of the CNAs. No witness testified to any specific examples in which an RN faced adverse consequences as a result of the nurse’s failure to responsibly direct another employee.

Independent Judgment

In *Oakwood Healthcare*, the Board, consistent with *Kentucky River*, adopted an interpretation of “independent judgment” that applies to any

supervisory function at issue “without regard to whether the judgment is exercised using professional or technical expertise.” 348 NLRB at 692. The test articulated by the Board for supervisory status utilizing independent judgment is that “an individual must at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data. Further, the judgment must involve a degree of discretion that rises above the “routine or clerical.” Id. at 692-693.

I earlier found that RN charge nurses do not assign work to CNAs by giving them significant overall duties. I further conclude that even if they do so, they do not exercise independent judgment in making such assignments. The CNAs overall tasks are largely dictated by the care plans and standing orders of physicians and management, not the charge nurses. A charge nurse’s assignment of discreet tasks and the isolated temporary switching of tasks by nurses do not involve a degree of discretion that rises above the routine or clerical.

As to scheduling matters, there is no evidence that charge nurses utilize independent judgment as to CNA schedules, such as granting time off or assigning overtime. They routinely consult with nurse management to obtain authorization for such schedule adjustments. Similarly, the charge nurse’s limited role in signing time adjustment forms does not constitute a “discretionary choice” and, therefore, fails to show the use of independent judgment.

B. Recommendations to Discipline

The charge nurses who testified denied that they possess any authority to discipline employees or to effectively recommend discipline. According to these witnesses, a charge nurse will document an incident of misconduct on a disciplinary form and then submit it to the DON, leaving blank the portion of the form which indicates the level of discipline to be imposed. Management will then take action without further input from the charge nurse. Although the Employer contends that charge nurses effectively recommend discipline, the record contains no examples in which such specific recommendations were made by a charge nurse. It is well established that merely reporting misconduct does not constitute supervisory authority within the meaning of Section 2(11). *Carlisle Engineered Products, Inc.*, 330 NLRB 1359, 1360 (2000), citing *Ten Broeck Commons*, 320 NLRB 806, 812 (1996).

Section 2(11) of the Act makes clear that the power to effectively recommend any of the enumerated attributes of supervisory authority is itself an attribute of such authority. The Board defines the power to effectively recommend as meaning that the recommended action is taken with no independent investigation by superiors. *Waverly-Cedar Falls Health Care Center*, 297 NLRB 390, 392 (1989), *enfd.* 933 F.2d 626 (8th Cir. 1991) (LPNs found not to be supervisors notwithstanding they recommended aides for hire, where director of nursing did not rely solely on their recommendations, but independently investigated and interviewed the aides). In the instant case, the record does not

establish that charge nurses have made recommendations which would satisfy the Board's definition of possessing the authority to effectively recommend discipline.

The Employer further contends that charge nurses are authorized to immediately suspend an employee in circumstances of patient abuse. RN Jones acknowledged that as a charge nurse she has the authority to take immediate action to remove an abusive employee for the balance of the shift but not to impose a suspension of longer duration. No evidence was adduced that such action was ever taken without first notifying a manager. There was also testimony indicating that the immediate removal of the suspected abuser is mandated by law. Assuming *arguendo* that actual authority exists as claimed by the Employer, the taking of limited action in response to flagrant violations is insufficient by itself to establish supervisory status. *Vencor Hospital – Los Angeles*, 328 NLRB 1136, 1139 (1999); *Phelps Community Medical Center*, 295 NLRB 486, 492 (1989).

C. Authority to Adjust Grievances

The record does not support the Employer's contention that charge nurses have the authority to effectively adjust employee grievances. The evidence proffered by the Employer regarding this issue was scant and conclusory. For example, the Employer notes that its employee handbook and the RN job description provide procedures for complaint and grievance resolution. Also, Manager of Human Resources Morris testified that CNAs bring their problems to charge nurses and that charge nurses have the ability to make changes based on those complaints. When asked to describe the type of problems CNAs bring to

the attention of charge nurses, Morris testified that one employee may complain that they have more patients than another employee. No evidence was provided by the Employer regarding specific instances when this has occurred or how charge nurses respond to these or any other types of complaints.

The evidence offered by the Employer is simply insufficient to support its position that charge nurses have the authority to adjust grievances pursuant to Section 2(11) of the Act. *Avante at Wilson, Inc.*, 348 NLRB No. 71 (2006).

D. Secondary Indicia

The Employer presented evidence that charge nurses complete annual performance evaluations for CNAs and LPNs. According to the Employer, performance evaluations are considered in determining annual merit increases for employees. Notwithstanding these claims, a finding that RNs are statutory supervisors is still not warranted for several reasons.

First, the ability to evaluate employees is not one of the indicia of supervisory status in Section 2(11) of the Act. *Williamette Industries*, 336 NLRB 743 (2001). Secondary indicia, such as the ability to evaluate work performance, is insufficient, without more, to establish supervisory status. *Ken-Crest Services*, 335 NLRB 777, 779 (2001).

Second, the Employer's contentions regarding the completion and impact of evaluations were contradicted by the testimony of RN Jones and LPN Blair. These nurses testified that they no longer routinely complete evaluation forms. According to RN Jones, the task of completing evaluations is now performed by

RN Misty Wilmot. Regarding the affect of evaluations on employee wages, RN Jones testified that the Employer never informed her that the evaluations would be considered when determining raises. LPN Blair testified that an evaluation she completed had no impact on the employee's raise.

The Board has consistently declined to find supervisory status based on evaluations without evidence that they constitute effective recommendations to reward, promote discipline or likewise affect the evaluated employee's job status. *Ten Broeck Commons*, 320 NLRB 806, 813 (1996); *Brown & Root, Inc.*, 314 NLRB 19, 21 (1994). The Employer adduced evidence that these annual evaluations were one factor among several considered by the Employer in determining annual wage adjustments. Moreover, it was acknowledged that during 2011, some employees received increases when their performance evaluations did not warrant an increase. In light of this, the Employer's evidence is not sufficient to demonstrate supervisory status based on the charge nurse's involvement in evaluating employees.

