

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

EXCELSIOR GOLDEN LIVING CENTER  And  SERVICE EMPLOYEES INTERNATIONAL UNION HEALTHCARE MINNESOTA (LOCAL 113)	CONSOLIDATED CASES  Case 18-CA-081449
GGNSC ST. PAUL RIDGE LLC, d/b/a GOLDEN LIVING CENTER – LAKE RIDGE HEALTH CARE CENTER  And  SERVICE EMPLOYEES INTERNATIONAL UNION HEALTHCARE MINNESOTA (LOCAL 113)	Case 18-CA-081459

**RESPONDENTS' RESPONSE TO THE ACTING GENERAL COUNSEL'S  
MOTION FOR SUMMARY JUDGMENT**

Comes now Respondents GGNSC St. Paul Ridge LLC, d/b/a Golden Living Center – Lake Ridge Health Care Center (“Lake Ridge”) and GGNSC Excelsior LLC, d/b/a Golden Living Center – Excelsior (“Excelsior”) (collectively, “Respondents”), by counsel, and for their Response to the Acting General Counsel’s (“AGC”) Motion for Summary Judgment, state as follows:

**INTRODUCTION**

In its Motion, the AGC contends that the sole issue in this case is whether discontinuance of dues checkoff post-expiration of the collective bargaining agreement demands notice and the opportunity to bargain. [G.C. Brief, p. 5] The AGC concedes that longstanding Board precedent endorses the Respondents’ conduct here and holds that an employer’s obligation under Section 8(a)(1) and (5) of the National Labor Relations Act (“Act”) to continue to honor dues checkoff ends with the expiration of the labor agreement under which the checkoff procedure has been

maintained. [*Id.*] However, the AGC argues that this term and condition *should be* a mandatory subject of bargaining, and long-standing Board precedent *should be* overruled. [*Id.*] Regardless of the AGC's desire for a change in legal precedent, neither applicable law nor the Act support its position, and retroactively applying its position against Respondents would create a "manifest injustice" given that Respondents' actions were entirely consistent with the contract and existing law.

### **PROCEDURAL BACKGROUND**

On May 21, 2012, Service Employees International Union, Healthcare Minnesota (Local 113) (the "Union") filed charges against Excelsior and Lake Ridge alleging that they had "unilaterally changed a term and condition of employment and discontinued voluntary dues checkoff without the Union's consent or a bona fide impasse" in violation of sections 8(a)(1) and 8(a)(5) of the Act. *See* Paragraph 2 of the Charges, attached hereto as **Exhibits "A" and "B,"** respectively. The Region issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing on June 13, 2012. The Order is attached hereto as **Exhibit "C."** Subsequently on July 5, 2012 the Regional Director for Region 18 issued an Order Postponing Hearing Indefinitely. Finally, on July 13, 2012, the AGC submitted a summary judgment motion arguing that the Board should overrule *Bethlehem Steel Co. (Shipbuilding Div.)*, 136 NLRB 1500 (1962) and decide this case in its favor. On July 23, 2012, Respondents submitted a cross-motion for summary judgment arguing that there is no dispute that Respondents acted here in accordance with existing Board law, and the Respondents are entitled to summary judgment as a matter of law.

## FACTUAL BACKGROUND

As admitted by the AGC, the facts in this case are not in dispute. The following statement of facts is based on the documents filed by the AGC and the Board:

Respondent Excelsior is a corporation with an office and place of business in Excelsior, Minnesota, and is engaged in the operation of a nursing home and commerce within the meaning of the Act. [Complaint, ¶2] Respondent Lake Ridge is a corporation with an office and place of business in Roseville, Minnesota, and is engaged in the operation of a nursing home and commerce within the meaning of the Act. [*Id.*, ¶3] At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the NLRA. [*Id.*, ¶4] Scott Norton, Vice President of Labor & Employment, is an agent of Respondents within the meaning of Section 2(13) of the Act. [*Id.*, ¶5]

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

All full-time and regular part-time registered nurses and licensed practical nurses employed by Respondent Excelsior at its Excelsior, Minnesota facility; excluding managerial employees, office clerical employees, all other employees, temporary and casual employees, guards and supervisors as defined in the Act, and specifically excluding the resident care coordinator.

[*Id.*, ¶6 (a)] The following employees of Respondent Excelsior (the “Excelsior Non-Professional Unit”) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All non-professional employees employed by Respondent Excelsior at its Excelsior, Minnesota facility; excluding registered nurses, licensed practical nurses, managerial employees, office/clerical employees, temporary employees, guards and supervisors as defined in the NLRA.

[*Id.*, ¶6 (b)]

At all material times, Respondent Excelsior has recognized the Union as the exclusive collective-bargaining representative of both the Excelsior Nurses Unit and the Excelsior Non-Professional Unit. [*Id.*, ¶6 (d, e)] This recognition has been embodied in successive collective-bargaining agreements (“CBA”), the most recent of which was effective from December 1, 2009 through November 30, 2011. A copy of the most recent CBA between the Union and Respondent Excelsior is attached hereto as **Exhibit “D.”** Thereafter, the parties mutually agreed to extend the terms of the CBA, including deduction of union dues, through January 31, 2012. *See* Letter of Understanding between the Union and Respondent Excelsior, attached hereto as **Exhibit “E.”**

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

All full time and regular part-time and casual non-professional employees employed by Respondent Lake Ridge at its Roseville, Minnesota facility, including certified nursing assistants, trained medication aides, housekeeping aides, kitchen aides, maintenance, cooks, activity assistants, activity aides, laundry aides, adult day program aides, transport aides, therapeutic recreation specialists, music therapists, and store clerks; excluding, managerial employees, office clerical employees, all other employees, guards and supervisors as defined in the National Labor Relations Act.

[*Id.*, ¶6 (c)] At all material times, Respondent Lake Ridge has recognized the Union as the exclusive collective-bargaining representative of the Lake Ridge Unit. [*Id.*, ¶6 (f)] This recognition has been embodied in successive CBAs, the most recent of which was effective from effective from September 1, 2010 through October 1, 2011. A copy of the most recent CBA between the Union and Respondent Lake Ridge is attached hereto as **Exhibit “F.”** Thereafter,

the parties mutually agreed to extend the terms of the CBA, including deduction of union dues, through January 31, 2012. *See* Letter of Understanding between the Union and Respondent Lake Ridge, attached hereto as **Exhibit “G.”**

Each of the CBAs described above includes identical Union Security provisions containing language regarding Respondents' agreement to deduct union dues from the wages of employees in the Units described above. [*See* CBA, Exhibits D & F, ¶2 (“UNION SECURITY”)]. The Union Security provision states in pertinent part:

The Employer agrees to deduct Union dues and initiation fees, or comparable enrollment and service fees for employees electing not to become Union members, from the wages of employees who voluntarily provide the Employer with a written authorization to make such deductions. The written authorization shall not be irrevocable for a period of more than one (1) year or beyond the termination date of this Agreement, whichever occurs sooner. Deductions shall be made from the wages of employees in the first (1s) pay period of the month in which the payment is due. Withheld amounts will be forwarded to the Union by the tenth (1 10th) day of the month following the actual withholding, together with a record for the amount, social security number, and name of those for who such deductions have been made.