E. The Employer Failed to Meet its Burden of Establishing the Supervisory Status of Registered Nurses

There is insufficient evidence that RN charge nurses have authority to hire, fire, reward, promote, transfer, layoff or recall employees, or adjust employees' grievances, or to effectively recommend such actions. While the Employer established that charge nurses may allocate work assignments consistent with the routine needs of the patients, the evidence establishes that they do not utilize independent judgment when performing this task. Similarly, although the RN

charge nurses are paid at a higher rate of pay than other hourly employees, this factor is insufficient to confer supervisory status. Absent proof of such primary statutory criteria, secondary indicia is insufficient to support a finding of supervisory status. *Bay Area*, 275 NLRB 1063, 1080 (1985); *Memphis Furniture Mfg. Co.*, 232 NLRB 1018, 1020 (1977); *General Security Services Corp.*, 326 NLRB 312 (1998); and *Billows Electric Supply*, 311 NLRB 878 fn. 2 (1993). Accordingly, based on the totality of the record, I find that the Employer has not met its burden of proving that RN charge nurses are supervisors as defined in Section 2(11) of the Act, and therefore, I find the petitioned-for unit appropriate.

F. The Status of Patsy Meadows and Misty Wilmot

Near the conclusion of the hearing, the Petitioner requested that RNs Meadows and Wilmot be excluded from the unit as statutory supervisors, but agreed to proceed in any unit found to be appropriate. Regarding Meadows, the testimony pertaining to her was limited to the fact that since an unspecified time, Meadows has been off on leave and prior to her leave she was utilized as a "weekend supervisor." The record does not disclose when, or if, she will return to work. Meadows was not listed on the Employer documents which list the employees who received wage adjustments in July 2010 or 2011. Although the record does not disclose what Meadows' weekend supervisory duties consisted of, the fact that no management officials are present at the facility on weekends suggests that Meadows may be a statutory supervisor. Given the scarcity of the

record evidence and the uncertainty about her supervisory status, I will permit Meadows to vote subject to challenge.

Misty Wilmot works a 3:00 p.m. to 11:00 p.m. shift while all other RNs work 12-hour shifts. Wilmot is regarded as a supervisor by other nurses. She spends most of her workday performing administrative duties, such as patient admissions, but she also occasionally assists nurses. Since early 2011, Wilmot has been responsible for completing the annual evaluations of CNAs, RNs and LPNs. Wilmot has, on occasion, assigned other nurses to complete evaluations in order to reduce backlogs. The Employer proffered evidence showing that Wilmot issued discipline to an LPN in September 2011 for an attendance policy infraction and to a CNA in August 2011 for mistreating a resident. The record is silent regarding whether Wilmot exercised independent judgment when she issued the discipline. Since there are facts that weigh in favor of and weigh against a finding that Wilmot is a statutory supervisor, I will permit her to vote subject to challenge.

IV. CONCLUSIONS AND FINDINGS

Based on the entire record in this proceeding, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Petitioner claims to represent certain employees of the Employer.

4. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time registered nurses employed by the Employer at its Springfield, Tennessee facility.

EXCLUDED: All other employees, including, all directors of nursing, assistant directors of nursing, directors of clinical education, resident nursing assessment coordinators, minimum data set coordinators, medical records coordinators, admissions directors, dietary employees, activities employees, social services employees, licensed practical nurses, certified nursing assistants, contract personnel, housekeeping employees, maintenance employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Association of Machinists and Aerospace Workers, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to

communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **December 7, 2011**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website www.nlr.gov,⁴ by mail, by hand or courier delivery, or by facsimile transmission at 901-544-0008. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

⁴ To file the eligibility list electronically, go to the Board's website at www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Since the list will be made available to all parties to the election, please furnish a total of **three** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

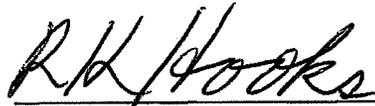
VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board

November 30, 2011

in Washington, DC by 5 p.m. EDT December 14, 2011. The request may be filed electronically through the Agency's web site, www.nlrb.gov,⁵ but may not be filed by facsimile.

DATED: November 30, 2011



Ronald K. Hooks, Regional Director
National Labor Relations Board
Region 26
80 Monroe Avenue - Suite 350
Memphis, TN 38103-2416

⁵ To file the request for review electronically, go to the Board's website at www.nlrb.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Exhibit

3



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VIA FEDERAL EXPRESS - 2nd DAY

December 12, 2011

Lester A. Heltzer, Executive Secretary
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570-0001

**Re: GGNSC Springfield LLC d/b/a Golden LivingCenter-Springfield
Case 26-RC-067840**

Dear Executive Secretary:

Enclosed please find eight (8) copies of the Employer's Request for Review in the above-referenced matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Keith R. Jewell".

Keith R. Jewell
General Counsel -
Labor and Employment Law

KRJ/lrl

Enclosure

cc: Ron Hooks, Regional Director (w/encl.)
Ramon Garcia (w/encl.)

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**BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:)	
)	
GGNSC SPRINGFIELD LLC d/b/a)	
GOLDEN LIVINGCENTER-SPRINGFIELD,)	
)	
Employer,)	
and)	Case No. 26-RC-067840
)	
INTERNATIONAL ASSOCIATION OF)	
MACHINISTS AND AEROSPACE)	
WORKERS, AFL-CIO,)	
)	
Petitioner.)	
)	

EMPLOYER'S REQUEST FOR REVIEW

Pursuant to Section 102.67 of the Rules and Regulations of the National Labor Relations Board ("the Board"), GGNSC Springfield LLC d/b/a Golden LivingCenter–Springfield in Springfield, Tennessee (the "Employer" or the "Home") requests the Board to grant review of the Regional Director’s Decision and Direction of Election which found that the Employer’s Registered Nurses (hereinafter "RNs", "Charge Nurses", or "CNs") were not *Supervisors* within the meaning of Section 2(11) of the National Labor Relations Act, as amended (the "Act").

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I. BASIS FOR REVIEW

Review is warranted here because:

1. The Regional Director's Decision, as to substantial factual issues, is clearly erroneous based on the record;
2. The Regional Director's Decision raises substantial questions of law and policy due to its departure from officially reported and controlling U. S. Supreme Court precedent in NLRB v. Health Care & Retirement Corp., 511 U.S. 571, 114 S.Ct. 1778 (1994); and Kentucky River, 1212 S.Ct. 1861 (2001);
3. The Regional Director's Decision raises substantial questions of law and policy due to its departure from officially reported Board precedent.

The Employer respectfully requests the Board to grant this Request for Review, and find that its RNs or Charge Nurses are supervisors within the meaning of Section 2(11) of the Act.

II. CONTRARY TO THE REGIONAL DIRECTOR'S DECISION, THE RECORD EVIDENCE COMPELS THE FINDING THAT THE EMPLOYER'S RN CHARGE NURSES POSSESS AND EXERCISE SUPERVISORY AUTHORITY

The Regional Director's determination that the Employer's RNs are not supervisors within the meaning of the Act is not supported by the record evidence. The Decision ignores, mischaracterizes, and arbitrarily dismisses record facts demonstrating that the RNs possess, and have exercised supervisory authority. A finding that the Employer's RNs are supervisors within the meaning of the Act is supported by the record evidence. The RNs not only possess, but exercise supervisory authority.

A. The Employer's Position.

The Employer's RNs satisfy the statutory criteria for supervisory status as set forth in the Act. The record shows that the RNs possess supervisory authority and can exercise independent judgment by, *inter alia*: (1) counseling and disciplining employees; (2) evaluating and rewarding employees' performance; (3) adjustment of grievances; and (4) assigning and directing the work of employees. Moreover, the Employer's RNs are held out as supervisors.

B. Statement of the Facts.

1. The Home.

Golden LivingCenter-Springfield is a skilled nursing home in Springfield, Tennessee. The primary business of the Home is to care for its residents and the elderly.

2. Managerial Structure and Operation.

At the top of the Nursing Department primary care hierarchy is the Director of Nursing ("DON"). The applicable structure and chain of command then follows with the two Assistant Directors of Nursing ("ADONs"), the 3-11 Nursing Supervisor and/or Charge Nurses, and then the Certified Nursing Assistants (CNAs).

The Home is a 24 hour facility with 24 hour coverage on two wings, East and West. Upper nursing management (the Director of Nursing and two ADONs) are present at the facility mainly Monday through Friday during the day and early evening. During the remaining hours of operation, the highest ranking or highest level personnel in the building is the 3-11 RN Supervisor (until 11:00 pm on weekdays) and/or the RN Charge Nurses (E-3).¹ However, the 3-11 RN Supervisor position was created to assist with handling new resident admissions (t-22-23). Charge

¹An "E" denotes employer exhibit, and "t" denotes transcript page.

Nurses are required to monitor the CNAs (t-23). RN Charge Nurses are regularly the highest ranking person at the facility from 11:00 pm - 7:00 am on weekdays. For weekends, RN Charge Nurses will be rotated into a Nursing Supervisor position like the weekday 3-11 Nursing Supervisor position (t-22). Representative 24 hour deployment assignments sheets for Sunday, November 6, 2011, and Monday, November 7, 2011, show that on Sunday the only RN Charge Nurses scheduled were Vazquez, Hunter, and Jones from 6:45 pm - 7:15 am for the facility and day; and for Monday only RN Charges Nurses Vasquez, Holman, and Jones were scheduled for that day and were to work 6:45 pm - 7:15 am (E-3).

C. The Record Evidence Justifies the Finding that the Employer's RNs Possess and Exercise Supervisory Authority.

Under Section 2(11) of the Act, the term "supervisor" is defined as follows:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise is not of a merely routine or clerical nature, but requires the use of independent judgment.

29 U.S.C. Section 152(11)

It is well-settled that the possession of any single indicia of supervisory status by the Employer's nurses would be sufficient, under Section 2(11) of the Act, to establish supervisory status. Albany Medical Center Hospital, 273 NLRB 485 (1984). As discussed below, the Employer's RN Charge Nurses possess and exercise supervisory authority.

1. RNs Have the Authority to Counsel and Discipline CNAs.

The record evidence established that RNs have the authority to issue discipline to CNAs and LPNs (E-9). The RN Charge Nurse completes, presents, and signs discipline (t-35-36, 102). RNs can issue discipline to both CNAs and LPNs (t-37). It is within an RNs discretion to decide to orally counsel or to issue a written memoranda (t-38, 68-70; E-8). How the CN decides to address conduct or performance issues, even if she exercises her independent discretion by only doing an oral counseling, has an effect upon the CNAs who report to her.

Written warnings do effect the employment of the CNAs or LPNs to whom issued. They have resulted in the suspension of a CNA for example (t-103-105). Four written warnings can result in termination (E-2, 11, 12). Three written warnings result in the CNA or LPN being ineligible for a merit increase (t-56, 58; E-18). CNA Vanessa Starks was ineligible for a merit increase in 2010 because she had three written warnings in her personnel file (E-18, t-58).

2. RNs Complete Annual Performance Evaluations for LPNs and CNAs.

The Charge Nurses complete, sign, and present annual evaluations to CNAs (t-47, E-13, 14). RN Charge Nurses also evaluate LPNs (t-47, E-15). Notably, in the evaluation of LPN Elizabeth Ann Blair in April 2011 by RN Charge Nurse Vicki Jones, Blair comments that she works "under" the RNs (E-15). The evaluation form for Charge Nurses is the "Management Position" form and the form for CNAs is the "Hourly Position" form (E-15, 14). Annual evaluations are considered for determining annual merit increases for employees (t-55, 57-58, 60; E-17, 18, 19).

3. RNs Have the Authority to Adjust Grievances of the CNAs.

The Company provides a procedure for employees with complaints or grievances. Employees are to present those to their supervisor (E-2). For CNAs, that would be their Charge

Nurse (t-51-52). Such grievances have included complaints about being assigned too many residents to care for. CNAs are assigned a certain number by the Charge Nurse depending on the residents' acuity. RN Charge Nurses are permitted to make those assignments and to modify them as they determine (t. 51-52; 74).

4. RN Charge Nurses Have the Authority to Assign and Direct the Work of the CNAs.

CNs assign the CNAs the residents they are to care for as well as special assignments like showers, etc. (E-16, t-50-51).

CNs have the authority to call in replacement employees to cover absences. They are not required to call employees in any particular order (t-50-51).

CNs are permitted to determine whether CNAs can leave early, stay over, or work through meals (t-26-27).