[*Id.*]

After expiration of the CBAs and extensions thereto, the parties agreed to no further extensions, and the CBA terminated on January 31, 2012. [*See* Exhibits E & G] By letter dated March 14, 2012, Respondents notified the Union that since the CBAs and extensions had expired and that union security and dues check-off could not continue and would cease after March 2012 for the three Units described above. [Complaint, ¶8 (a)] A copy of the Letter from S. Norton to the Union is attached hereto as **Exhibit “H.”** Effective about April 2012, Respondents ceased deducting Union dues from the pay of the employees in the three Units described above. [*Id.*, ¶8 (b)]

## ARGUMENT

### A. **APPLICABLE LAW DOES NOT SUPPORT THE AGC'S ARGUMENT TO CHANGE BOARD LAW EXCLUDING DUES CHECKOFF FROM THE UNILATERAL CHANGE RULE**

The AGC "argues that there is no principled rationale for excluding checkoff from the unilateral change rule regardless of whether the checkoff provision exists alongside a union security clause." [G.C. Brief, p. 7] This argument is without merit.

#### 1. **The AGC Fails To Recognize That Board Majority Has Provided Sound Reasoning To Depart From The *Katz* Doctrine**

In *Bethlehem Steel*, 136 NLRB 1500, 1502 (1962), a Board majority recognized that dues checkoff provisions are creatures of the contract that expire with the contract. The case sets forth the most explicit rationale for excluding checkoff from the unilateral change rule adopted by a Board majority. Its reasoning ties, and in some manner equates, dues checkoff with union security provisions. *Id.* (“[U]pon the termination of a union-security contract, the union-security provisions become inoperative and no justification remains for either party to the contract thereafter to impose union-security requirements. . . . Similar considerations prevail with respect to Respondent's refusal to continue to check off dues....”). The first proviso of Section 8(a)(3) of the Act exempts from prohibition under the Act an employer “making an agreement” with a union for a union security requirement under specific circumstances. *Id.* The Board reasoned that, based on this statutory language,

[s]o long as such a contract is in force, the parties may, consistent with its union security provisions, require union membership as a condition of employment. However, upon the termination of a union-security contract, the union-security provisions become inoperative and no justification remains for either party to the contract thereafter to impose union-security requirements.

*Id.*

Accordingly, the Board in *Bethlehem Steel* found no violation in the employer ceasing to enforce union security once the contract on which it was founded expired. *Id.* The AGC's complaint in this case does not challenge *Bethlehem's Steel's* conclusion regarding union security. However, based on its ruling with regard to union security, the Board in *Bethlehem Steel* went on to hold that the dues-checkoff provision of the expired contract also was not within the unilateral change rule set forth in *NLRB v. Katz*, 369 U.S. 736 (1962) and, therefore, that the employer did not violate the Act by failing to honor this term and condition of employment upon the labor agreement's expiration. *Id.* After finding no violation for failing to continue in effect union security, the Board reasoned:

Similar considerations prevail with respect to Respondent's refusal to continue to check off dues after the end of the contracts. The checkoff provisions in Respondent's contracts with the Union implemented the union-security provisions. The Union's right to such checkoffs in its favor, like its right to the imposition of union security, was created by the contracts and became a contractual right which continued to exist so long as the contracts remained in force. . . . Consequently, when the contracts terminated, the Respondent was free of its checkoff obligations to the Union.

*Id.*

For the past 50 years since *Bethlehem Steel*, the Board has decided cases implementing this rule. *See Tampa Sheet Metal Co.*, 288 NLRB 322, 326 fn. 15 (1988) ("An employer's duty to check off union dues is extinguished upon the expiration of the collective-bargaining agreement"); *Robbins Door & Sash Co.*, 260 NLRB 659 (1982) ("It is well settled that an employer's duty to check off union dues is extinguished upon the expiration of the collective-bargaining agreement which created that duty"); *Ortiz Funeral Home Corp.*, 250 NLRB 730, 731 fn. 6 (1980) ("It is well established that after the expiration of such an agreement an employer may not unilaterally change the terms and conditions of employment established pursuant to that

agreement until a new contract is negotiated or the parties reach an impasse in bargaining. This, of course, does not apply to a union's right to dues checkoff, which is extinguished on expiration of the collective-bargaining agreement creating that right.”).

The AGC makes much of the particular language in the checkoff provision at issue in *Bethlehem Steel*, arguing that because the provision at issue in this case lacks the exact language—“so long as this Agreement remains in effect”—the rationale of that case does not apply here. [C.G. Brief, p. 17-18] However, there is no indication in *Bethlehem Steel* or its progeny that such language, or any particular language linking checkoff to the duration of the contract, must be found in the contract for the dues checkoff exemption to the unilateral change rule to apply. To support this red herring argument, the AGC cites to cases which have absolutely nothing to do with dues checkoff. Over the course of the last 50 years, the Board has had plenty of opportunities to make policy change and to clarify its holding in *Bethlehem Steel*. The fact that the Board has chosen not to do so supports the conclusion that it must have intended the general rule to apply regardless of any specific contractual language.

It is, in fact, logical, that since the Act provides that a union security provision expires upon contract expiration, the dues checkoff provision that implements that provision concurrently expires. Even the Ninth Circuit, after 15 years of litigation in which it thrice considered the interconnectedness of these two provisions agrees. Further, the Court found the distinction between right-to-work states and non-right-to-work states to be "crucial" in this regard. *Local Joint Executive Bd. of Las Vegas v. NLRB*, 657 F.3d 865, 875 (9th Cir. 2011). It explained that, "unlike in *Bethlehem Steel*, where the unilateral cessation of dues-checkoff merely terminated a contractual arrangement that individual employees and employers alike were compelled to accept, the unilateral cessation of check-off by the Employers in this case

stripped employees of a contractual right that they had expressly exercised by requesting dues-checkoff.” *Id.* The Court acknowledged that it understood "why the Board would treat dues-checkoff in the same manner as union security where both are present." *Id.* Thus, an appellate court that has had this issue before it three times understands and accepts the *Bethlehem Steel* rationale, based on the principle that "if union security provisions are limited by statute to the duration of an existing CBA, dues-checkoff provisions that 'implement [] the union-security provisions' are limited in the same manner." *Id.* (citing *Bethlehem Steel*, 136 NLRB at 1502).