CNAs are assigned a certain number of residents by the Charge Nurse depending on the residents' acuity. RN Charge Nurses are permitted to make those assignments and to modify them as they determine (t. 51-52; 74).

5. The Employer's RN Charge Nurses are Held Out As Supervisors.

The job descriptions for the CNAs and RN Charge Nurses reflect the role of the Charge Nurse as supervisor (E-6, 7). A number of RN Charge Nurses have also signed off on such acknowledgments (E-8). Postings at the facility are used to communicate and reinforce the supervisory role of the Charge Nurses (E-4). RN Charge Nurses are paid more than LPN Charge Nurses and CNAs (E-18). RN Charge Nurses have access to Employer information on labor

relations and are trained thereon annually (t-127). RN Charge Nurses also receive supervisory training annually (t-103).

III. CONTRARY TO THE REGIONAL DIRECTOR'S DECISION, THE LAW COMPELS FINDING THAT THE EMPLOYER'S RN CHARGE NURSES ARE SUPERVISORS

The Employer's RN Charge Nurses possess numerous attributes of Section 2(11) and Board law compels the finding that they are statutory supervisors. As discussed below, Board law has found that individuals with *less* supervisory authority than the Employer's nurses are indeed statutory supervisors. The same result should be obtained here.

The Board has repeatedly reiterated that the statutory indicia set forth in Section 2(11) of the Act must be read in the disjunctive. Albany Medical Center, 273 NLRB 485, 486; Research Designing Services, Inc., 141 NLRB 211, 213 (1963). In Albany Medical Center, *supra*, the Board stated that "the statutory indicia set forth in Section 2(11) of the Act are stated in the disjunctive and *only one need exist to confer supervisory status.*" 273 NLRB at 486 (emphasis added). In fact, the mere possession of supervisory authority -- whether or not it is actually exercised -- satisfies the statutory criteria. Cox Enterprises, Inc., d/b/a Atlanta Newspapers, 263 NLRB 632 (1982). Exeter Hospital, 248 NLRB 377, 378 (1980). In Hook Drugs, Inc., 191 NLRB 189, 191 (1971), the Board found the law to be:

[W]ell settled that a supervisor retains his supervisory status regardless of whether he actively exercises his supervisory powers. It is the existence of the power which determines his status.

Id. at 191 (emphasis added, citations omitted). Accord, Cox Enterprises, Inc., supra, at 633 (route managers found to be supervisors despite the fact that "some route managers do not exercise the full extent of their authority"); Exeter Hospital, supra, at 377-78 (nurses possessed authority to consider

and grant requests for time off, entertain grievances, and discipline employees).

In the instant case, the Employer's RN Charge Nurses do possess supervisory authority and have exercised some of that authority.

A. The Authority to Discipline CNAs and LPNs Satisfies Section 2(11).

The Board has repeatedly recognized that possession of the authority to discipline employees satisfies the statutory test of Section 2(11). The Employer's RNs possess the authority to discipline employees. That alone could end this inquiry. In Pine Manor Nursing Home, 270 NLRB 1008, 1009 (1984), nurses who possessed the authority to issue discipline, and exercised it through *verbal* disciplinary warnings, were found to be supervisors. *Id.* at 1009 (*citing*, Wedgewood Health Care, 267 NLRB 525 (1983); and Northwoods Manor, 260 NLRB 854 (1985).

The Employer's RN Charge Nurses may effectively decide to use oral counselings rather than written warnings. That is within their independent discretion to decide. If they choose to issue written warnings, these can result in termination or being ineligible for merit increases. Since the Employer's RN Charge Nurses possess authority to discipline and can enforce the Home's policies, Board law requires a finding that they are statutory supervisors. See also Cox Enterprises, 263 NLRB 632 (1982) and Rest Haven Living Center, 322 NLRB 210 (1966).

B. The Annual Evaluations Prepared by RN Charge Nurses Establish Their Supervisory Status.

Board law is clear – Charge Nurses will be treated as supervisors based upon their role in performing evaluations of CNAs if the evaluations directly affect the CNAs' employment status. The Board in First Healthcare, 323 NLRB No. 202 (1997), concluded the LPNs at issue in that case were supervisors based upon their role in preparing CNA evaluations that directly affected

the CNA's employment status. The Charge Nurses there, as in this case, completed annual evaluations. The LPNs met with the CNAs to review the evaluations. Further, although the evaluations were signed by the higher management, there was no evidence that higher management independently investigated or changed the evaluations completed by the LPNs.

First Healthcare. As stated by the board in Nymed, Inc. d/b/a Ten Broeck Commons (Ten Broeck Commons), 320 NLRB 806, 813 (1996):

The Board has consistently found that LPNs are supervisors when they independently perform evaluations of other employees which lead directly to personnel actions affecting those employees....

In Ten Broeck Commons, the Board found that the LPNs were not supervisors. However, in Ten Broeck Commons, the LPNs repeatedly changed any evaluations to conform with their nursing supervisor's opinion. 320 NLRB at 813. Also, the nursing supervisors reviewed the evaluations and changed grades previously assigned by the LPNs. Id. Obviously, Ten Broeck Commons is distinguishable from the present case. The Employer's RNs on their own perform the annual evaluations of CNAs. The RNs independently decide which scores a CNA should receive, what comments they will write in the sections provided on the form, and whether or not the CNA has met, exceeded or needs improvement in certain areas. The RNs then present the evaluation to the CNA and have them sign.

The annual evaluations affect the employment status of the CNAs in regard to merit or performance increases and confer supervisory status on the RNs. See Bayou Manor Health Center, 311 NLRB 955 (1993).

C. The Authority to Adjust Grievances Compels a Finding of Supervisory Status.

The Employer's policies and employee handbook provide a procedure for problem resolution (E-7, 8, 14). In Passavant Retirement & Health Center, 149 F.3d 243 (3rd Cir. 1998), the Court determined that even the adjustment of minor oral complaints amounted to "adjustment of grievances" under the National Labor Relations Act. The Employer's RNs adjust minor oral complaints and more serious complaints through the problem resolution procedures. If not resolved by the Charge Nurse, these formal grievances can be appealed to the higher authority in accord with the written procedures.

The Board has consistently held that the adjustment of employee grievances is a clear indicator of supervisory status. In Paintsville Hospital Company, Inc., 278 NLRB 724, 740 (1986), the Board stated: "The authority to adjust grievances is sufficient under Section 2(11) of the Act to establish supervisory status." See also Wright Memorial Hospital, 225 NLRB 1319, 1320 (1980) wherein the Board noted the RN charge nurses who possessed the authority to adjust employee complaints or grievances are supervisors.

D. The Authority to Assign and Direct Employees is an Indicia of Supervisory Status.

The RNs are statutory supervisors since they "meaningfully" monitor, direct and assign work sections and assignments to the CNAs on a daily basis. See, Pine Manor Nursing Center, 270 NLRB 1008 (1984); Opelika Foundry, 281 NLRB 897(1986); Lincoln Lutheran of Racine, Wisconsin, Inc., 290 NLRB 1077 (1988); Maine Yankee Atomic Power, 624 F. 2d 347(4th Cir.1980); and Caremore, Inc. v. NLRB, 150 F.3d 628 (6th Cir. 1998).

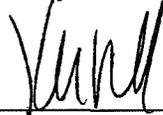
IV. THE REGIONAL DIRECTOR MISAPPLIED AND IGNORED THE CONTROLLING LEGAL PRECEDENT

In Bridgeport and Port Jefferson Steamboat Company, 313 NLRB 542 (1993), the Board recognized that the general rule is that employers are entitled to make their own nondiscriminatory decisions as to how best to supervise their operations; and as the trier of fact, the Board, may not simply substitute its own subjective judgment of what it would have done were it in the employer's position. The Employer's decision to have its RN Charge Nurses function as part of its management team in the highly regulated, demanding, and litigious business of patient care should not be second guessed.

V. CONCLUSION

For all the foregoing reasons, the law and facts in this case compel the conclusion that the Employer's RNs are supervisors within the meaning of the Act. Accordingly, they should be excluded as a matter of law and the petition should be dismissed.

Respectfully submitted,

By:  _____

Keith R. Jewell
Golden Living
1000 Fianna Way
Fort Smith, Arkansas 72919
(479) 201-4819

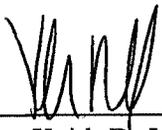
Dated: December 12, 2011

CERTIFICATE OF SERVICE

I, Keith R. Jewell, hereby certify that copies of the foregoing Employer's Request for Review were this date served upon the following by Federal Express:

Ramon Garcia
IAMAW, AFL-CIO
690 E. Lamar Boulevard, Suite 580
Arlington, TX 76011-1711

Ronald Hooks, Regional Director
NLRB Region 26
80 Monroe Ave., Suite 360
Memphis, TN 38103-2400

By: 
Keith R. Jewell

Dated: December 12, 2011

RECEIVED

2011 DEC 14 AM 11:08

NLRB
ORDER SECTION

golden
living

Golden Living
1000 Flanna Way
Fort Smith, AR 72919

TO: FEDERAL EXPRESS 2nd DAY

Lester A. Heltzer, Executive Secretary
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570-0001

2986.817

Align top of FedEx Express Shipping Label here.

KRJ

ORIGIN ID: FSMA (479) 201 4839
Lisa Louther
Golden Living Inc.
1000 Flanna way

Ship Date: 12DEC11
ActWgt: 2 LB
System#: 400747/FXRS0775
Account: S 138111903

Fort Smith, AR 72919
UNITED STATES US

TO National Labor Relations Board (479) 201 4839
Lester A Heltzer Executive Secreta
1099 14th Street NW

FedEx
Express



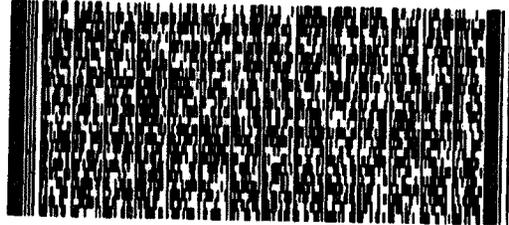
Washington, DC 20570

Ref: 2006.027David Beck/KRJ
SNV:
PB:

Dept:



Delivery Address
Barcode



BILL SENDER

2DAY

WED

TRK# 8971 1328 4010

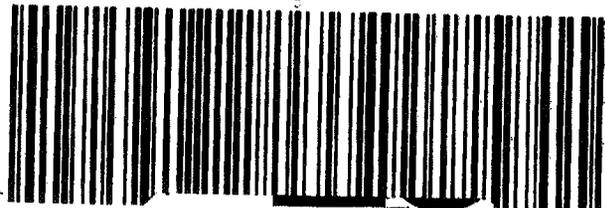
Form 02011

Deliver By:
14DEC11

20570 -DC-US

DCA A1

SA BZSA



ORDER SECTION
NLRB

2011 DEC 14 PM 2:13

RECEIVED

Part # 159148-434 RFB 114

Exhibit

4

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

GGNSC SPRINGFIELD LLC D/B/A
GOLDEN LIVING CENTER-SPRINGFIELD
Employer

and

Case 26-RC-67840

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.

MARK GASTON PEARCE, CHAIRMAN

CRAIG BECKER, MEMBER

BRIAN E. HAYES, MEMBER

Dated, Washington, D.C., December 28, 2011.

Exhibit

5

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

GGNSC Springfield LLC d/b/a Golden Living
Center-Springfield

Employer

and

International Association of Machinists &
Aerospace Workers, AFL-CIO

Petitioner

Date Filed

Case No. 26-RC-067840

10/31/2011

Date Issued December 29, 2011

Type of Election
(Check one:)

- Stipulation
- Board Direction
- Consent Agreement
- RD Direction
- Incumbent Union (Code)

(If applicable check either or both:)

- 8(b) (7)
- Mail Ballot

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

- 1. Approximate number of eligible voters 13
- 2. Number of Void ballots 0
- 3. Number of Votes cast for IAM 6
- 4. Number of Votes cast for _____
- 5. Number of Votes cast for _____
- 6. Number of Votes cast against participating labor organization(s) 3
- 7. Number of Valid votes counted (sum of 3, 4, 5, and 6) 9
- 8. Number of Challenged ballots 1
- 9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 10
- 10. Challenges are (not) sufficient in number to affect the results of the election.
- 11. A majority of the valid votes counted plus challenged ballots (Item 9) has (~~not~~) been cast for Petitioner

DATE: 12/29/2011
TIME: 7:10

For the Regional Director, Region 26 Deanna McFarlan

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For Employer Rou Chambers

For Petitioner Ricky Walker

For _____

For _____

Exhibit

6

NOTICE OF BARGAINING OBLIGATION

In the recent representation election, a labor organization received a majority of the valid votes cast. Except in unusual circumstances, unless the results of the election are subsequently set aside in a post-election proceeding, the employer's legal obligation to refrain from unilaterally changing bargaining unit employees' terms and conditions of employment begins on the date of the election.