The Ninth Circuit's conclusion in this regard applies to our facts, where the Respondents, located in Minnesota, a non-right-to-work state, ceased union dues deductions following expiration of a contract containing a union security clause providing for deduction of union dues. [See CBA, Exhibits D & F, ¶2 (“UNION SECURITY”)]. The AGC’s brief states, “The Acting General Counsel concedes that, under existing case law, discontinuation of dues checkoff after the expiration of the relevant collective-bargaining agreement is not a mandatory subject of bargaining.” [G.C. Brief, p. 5] Therefore, there is no basis whatsoever for finding discontinuance of dues checkoff upon contract expiration to be an unfair labor practice in violation of Sections 8(a)(1) and (5) of the Act.

**2. The AGC's Arguments For Overturning Fifty Years Of Precedent Are Unavailing And Based On Fallacy**

The AGC argues that the Board precedent, beginning with *Bethlehem Steel* and extending for 50 years should be overruled. The brief asserts numerous arguments to bolster the AGC’s position, all of which are unavailing and which ignore the fact that Sections 8(a)(3) and 302(c) of the Act treat dues checkoff as a creature of the contract distinct from wages, hours and other terms and conditions of employment. Further, the AGC’s argument that all other exceptions to

the unilateral change rule have a statutory basis is based on fallacy. Finally, the AGC ignores the fact that its rationale tramples on employees' Section 7 rights and the freedom of contract.

(a) The Act Supports Current Board Law

Under Section 8(a)(3) and Section 302(c)(4) of the Act, a union security arrangement is only lawful if there is a written collective bargaining agreement between an employer and a union and a dues deduction authorization signed by each affected employee. Section 8(a)(3)<sup>1</sup> allows an employer and a union to require all bargaining unit employees to join the union as a condition of employment. Section 302<sup>2</sup> prohibits any employer payments to unions, with enumerated exceptions, one of which is that the employer may do so pursuant to an employee's written wage assignment. Mandating that employees join the union as a condition of employment necessarily means that these employees will pay union dues. The two, union security and dues checkoff, are inexorably intertwined.

In its Brief, the AGC asserts that *Bethlehem Steel* is wrongly decided because it links the requirement that a union security provision be included in a written collective bargaining agreement to dues checkoff. [G.C. Brief, pp. 9-10] The AGC contends that Section 8(a)(3) only requires a collective bargaining agreement provision for union security and not for dues checkoff. The AGC also contends that Section 302(c)(4) only requires a written wage

---

<sup>1</sup> Section 8(a)(3) states, as relevant here, "nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement." 29 U.S.C. §158(a)(3).

<sup>2</sup> Section 302(c)(4) states, "It shall be unlawful for any employer or association of employers . . . to pay . . . any money or other thing of value . . . (2) to any labor organization . . . which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce . . . . It then enumerates exceptions to this prohibition, stating in relevant part, "The provisions of this section shall not be applicable . . . (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective bargaining agreement, whichever occurs sooner. . . ." 29 U.S.C. §186(c).

assignment but not a collective bargaining agreement. The AGC asserts that the Board has mistakenly combined these concepts. [G.C. Brief, pp. 12-14] But the *Bethlehem Steel* Board considered only the collective bargaining agreement requirement contained in Section 8(a)(3) and did not even address the Section 302(c)(4) written wage assignment provision. In *Bethlehem Steel*, the Board explained that union security and dues checkoff become terms and conditions of employment only by virtue of a collective bargaining agreement, unlike wages, benefits and hours, which are employment conditions regardless of contract existence. *Bethlehem Steel*, 136 NLRB at 1502. *See also, Hacienda III*, 355 NLRB No. 154, slip op at 4-5 (2010) (Members Schaumber and Hayes concurring). Section 302(c)(4)'s provision does not come into play until there is a collective bargaining agreement.

The AGC further contends that, "A few courts have misconstrued Section 302(c)(4) to prohibit checkoff in the absence of a current agreement between the employer and union." [G.C. Brief, p. 13] The courts the AGC cites, however, did not state that Section 302(c)(4) alone required a written collective bargaining agreement. Rather, they reached this conclusion by properly reading Section 8(a)(3) and Section 302(c)(4) together. And while the AGC cites *Tribune Publishing Co. v. NLRB*, 564 F.3d 1330, 1335 (D.C. Cir. 2009) for the proposition that Section 302(c)(4) does not require a written collective bargaining agreement, *Tribune Publishing Co.* addressed Section 302(c)(4) alone and did not address Section 8(a)(3).

The AGC further argues that dues checkoff does not merely implement union security because dues checkoff creates a wage assignment independent from a collective bargaining agreement that assigns a part of future wages to the union, and it must be revocable by the employee upon contract expiration and thus, can survive the expiration of a collective bargaining agreement. [G.C. Brief, p. 11] But the AGC misses the point. Pursuant to Section 302(c)(4),

when a collective bargaining agreement is expired, the wage assignment can continue beyond expiration unless revoked because of the wage assignment contract between the employee and the employer, which is separate and distinct from any obligations the employer has to the union under an expired dues deduction provision in a collective bargaining agreement. The logical reason Section 302(c)(4) requires that the wage assignment be revocable upon contract expiration is that once the contract expires, the wage assignment is no longer compelled by the collective bargaining agreement but the separate and distinct wage assignment contract between the employee and employer continues. While the employee arguably may have a cause of action against an employer for ceasing such union dues deductions after contract expiration, the union has none because when a collective bargaining agreement includes both a union security and dues checkoff provision, the dues checkoff provision serves to implement the union security provision. *Bethlehem Steel*, 136 NLRB at 1502.

The AGC also cites Board and Courts of Appeals decisions to support the contention that dues checkoff is an administrative convenience for dues collection rather than a union security device. [G.C. Brief, p. 11] Two of the cases the AGC cites, *Shen-Mar Food Products, Inc.*, 221 NLRB 1329, 1330 (1976), *enfd. as modified* 557 F.2d 396 (4th Cir. 1977) and *NLRB v. Atlanta Printing Specialties and Paper Products Union 527, AFL-CIO*, 523 F.2d 783, 786 (5th Cir. 1975) both arise in right-to-work states; thus, dues checkoff could not have been a means to implement union security.<sup>3</sup> In the third case, *American Nurses' Association*, 250 NLRB 1324, 324 n.1 (1980), the cited footnote stating that, "union security and dues checkoff are distinct and separate matters" is in the context of employees revoking their dues checkoff authorizations and the Board's determination that such actions did not constitute resignation from the union. *See id.*

---

<sup>3</sup> *Shen-Mar* arose in Virginia and *Atlanta Printing* arose in Georgia.

at 1328. Thus, the cited footnote does not address (nor is it analogous to) the circumstances that exist here.