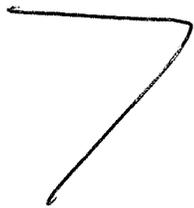
The employer is not precluded from changing bargaining unit employees' terms and conditions during the pendency of post-election proceedings, **as long as** the employer (a) gives sufficient notice to the labor organization concerning the proposed change(s); (b) negotiates in good faith with the labor organization, upon request; and (c) good faith bargaining between the employer and the labor organization leads to agreement or overall lawful impasse.

This is so even if the employer, or some other party, files objections to the election pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board (the Board). If the objections are later overruled and the labor organization is certified as the employees' collective-bargaining representative, the employer's obligation to refrain from making unilateral changes to bargaining unit employees' terms and conditions of employment begins on the date of the election, not on the date of the subsequent decision by the Board or court. Specifically, the Board has held that, absent exceptional circumstances,¹ an employer acts at its peril in making changes in wages, hours, or other terms and conditions of employment during the period while objections are pending and the final determination about certification of the labor organization has not yet been made.

It is important that all parties be aware of the potential liabilities if the employer unilaterally alters bargaining unit employees' terms and conditions of employment during the pendency of post-election proceedings. Thus, typically, if an employer makes post-election changes in employees' wages, hours, or other terms and conditions of employment without notice to or consultation with the labor organization that is ultimately certified as the employees' collective-bargaining representative, it violates Section 8(a)(1) and (5) of the National Labor Relations Act since such changes have the effect of undermining the labor organization's status as the statutory representative of the employees. This is so even if the changes were motivated by sound business considerations and not for the purpose of undermining the labor organization. As a remedy, the employer could be required to: 1) restore the status quo ante; 2) bargain, upon request, with the labor organization with respect to these changes; and 3) compensate employees, with interest, for monetary losses resulting from the unilateral implementation of these changes, until the employer bargains in good faith with the labor organization, upon request, or bargains to overall lawful impasse.

¹ Exceptions may include the presence of a longstanding past practice, discrete event, or exigent economic circumstance requiring an immediate response.

Exhibit



FORM NLRB-501

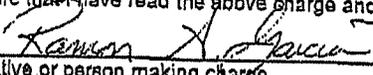
FORM EXEMPT UNDER 44 U.S.C. 3512

UNITED STATES OF AMERICA
 NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 26-CA-072684	Date Filed 1/19/12

INSTRUCTIONS

File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged ULP occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT		
a. Name of Employer Golden Gate National Senior Care, LLC (GGNSC) Springfield LLC d/b/a Golden Living Center - Springfield		b. Number of employers involved 100 +
c. Address (street, city, state, ZIP code) GGNSC SPRINGFIELD LLC D/B/A GOLDEN LIVING CENTER- SPRINGFIELD 104 Watson Rd. Springfield, TN 37172-4510	d. Employer Representative Keith Jewell, Attorney	e. Telephone No. 479-201-4819 [fax] 470-201-4801
f. Type of Establishment (factory, mine, wholesaler, etc.) Nursing Home	g. Identify principal product or service Short Term and Long Term Nursing Care	
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsection (1) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.		
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)		
<p>The above-named Employer by its officers, agents, and representatives has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed by Section 7 of the National Labor Relations Act, as amended, by failing and refusing since January 17, 2012 to recognize and bargain with the Union as the exclusive collective bargaining representative of employees in the appropriate unit certified in 26-RC-067840.</p>		
3. Full name of party filing charge (if labor organization, give full name, including local name and number) International Association of Machinists and Aerospace Workers, AFL-CIO		
4a. Address (street and number, city, state and ZIP code) 690 E. Lamar Blvd., Ste 580 Arlington TX 76011-1711		4b. Telephone No. 817-505-0100 [fax] 817-459-0107
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization. International Association of Machinists and Aerospace Workers, AFL-CIO		
6. DECLARATION		
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		
By Ramon Garcia  Signature of representative or person making charge		Title Grand Lodge Representative
Address Same as 4a		Telephone No. Same as 4b Date 01/18/2012

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
 Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Exhibit

8



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 26
80 MONROE AVE
STE 350
MEMPHIS, TN 38103-2400

Agency Website: www.nlr.gov
Telephone: (901)544-0018
Fax: (901)544-0008

January 19, 2012

KEITH R. JEWELL, General Counsel
GOLDEN GATE NATIONAL SENIOR CARE, LLC D/B/A GGNSC SPRINGFIELD LLC
D/B/A GOLDEN LIVING CENTER - SPRINGFIELD
1000 FIANNA WAY
FORT SMITH, AR 72919-9008

Re: Golden Gate National Senior Care, LLC
d/b/a GGNSC Springfield LLC d/b/a Golden
Living Center - Springfield
Case 26-CA-072684

Dear Mr. JEWELL:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Examiner JILL C. ADKINS whose telephone number is (615)736-7388. The mailing address is 810 BROADWAY STE 302, NASHVILLE, TN 37203-3810. If JILL C. ADKINS is not available, you may contact Resident Officer JOSEPH H. ARTILES whose telephone number is (615)736-2584.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your

representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Procedures: We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Golden Gate National Senior Care, LLC
d/b/a GGNSC Springfield LLC d/b/a
Golden Living Center - Springfield
Case 26-CA-072684

- 3 - January 19, 2012

Very truly yours,

A handwritten signature in black ink that reads "Ronald K. Hooks". The signature is written in a cursive style with a long horizontal flourish at the end.

RONALD K. HOOKS
Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

**GOLDEN GATE NATIONAL SENIOR CARE,
LLC D/B/A GGNSC SPRINGFIELD LLC D/B/A
GOLDEN LIVING CENTER- SPRINGFIELD**

Charged Party

and

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO**

Charging Party

Case 26-CA-072684

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on January 19, 2012, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

KEITH R. JEWELL, General Counsel
GOLDEN GATE NATIONAL SENIOR
CARE, LLC D/B/A GGNSC SPRINGFIELD
LLC D/B/A GOLDEN LIVING CENTER -
SPRINGFIELD
1000 FIANNA WAY
FORT SMITH, AR 72919-9008

January 19, 2012

Date

Deanna McFarland, Designated Agent of
NLRB

Name
/s/

Signature

Exhibit
9

2/9/12

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

**GGNSC SPRINGFIELD LLC D/B/A
GOLDEN LIVING CENTER - SPRINGFIELD**

and

Case 26-CA-072684

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO**

COMPLAINT

International Association of Machinists and Aerospace Workers, AFL-CIO, herein called the Union, has charged that GGNSC Springfield LLC d/b/a Golden Living Center – Springfield, herein called the Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151, et seq., herein called the Act. Based thereon, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and alleges as follows:

1.

The charge in this proceeding was filed by the Union on January 19, 2012, and a copy was served on Respondent by regular mail on January 19, 2012.

2.

At all material times, Respondent, a Delaware corporation, with an office and place of business in Springfield, Tennessee, has been engaged in the operation of a skilled nursing facility.

3.

(a) During the 12-month period ending December 31, 2011, Respondent, in conducting its business operations described above in paragraph 2, derived gross revenues in excess of \$100,000.

(b) During the 12-month period ending December 31, 2011, Respondent, in conducting its business operations described above in paragraph 2, purchased and

received at its Springfield, Tennessee facility goods and/or supplies valued in excess of \$50,000 directly from points outside the State of Tennessee.

4.

At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

5.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

6.

At all material times, an unnamed attorney has been an agent of Respondent within the meaning of Section 2(13) of the Act.

7.

(a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time registered nurses employed by Respondent at its Springfield, Tennessee facility.

Excluded: All other employees, including, all directors of nursing, assistant directors of nursing, directors of clinical education, resident nursing assessment coordinators, minimum data set coordinators, medical records coordinators, admissions directors, dietary employees, activities employees, social services employees, licensed practical nurses, certified nursing assistants, contract personnel, housekeeping employees, maintenance employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

(b) On January 6, 2012, the Board certified the Union as the exclusive collective-bargaining representative of the Unit.

(c) At all times since January 6, 2012, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

8.

About January 11, 2012, the Union, by letter, requested Respondent to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

9.

Since about January 17, 2012, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

10.

By the conduct described above in paragraph 9, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

11.

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before February 23, 2012 or postmarked on or before February 22, 2012.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature

continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in the complaint are true.

Dated at Memphis, Tennessee, this 9th day of February, 2012.

A handwritten signature in black ink, appearing to read "Ronald K. Hooks", written over a horizontal line.

Ronald K. Hooks, Regional Director
National Labor Relations Board
Region 26
The Brinkley Plaza Building
80 Monroe Avenue, Suite 350
Memphis, TN 38103-2416

Attachment

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

GGNSC Springfield LLC d/b/a Golden Living Center - Springfield
Case 26-CA-072684

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds thereafter must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; **and**
- (5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

KEITH R. JEWELL, General Counsel
GOLDEN GATE NATIONAL SENIOR CARE,
LLC D/B/A GGNSC SPRINGFIELD LLC D/B/A
GOLDEN LIVING CENTER - SPRINGFIELD
1000 FIANNA WAY
FORT SMITH, AR 72919-9008

RAMON A. GARCIA, Grand Lodge
Representative
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO
690 E LAMAR BLVD, STE 580
ARLINGTON, TX 76011-1711

FOR THE SERVICE OF DOCUMENTS ONLY

Exhibit

10

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

**GGNSC SPRINGFIELD LLC D/B/A GOLDEN
LIVING CENTER- SPRINGFIELD**

Charged Party

and

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO**

Charging Party

Case 26-CA-072684

AFFIDAVIT OF SERVICE OF COMPLAINT

I, the undersigned employee of the National Labor Relations Board, state under oath that on February 9, 2012, I served the above-entitled document(s) by certified mail upon the following persons, addressed to them at the following addresses:

KEITH R. JEWELL, General Counsel
GOLDEN GATE NATIONAL SENIOR
CARE, LLC D/B/A GGNSC SPRINGFIELD
LLC D/B/A GOLDEN LIVING CENTER -
SPRINGFIELD
1000 FIANNA WAY
FORT SMITH, AR 72919-9008

CERTIFIED MAIL: 7010 1060 0001 0663 6023

RAMON A. GARCIA, Grand Lodge
Representative
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO
690 E LAMAR BLVD, STE 580
ARLINGTON, TX 76011-1711

CERTIFIED MAIL: 7010 1060 0001 0663 6207

February 9, 2012

Date

Ann Ralph, Designated Agent of NLRB

Name

/S/

Signature

Exhibit

11

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 26**

In the Matter of:	:	Case No. 26-CA-072684
	:	
GGNSC SPRINGFIELD LLC D/B/A	:	
GOLDEN LIVING CENTER –	:	
SPRINGFIELD	:	
	:	ANSWER OF RESPONDENT
and	:	GGNSC SPRINGFIELD LLC D/B/A
	:	GOLDEN LIVING CENTER -
INTERNATIONAL ASSOCIATION OF	:	SPRINGFIELD TO THE COMPLAINT
MACHINISTS AND AEROSPACE	:	
WORKERS, AFL-CIO	:	

For its Answer to the Complaint of the NLRB in the above-captioned matter, Respondent GGNSC Springfield LLC d/b/a Golden Living Center – Springfield (hereinafter, “Respondent”) states as follows:

FIRST DEFENSE

1. Respondent admits the allegations contained in paragraph 1 of the Complaint.
2. Respondent admits the allegations contained in paragraph 2 of the Complaint.
- 3(a). Respondent admits the allegations contained in paragraph 3(a) of the Complaint.
- 3(b). Respondent admits the allegations contained in paragraph 3(b) of the Complaint.
4. Respondent admits the allegations contained in paragraph 4 of the Complaint.
5. Respondent admits the allegations contained in paragraph 5 of the Complaint.
6. Respondent denies the allegations contained in paragraph 6 of the Complaint.
- 7(a). Respondent denies the allegations contained in paragraph 7(a) of the Complaint.