Further, while the United States Supreme Court has not decided whether checkoff survives contract expiration, it has recognized this statutorily based principle. *See Litton Business Systems v. NLRB*, 501 U.S. 190 (1991), in which the Court, citing specifically to Section 302(c)(4) and to *Indiana & Michigan Electric*, 284 NLRB 53, 55 (1987),<sup>4</sup> stated, "[I]t is the Board's view that union security and dues check-off provisions are excluded from the unilateral change doctrine because of statutory provisions which permit these obligations only when specified by the express terms of a collective-bargaining agreement."

(b) The AGC's Argument That All Other Exceptions To The Unilateral Change Rule Have A Statutory Basis Is Based On Fallacy

The AGC argues that all exceptions to the unilateral change rule other than checkoff are creatures of contract due to a statutory mandate or the contractual surrender of a statutory right. [G.C. Brief, p. 15] This argument is based on a fallacy. Though mandatory subjects of bargaining, arbitration, union security and dues checkoff are all creatures of case law, not obligations placed on the employer by statute. Even under a "closed shop," when an employer agrees to collect dues for the union, it is surrendering a right (or agreeing to something which it is not bound by statute to do), similar to an agreement to adopt an arbitration clause or a union security clause. However, even if the Board were to accept as true the AGC's argument that all

---

<sup>4</sup> In *Indiana & Michigan*, the Board stated, that the exception to the *Katz* doctrine is "based on the fact, noted in *Bethlehem Steel*, that '[t]he acquisition and maintenance of union membership cannot be made a condition of employment except under a contract which conforms to the proviso to Section 8(a)(3).' This term and condition is thus inherently and solely a contractual matter, and an employer's refusal to enforce a union-security provision without a proper contractual basis is 'in accordance with the mandate of the Act.' 136 NLRB at 1502."

other exceptions to the unilateral change rule have a statutory basis, the same would apply to union security and, by extension, dues checkoff. *See Bethlehem Steel*, 136 NLRB at 1502.

(c) Requiring Post-Expiration Dues Checkoff Tramples Employees' Section 7 Rights And Infringes Respondents' Freedom Of Contract

Section 7 of the Act affords to employees the right to assist a labor organization financially and the right to refrain from doing so. 29 U.S.C. §157.<sup>5</sup> The Section 8(a)(3) proviso is an exception to Section 7's prohibition against coerced union assistance, but that is limited to financial support in the form of dues and fees. *Communication Workers v. Beck*, 487 U.S. 735 (1988). Section 302(c)(4) reinforces employees' Section 7 and Section 8(a)(3) rights by requiring a specific written authorization that is not irrevocable beyond the collective bargaining agreement's termination date. *See IBEW Local No. 2088*, 302 NLRB 322, 328 (1991) (holding a dues checkoff clause making checkoff irrevocable for successive annual periods violated employees' Section 7 rights); *US. Can*, 984 F.2d at 869 ("[T]he requirement to join the union (or pay dues to it) coerces employees in a way forbidden by 29 U.S.C. §158(a)(3)."). Consistent with their Section 7 rights, employees who do not pay union dues post-expiration exercise their statutory right to refrain from assisting the Union financially. Respondents similarly have acted according to existing Board law. Such actions were consistent with one of the fundamental policies of the Act — the freedom of contract. *H.K Porter, Co.*, 397 U.S. 99, 108 (1970).

---

<sup>5</sup> Section 7 of the Act provides: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)." 29 U.S.C. §157.

3. **The Board Should Uphold Bethlehem Steel Under Principles Of Stare Decisis**

While the AGC advocates overturning *Bethlehem Steel*, principles of *stare decisis* require that the Board deny its Motion and dismiss these cases. The doctrine of *stare decisis* requires that once a court or administrative agency decides a question of law, it creates a precedent that should be followed in subsequent cases. The Board should consider *stare decisis* in all cases applying Board precedent because "there are values that are inherent in the doctrine of *stare decisis*. These values include stability, predictability, and certainty of the law. In the context of labor relations law, these values are outweighed only upon a clear showing that extant law is contrary to statutory principles, disruptive to industrial stability, or confusing." *Levitz Furniture Co. of the Pacific, Inc.*, 333 NLRB 717, 731 (2001) (Member Hurtgen concurring).

The Board should uphold the principle of *stare decisis* in this case because doing so upholds the important values of stability, predictability and certainty of law. The *Bethlehem Steel* rule has been in effect for 50 years and has provided stability, predictability and certainty of law with respect to the negotiation, implementation and cessation of dues checkoff provisions. Nothing about it is confusing — when the contract expires, the dues checkoff provision expires. *Bethlehem Steel's* progeny have reinforced these principles. Nothing in *Bethlehem Steel* contradicts the Act. To the contrary, *Bethlehem Steel's* rule is consistent with the Act's fundamental principles of independence, freedom of contract, and employee free choice.

Changing this rule after 50 years of precedent would disrupt industrial stability. Parties that have negotiated dues checkoff provisions with the understanding that they will expire upon contract expiration will have lost the benefit of their bargain. In successor contract negotiations, employers will propose eliminating dues checkoff to protect their ability to cease dues checkoff upon bargaining impasse and will stop agreeing to dues checkoff provisions during bargaining

for new contracts because they would continue beyond contract expiration, impeding bargaining for both new and successor contracts. When considering the wisdom of seeking to overturn *Bethlehem Steel*, the AGC should be mindful of the adverse ramifications that would follow on the heels of its desired result.

**B. THE ACT DOES NOT SUPPORT STRIPPING RESPONDENTS OF DISCONTINUANCE OF DUES DEDUCTIONS UPON CONTRACT EXPIRATION AS AN ECONOMIC WEAPON**

Elimination of dues deduction upon contract expiration as an economic weapon remains proper. "The Act is premised on the view that in arms-length economic relationships, there can be areas of conflict between employers and employees that, if the parties cannot reach agreement, can be resolved through a contest of economic strength in the collective-bargaining process if the employees choose to bargain collectively." *Brevard Achievement Center, Inc.*, 342 NLRB 982, 985 (2004). The Board may not "pass judgment on the legitimacy of any particular economic weapon used in support of genuine negotiations." *NLRB v. Katz*, 369 U.S. at 747 (citing *NLRB v. Insurance Agents*, 361 U.S. 477 (1960)). The United States Supreme Court recognized in *NLRB v. Brown*, 380 U.S. 278 (1965), that in the absence of proven unlawful motivation, an employer may use economic weapons to interfere in some measure with concerted employee activities, or which, in some manner, discourage union membership, and yet Section 8(a)(1) and Section 8(a)(3) do not prohibit their use.

Again, we must examine the facts in this case. Respondents notified the Local Union that it intended to cease any dues deductions upon CBA expiration. [See Exhibit H] The Board has not prohibited employers from using cessation of dues deduction as an economic weapon. In fact, it is a lawful economic weapon when, as in this case, it is used in conjunction with lawful bargaining (or, to put it differently, in the absence of any evidence of unlawful bargaining). *See*

Member Schaumber and Member Hayes's *Hacienda III* concurrence, in which they state, "[A]n employer's ability to cease dues checkoff upon contract expiration has become a recognized economic weapon in the context of bargaining for a successor agreement," and, "To strip employers of that [weapon] would significantly alter the playing field that labor and management have come to know and expect." *Hacienda III*, 355 NLRB No. 154, slip op. at 5, citing *NLRB v. Insurance Agents*, 361 U.S. 477, 489 (1960). Chairman Liebman and Member Pearce, in their concurring opinion, affirmed that an employer lawfully may use this economic weapon provided it is engaged in lawful bargaining. *Hacienda III*, 355 NLRB No. 154, slip. op. at 3.

The AGC concedes that, "under existing case law, discontinuation of dues checkoff after the expiration of the relevant collective-bargaining agreement is not a mandatory subject of bargaining." [G.C. Brief, p. 5] Accordingly, there is no basis for finding discontinuance of dues checkoff upon contract expiration to be an unfair labor practice in violation of Sections 8(a)(1) and (5) of the Act. Therefore, the Act does not support stripping Respondents of this proper economic weapon.

### **C. THE BOARD SHOULD DENY THE AGC'S REMEDIAL ORDER**

The AGC seeks a severe and punitive remedial order, which is entirely inappropriate given that Respondents' actions were entirely consistent with the CBA language and precedent established in *Bethlehem Steel* and its progeny. The AGC heavy-handedly requests that the Board order Respondents to reimburse the Union with interest out of its own funds for loss of dues where employees have individually signed valid dues checkoff authorizations. [G.C. Brief, p. 20]

First, retroactively applying its position overruling *Bethlehem Steel* would create a "manifest injustice" against Respondents that should not be permitted. *See Wal-Mart Stores, Inc.*,

351 NLRB 130, 134 (2007) (quoting *SNE Enterprises, Inc.*, 344 NLRB 673 (2005)). When determining whether retroactively applying a change to established law will cause "manifest injustice," the Board considers "the reliance of the parties on preexisting law, the effect of retroactivity on accomplishment of the purposes of the Act, and any particular injustice arising from retroactive application." *Wal-Mart Stores, Inc.* 351 NLRB at 134. Respondents clearly relied on the 50 years of precedent *Bethlehem Steel* and its progeny set forth when it decided to cease union dues deductions. In addition, retroactively applying a change in the law concerning dues deduction upon contract expiration will negatively affect the Board's ability to further the Act's purposes. As Board Members Liebman and Walsh stated in their dissent in *NLRB v. Dana Corporation*, 351 NLRB 434, 444, (2007), *overruled on other grounds*, "[t]he ultimate object of the National Labor Relations Act, as the Supreme Court has repeatedly stated, is 'industrial peace.' The Board seeks to maximize and balance two sometimes competing goals, 'preserving a free employee choice of bargaining representatives, and encouraging the collective-bargaining process.'" *Id.* Allowing retroactive application to this case would only disrupt and negatively affect the employees' Section 7 free choice to the extent they have chosen not to continue to support the Union financially.

Second, the remedy the AGC seeks is not a remedy, but a punishment. "While the Act gives the Board broad discretion when it comes to fashioning remedies for unfair labor practices, the operative word is 'remedies,' and Board orders which are merely punitive in character will be struck down for that reason." *Miramar Hotel Corporation d/b/a Miramar Sheraton Hotel*, 336 NLRB 1203, 1243 (2001) (citing *Republic Steel Corp.*, 311 U.S. 7, 11-12 (1940)). Additionally, Section 302(c)(4) is the provision that allows an employer to deduct union dues from employees' wages and remit them to their exclusive collective bargaining representative. But the Act does

not provide for these monies to be paid by the employer or any other party. Section 302(c)(4) is designed to ensure that the employees, not the employer or the union, expresses their desire to pay union dues. If the Board retroactively applies dues deduction by requiring Respondents to pay union dues to the Union in this case, such actions will be punitive and inconsistent with the principles of the Act.

Finally, the precedent on which Respondent relied is 50 years old. Nothing had changed with respect to the *Bethlehem Steel* principles during that 50-year period, including during the last 20 years when the Board has considered its *Hacienda I, II and III* decisions. And the dissents in these cases did not put Respondent on notice that *Bethlehem Steel* was no longer good law; to the contrary, *Bethlehem Steel* is the law. In addition, in *Levitz Furniture Company of the Pacific, Inc.*, 333 NLRB 717, 729 (2001), the Board expressly declined to retroactively apply a new standard concerning unilateral withdrawal of recognition, explaining that employers did not have "adequate warning" of the change in Board law. Accordingly, the Board should decline to apply retroactively any change in the law until those affected have been given sufficient notice.

### **CONCLUSION**

For the foregoing reasons, the Board should grant Respondents' motion for summary judgment and dismiss Case Nos. 18-CA-081449 and 18-CA-081459.