7(b). While denying that “the Unit” is appropriate under the National Labor Relations Act, Respondent otherwise admits the remaining allegations contained in paragraph 7(b) of the Complaint.

7(c). Respondent denies the allegations contained in paragraph 7(c) of the Complaint.

8. Respondent admits the allegations contained in paragraph 8 of the Complaint.

9. While denying that “the Unit” is appropriate under the National Labor Relations Act, Respondent otherwise admits the remaining allegations contained in paragraph 9 of the Complaint.

10. Respondent denies the allegations contained in paragraph 10 of the Complaint.

11. Respondent denies the allegations contained in paragraph 11 of the Complaint.

12. Respondent denies each and every allegation of the Complaint not specifically and expressly admitted herein.

SECOND DEFENSE

13. The actions taken by GGNSC Springfield LLC d/b/a Golden Living Center - Springfield are lawful under the National Labor Relations Act and controlling legal precedent.

THIRD DEFENSE

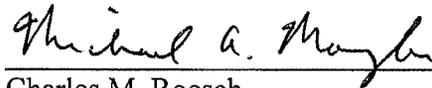
14. Some or all of the allegations in the Complaint are impermissibly vague and must be dismissed as a matter of law.

FOURTH DEFENSE

15. Respondent gives notice that it intends to rely upon and utilize any other defenses which may become available or apparent during the course of this action, and hereby reserves the right to amend its Answer to assert any such defenses.

WHEREFORE, having fully answered the Complaint, Respondent GGNSC Springfield LLC d/b/a Golden Living Center - Springfield respectfully requests that the Complaint be dismissed and that Respondent be awarded its costs and attorneys' fees.

Respectfully submitted,



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Attorneys for Respondent

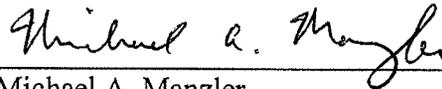
CERTIFICATE OF SERVICE

I hereby certify that the original and four copies of the foregoing Answer of Respondent were served via certified mail on February 22, 2012 on:

Ronald K. Hooks
Regional Director
National Labor Relations Board, Region 26
The Brinkley Plaza Building
80 Monroe Ave, Suite 350
Memphis, TN 38103-2416

and a copy was also served, via electronic mail on February 22, 2012, on:

Ramon A. Garcia
International Association of Machinists
and Aerospace Workers, AFL-CIO
690 E. Lamar Blvd, Ste 580
Arlington, TX 76011-1711
rgarcia@iamaw.org



Michael A. Manzler

Exhibit

12



**INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO
DISTRICT LODGE NO. 711**

1901 LINDELL AVENUE
NASHVILLE, TENNESSEE 37203
PHONE 615-259-1100
FAX 615-259-1101

January 11, 2012

Mr. Keith R. Jewell, General Counsel
Labor and Employment
Golden Living
1000 Fianna Way
Fort Smith, AR 72919

Dear Mr. Jewell:

As you are aware, the International Association of Machinists and Aerospace Workers District Lodge 711 has been certified by the National Labor Relations Board as the exclusive bargaining representative for all full time and part time Registered Nurses (RN's) employed at Golden Living Nursing Home, 104 Watson Road, Springfield, TN, 37172. location.

I have been assigned to represent the employees during the negotiations of the initial collective bargaining agreement and for any other purposes under the National Labor Relations Act. In order for the Union to represent the bargaining unit and prepare for the Collective Bargaining process with your Company, I am requesting some relevant information. Please review the attached information requests and provide the requested information as soon as possible.

I am requesting that we set dates to begin negotiations as soon as possible. I am offering the last two (2) weeks of March 2012 and/or the first two (2) weeks of April 2012. Please let me know if any of these dates are acceptable.

As indicated above, I am the IAM & AW representative assigned to ensure that the rights of all members of the bargaining unit are protected. Thus, I will be advising the employees that they can contact me should the need arise, and I expect that you will recognize their right to union representation in the appropriate circumstances.

Keith R. Jewell, General Counsel
Labor and Employment
Golden Living
January 11, 2012
Page 2

If you have any questions regarding the requested information, do not hesitate to contact me, my cell phone number is 931-933-1139 and my email address is

Thanking you in advance for your cooperation.

Sincerely,



Mike Lee
Business Representative
IAM & AW District 711

ML:lmj

cc: Bob Martinez, GVP, IAM & AW - Southern Territory
Rickey Wallace, President & DBR, IAM & AW District 711

Exhibit

13



Enhancing lives through
innovative healthcare™

VIA FACSIMILE and U.S. MAIL
(615) 292-4585

January 19, 2012

Mike Lee
Business Representative
IAM & AW District 711
1901 Lindell Avenue
Nashville, TN 37203

**Re: GGNSC Springfield LLC d/b/a Golden LivingCenter-Springfield
Case No. 26-RC-067840**

Dear Mr. Lee:

I have received your request for information and bargaining. Be advised that the legal review of the certification of the RNs has been concluded. It has been determined that the certification of the RNs should be tested because of their 2(11) supervisory status. Therefore, a technical refusal to bargain is procedurally required.

Very truly yours,

A handwritten signature in black ink, appearing to read "Keith R. Jewell".

Keith R. Jewell
General Counsel -
Labor and Employment Law

KRJ/lrl

cc: Chuck Roesch, Esq.

www.goldenliving.com

1000 Fianna Way

Fort Smith, AR 72919 • Phone: 479-201-2000 • Fax: 479-201-4801

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2012, a copy of Counsel for the Acting General Counsel's Motion to Transfer Case to the Board and for Summary Judgment was filed via NLRB E-Filing system with the Office of Executive Secretary of the Board.

I further certify that on February 28, 2012, a copy of Counsel for the Acting General Counsel's Motion to Transfer Case to the Board and for Summary Judgment was served on the following via Email:

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Keith R. Jewell, General Counsel
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d/b/a GGNSC Springfield LLC d/b/a
Golden Living Center - Springfield
1000 Fianna Way
Fort Smith, AR 72919-9008
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Michael W. Jeannette *as for*
Counsel for the Acting General Counsel