Respectfully submitted,



R. Scott Summers  
Laura B. Grubbs  
Dinsmore & Shohl, LLP  
101 South Fifth Street, Suite 2500  
Louisville, KY 40202  
Phone 502-581-8000  
Scott.summers@dinsmore.com  
Laura.grubbs@dinsmore.com  
*Counsel for Respondents*

**CERTIFICATE OF SERVICE**

I hereby certify that the original of the foregoing was served and filed using the NLRB's website on the 17<sup>th</sup> day of September, 2012, on:

Marlin O. Osthus, Regional Director  
Region 18  
National Labor Relations Board  
330 South Second Avenue, Suite 790  
Minneapolis, Minnesota 55401

and a copy was also served, via electronic mail on the 19<sup>th</sup> day of September, 2012, on:

Service Employees International Union  
Healthcare Local Minnesota, Local 113  
345 Randolph Ave., Ste 100  
Saint Paul, MN 55102-3610

Adam D. Case, Attorney  
Miller O'Brien Cummins PLLP  
One Financial Plaza, Ste 2400  
120 South 6<sup>th</sup> Street  
Minneapolis, MH 55402-1809



*Counsel for Respondents*

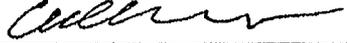
# EXHIBIT A

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 18-CA-081459	Date Filed May 21, 2012

**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Lake Ridge Golden Living Center Nursing Home	b. Tel. No. 330-980-5388 c. Cell No. 479-201-0642 f. Fax No. g. e-Mail scott.norton@goldenliving.co h. Number of workers employed Around 130
d. Address (Street, city, state, and ZIP code) 2727 North Victoria St. Roseville, MN 55113	e. Employer Representative Scott Norton VPHR
i. Type of Establishment (factory, mine, wholesaler, etc.) Nursing Home	j. Identify principal product or service Health Care
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 5 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Since approximately April, 2012 the Employer has unilaterally changed a term and condition of employment without the union's consent or a bona fide impasse by discontinuing voluntary dues check off.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Service Employees International Union Healthcare Minnesota (Local 113)	
4a. Address (Street and number, city, state, and ZIP code) 345 Randolph Ave. Suite 100 St. Paul, MN 55102	4b. Tel. No. 651-294-8122 4c. Cell No. 4d. Fax No. 651-284-8200 4e. e-Mail jgulley@seiu113.com
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) Service Employees International Union	
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  (signature of representative or person making charge)	Adam D. Case (Print type name and title or office, if any)
Address 120 South Sixth St. Suite 2400 Minneapolis, MN 55402	Tel. No. 612-333-5831 Office, if any, Cell No. Fax No. 612-342-2613 e-Mail acase@m-o-c-law.com
05/21/12 (date)	

WILLFUL FALSE STATEMENTS ON THIS CHARGE 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.

# **EXHIBIT B**

INTERNET  
FORM NLRB-601  
(2-08)

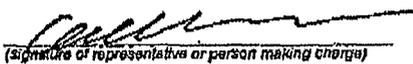
UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 41 U.S.C. § 3612

DO NOT WRITE IN THIS SPACE	
Case 18-CA-081449	Date Filed May 21, 2012

**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practices occurred or is occurring.

<b>1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT</b>	
a. Name of Employer Excelsior Golden Living Center	b. Tel. No. 330-980-6388 c. Cell No. 479-201-0642 f. Fax No. g. e-Mail scott.norton@goldenliving.co h. Number of workers employed
d. Address (Street, city, state, and ZIP code) 515 Division Street Excelsior, MN 55331	e. Employer Representative Scott Norton VPHR
i. Type of Establishment (factory, mine, wholesaler, etc.) Nursing Home	j. Identify principal product or service Health Care
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 5 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Since approximately April, 2012 the Employer has unilaterally changed a term and condition of employment without the union's consent or a bona fide impasse by discontinuing voluntary dues check off.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Service Employees International Union Healthcare Minnesota (Local 113)	
4a. Address (Street and number, city, state, and ZIP code) 345 Randolph Ave. Suite 100 St. Paul, MN 55102	4b. Tel. No. 651-294-8122 4c. Cell No. 4d. Fax No. 651-284-8200 4e. e-Mail jgulle@seiu113.com
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) Service Employees International Union	
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  (signature of representative or person making charge)	Adam D. Case (Print type name and title or office, if any)
Address 120 South Sixth St. Suite 2400 Minneapolis, MN 55402	Tel. No. 612-333-5831 Office, if any, Cell No. Fax No. 612-342-2613 e-Mail aacase@m-c-law.com
05/21/12 (date)	

**WILLFUL FALSE STATEMENTS ON THIS CHARGE 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.

# EXHIBIT C

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION EIGHTEEN

EXCELSIOR GOLDEN LIVING CENTER

and

Case 18-CA-081449

SERVICE EMPLOYEES INTERNATIONAL UNION  
HEALTHCARE MINNESOTA (LOCAL 113)

GGNSC ST. PAUL RIDGE LLC, d/b/a GOLDEN LIVING  
CENTER – LAKE RIDGE HEALTH CARE CENTER

and

Case 18-CA-081459

SERVICE EMPLOYEES INTERNATIONAL UNION  
HEALTHCARE MINNESOTA (LOCAL 113)

**ORDER CONSOLIDATING CASES,  
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board), and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 18-CA-081449, which is based on a charge filed by Service Employees International Union Healthcare Minnesota (Local 113) a/k/a SEIU Healthcare Minnesota, herein called the Union, against Excelsior Golden Living Center (Respondent Excelsior), and Case 18-CA-081459, which is based on a charge filed by the Union against Lake Ridge Golden Living Center Nursing Home, herein described by

its correct name GGNSC St. Paul Ridge LLC, d/b/a Golden Living Center – Lake Ridge Health Care Center and hereinafter called Respondent Lake Ridge, (collectively, Respondents), are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act) and Section 102.15 of the Board's Rules and Regulations and alleges Respondents have violated the Act by engaging in the following unfair labor practices:

1.(a) The charge in Case 18-CA-081449 was filed by the Union on May 21, 2012, and a copy was served by regular mail on Respondent Excelsior on about that same date.

(b) The charge in Case 18-CA-081459 was filed by the Union on May 21, 2012, and a copy was served by regular mail on Respondent Lake Ridge on about that same date.

2.(a) At all material times, Respondent Excelsior has been a corporation with an office and place of business in Excelsior, Minnesota, and has been engaged in the operation of a nursing home.

(b) In conducting its operations described above in subparagraph (a), during the calendar year ending December 31, 2011, Respondent Excelsior derived gross revenues in excess of \$100,000.

(c) In conducting its operations described above in subparagraph (a), during the calendar year ending December 31, 2011, Respondent Excelsior purchased and

received at its Excelsior, Minnesota facility products, goods and materials valued in excess of \$5,000 directly from suppliers located outside the State of Minnesota.

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

3.(a) At all material times, Respondent Lake Ridge has been a corporation with an office and place of business in Roseville, Minnesota, and has been engaged in the operation of a nursing home.

(b) In conducting its operations described above in subparagraph (a), during the calendar year ending December 31, 2011, Respondent Lake Ridge derived gross revenues in excess of \$100,000.

(c) In conducting its operations described above in subparagraph (a), during the calendar year ending December 31, 2011, Respondent Lake Ridge purchased and received at its Roseville, Minnesota facility products, goods and materials valued in excess of \$5,000 directly from suppliers located outside the State of Minnesota.

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

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

5. At all material times, ~~Scott Norton~~, Vice President of Labor & Employment has been an agent of Respondents within the meaning of Section 2(13) of the Act.

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

All full-time and regular part-time registered nurses and licensed practical nurses employed by Respondent Excelsior at its Excelsior, Minnesota facility; excluding managerial employees, office clerical employees, all other employees, temporary and casual employees, guards and supervisors as defined in the Act, and specifically excluding the resident care coordinator.

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

All non-professional employees employed by Respondent Excelsior at its Excelsior, Minnesota facility; excluding registered nurses, licensed practical nurses, managerial employees, office/clerical employees, temporary employees, guards and supervisors as defined in the NLRA.

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

All full time and regular part-time and casual non-professional employees employed by Respondent Lake Ridge at its Roseville, Minnesota facility, including certified nursing assistants, trained medication aides, housekeeping aides, kitchen aides, maintenance, cooks, activity assistants, activity aides, laundry aides, adult day program aides, transport aides, therapeutic recreation specialists, music therapists, and store clerks; excluding, managerial employees, office clerical employees, all other employees, guards and supervisors as defined in the National Labor Relations Act.

(d) At all material times, Respondent Excelsior has recognized the Union as the exclusive collective-bargaining representative of the Excelsior Nurses Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from December 1, 2009 through November 30, 2011, thereafter extended through January 31, 2012, by a Letter of Understanding between the Union and Respondent Excelsior.

(e) At all material times, Respondent Excelsior has recognized the Union as the exclusive collective-bargaining representative of the Excelsior Non-Professional Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from December 1, 2009 through November 30, 2011, thereafter extended through January 31, 2012 by a Letter of Understanding between the Union and Respondent Excelsior.

(f) At all material times, Respondent Lake Ridge has recognized the Union as the exclusive collective-bargaining representative of the Lake Ridge Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from September 1, 2010 through October 1, 2011, thereafter extended through January 31, 2012 by a Letter of Understanding between the Union and Respondent Lake Ridge.

---

(g) At all times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the three Units described above in subparagraphs (a) through (c).

7. Each of the collective bargaining agreements described above in subparagraphs (d) through (f) of paragraph 6 includes identical language regarding Respondents' obligations to deduct Union dues from the wages of employees in the Units described above in subparagraphs (a) through (c). The relevant language is as follows:

The Employer agrees to deduct Union dues and initiation fees, or comparable enrollment and service fees for employees electing not to become Union members, from the wages of employees who voluntarily provide the Employer with a written authorization to make such deductions. The written authorization shall not be irrevocable for a period of more than one (1) year or beyond the termination date of this

Agreement, whichever occurs sooner. Deductions shall be made from the wages of employees in the first (1<sup>st</sup>) pay period of the month in which the payment is due. Withheld amounts will be forwarded to the Union by the tenth (10<sup>th</sup>) day of the month following the actual withholding, together with a record for the amount, social security number, and name of those for who such deductions have been made.

8.(a) By letter dated March 14, 2012, Respondents notified the Union that they would cease deducting Union dues after March 2012 for the three Units described above in subparagraphs (a) through (c) of paragraph 6.

(b) Effective about April, 2012, Respondents ceased deducting Union dues from the pay of the employees in the three Units described above in subparagraphs (a) through (c) of paragraph 6.

(c) The subject set forth above in subparagraphs (a) and (b) relates to wages, hours, and other terms and conditions of employment of the employees in the three Units described above in subparagraphs (a) through (c) of paragraph 6 and is a mandatory subject for the purposes of collective bargaining.

(d) Respondents engaged in the conduct described above in subparagraphs (a) and (b) without affording the Union an opportunity to bargain with Respondents with respect to this conduct.

9. By the conduct described above in paragraph 8, Respondents have been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in the Units described above in subparagraphs (a) through (c) of paragraph 6, in violation of Section 8(a)(1) and (5) of the Act.

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

---

As part of the remedy for the unfair labor practices alleged above in paragraphs 8 and 9, the Acting General Counsel seeks an Order requiring that Respondents retroactively give effect to the dues-check-off provision quoted above in paragraph 7 and contained in the collective bargaining agreements described above in subparagraphs (d) through (f) of paragraph 6, and to reimburse the Union for any and all monies lost by the Union because of Respondents' conduct described above in paragraph 8. In addition, the Acting General Counsel seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

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 consolidated complaint. The answer must be **received by this office on or before June 27, 2012, or postmarked on or before June 26, 2012.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://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 still 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 a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

#### **NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on ~~August 2, 2012~~, at 1:00 p.m., in the NLRB Hearing Room, 330 South 2<sup>nd</sup> Avenue, Suite 790, Minneapolis, Minnesota, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Minneapolis, Minnesota, this 13th day of June, 2012.

/s/ Marlin O. Osthus

Marlin O. Osthus, Regional Director  
Region 18  
National Labor Relations Board  
330 South Second Avenue, Suite 790  
Minneapolis, Minnesota 55401

Attachments

# **EXHIBIT D**

# Collective Bargaining Agreement

between

Excelsior Golden Living Center

and

SEIU Healthcare Minnesota  
Service & Maintenance



Effective  
December 1, 2009  
through  
November 30, 2011

## PREAMBLE

This Agreement, made and entered by and **Excelsior Golden Living Center**, , 515 Division Street, Excelsior, Minnesota (hereinafter referred to as the "Employer") and its successors and Minnesota's Health Care Union, **SEIU Healthcare Minnesota** (hereinafter referred to as the "Union").

### 1. RECOGNITION

The Union shall be the sole representative of all the non-professional employees of said Employer in the classifications set forth in the appendix hereof and within the bargaining unit certified by the National Labor Relations Board (18-RC-8352), or previously agreed upon by the parties excluding RNs, LPNs, managerial employees, office/clerical employees, temporary employees, guards and supervisors as defined in the NLRA.

#### 1.1 Classification or Title Change

In the event that any new or different non-professional classification or title not specified in the appendix hereof is established and such classification or title is not specifically excluded by the certification in Article 1, then the Union shall nevertheless, be the sole representative of said employee, the employee shall be included within the terms and conditions of this Agreement, the wage rate of such classification or title shall be negotiated by the Employer and the Union and the rate agreed upon become part of this Agreement as of the date such classification or title was established, if (1) the new or different classification or title as of the date of its establishment involves functions and duties identical to those pertaining to an existing classification or title, or (2) the new or different classification or title as of the date of its establishment involves functions substantially similar in their nature, character and scope to those performed in whole or in part in an existing classification or title as that existing classification or title existed prior to the creation of the new or different classification or title.

#### 1.2 No Change to Defeat Contract

No classification or title shall be changed or new classification or title created to defeat the spirit of this Agreement. No classification or title shall be changed or created and no employee transferred or promoted, either to positions covered by this Agreement or outside it except upon at least ten (10) days written notice to the Union prior to the effective date of the same, which notice shall specify in detail the proposed change, establishment, transfer or promotion. In case of emergency staffing situations the ten day notice requirement will be waived.

#### 1.3 Nondiscrimination

No employee covered by this Agreement shall be discriminated against because of membership in the Union or activities on behalf of the Union. Neither the Employer nor the

Union shall discriminate against any employee covered by this Agreement on account of race, color, religious creed, national origin, age, sex, sexual orientation or handicap.

#### 1.4 No Contradictory Rule

The Employer agrees not to enter into any agreement or contract with its employees including TMA's (who are in the classifications herein noted), either individually or collectively, which conflicts with any of the provisions of this contract. No statement or rule shall be made or established by the Employer or the Union which conflicts with or contradicts any of the provisions of this contract. The Employer shall have the right to make and enforce reasonable rules.

#### 1.5 Stewards

The Employer recognizes the right of the Union to elect or select from employees who are members of the Union, a job steward to handle such routine Union business as may from time to time be delegated to him/her by the Union in connection with this collective bargaining relationship. The name of such job stewards shall be furnished in writing to the Employer, and any changes in stewards shall be reported to the Employer in writing. In addition to the above stewards, the Employer also agrees to recognize the Business Agents of the Union as the proper authority to adjust with the Employer any controversy between the parties to the Contract as to the meaning and application of the provisions of this Agreement. Business shall be conducted on non-work time and in non-work areas.

The Employer shall make time available during the orientation process for a steward to provide information to new employees. The Employer and Union agree to cooperate when scheduling this activity.

It is the philosophy of labor and management that a cooperative relationship is in the best interest of the parties. To this extent, stewards shall be allowed adequate time on the clock to investigate issues that could lead to or are grievances or to attend labor/management or grievance meetings with prior approval of the supervisor in an effort to resolve problems expediently.

## 2. UNION SECURITY

2.1 There is a Collective Bargaining Agreement between the Employer and SEIU Healthcare, Minnesota's Union covering wages, hours of work, and other terms and conditions of employment. The Collective Bargaining Agreement provides that the Union is the sole representative for the classification of work for which the Employee is hired. After completion of ninety (90) calendar days of employment, the Collective Bargaining Agreement provides the Employee with the following two choices:

1. Employees may elect to become a Union member and participate fully in the affairs of the Union by paying an initiation fee and monthly dues.
2. Employees may choose not to become a Union member and pay a service fee and monthly fees. These employees shall not be able to attend membership meetings or participate in contract negotiations.

At the time of employment, a new employee who shall be subject to this Agreement shall be informed of this by the Employer and the Union.

It is the Employee's responsibility and a condition of employment to ensure that payments to the Union are made on a timely basis. The Collective Bargaining Agreement provides that Employees may voluntarily elect to have Union dues and fees deducted from their checks and sent to the Union.

2.2 All employees covered by this Agreement who are now or may hereafter become members of the Union shall during the life of this Agreement, remain members of the Union in good standing as a condition of employment. "In good standing", for the purposes of this Agreement, is defined to mean the payment of a standard initiation fee and standard regular monthly dues, uniformly required as a condition of acquiring or retaining membership in the Union.

Employees covered by this Agreement who elect not to become Union members shall pay to the Union an enrollment fee in an amount equal to the standard initiation fee paid by Employees who become Union members and a monthly service fee equal to the standard monthly dues paid by Union members. This payment in no event shall exceed the regular monthly Union dues paid by Union members working an equivalent number of hours.

Payments required by this section shall be made only after an Employee has completed ninety (90) days of employment. The fee required by paragraph one shall be due and payable upon the ninety-first (91<sup>st</sup>) day of employment and must be paid within ten (10) days thereafter. Monthly payments required by paragraph two are due and payable the first (1<sup>st</sup>) day of the month following the completion of ninety (90) days of employment and shall be paid by the tenth (10<sup>th</sup>) day of each month.

Any employee who is delinquent in making payments of the Collective Bargaining Fee required herein, for more than thirty (30) days, shall be subject to termination by the Employer. The Union shall provide written notice to such employee of the delinquency and provide the employee with sufficient opportunity to correct the delinquency. The Union shall provide copies to the Employer of any warning notice sent to such employee, a reasonable time prior to any demand for discharge for non-payment and the employer shall have a reasonable time within which to discuss the obligations with the employee before discharge actually occurs. The Union shall save the Employer harmless from any claims of an employee so terminated under this Article.

2.3 The Employer agrees to deduct Union dues and initiation fees, or comparable enrollment and service fees, for employees electing not to become Union members, from the wages of employees who voluntarily provide the Employer with a written authorization to make such deductions. The written authorization shall not be irrevocable for a period of more than one (1) year or beyond the termination date of this Agreement, whichever occurs sooner. Deductions shall be made from the wages of employees in the first (1<sup>st</sup>) pay period of the month in which the payment is due. Withheld amounts will be forwarded to the Union by the tenth (10<sup>th</sup>) day of the month following the actual withholding, together with a record for the amount, social security number, and name of those for who such deductions have been made.

In the event no wages are due the employee or that they are insufficient to cover the required deduction, the deduction for such month will nevertheless be made from the first wages of adequate amount next due the employee and will thereupon be transmitted to the Union.

The Union agrees to promptly refund any dues found to have been improperly deducted and transmitted to the Union.

#### 2.4 Employee Lists

Each month, the Employer will send the Union a list with the following information:

- New Hires: name, hire date, address, phone number, classification, rate of pay, social security number and number of hours worked per pay period.
- Non-Contract: name, social security number, date of job transfer, position the employee is transferring from and into, new hire information if the employee is transferring into the bargaining unit.
- Terminated Employees: name, termination date, classification and social security number.
- Employees on Leave of Absence: name, date leave begins, date of return and social security number.
- Changes: name changes, address changes, phone number changes, change in hours per pay period, change in classification, any other changes affecting Union membership or dues, and social security number.
- Hourly Reports: monthly lists of all employees in the bargaining unit with actual hours worked by pay period/month, along with name, social security number and period the hours cover.
- Seniority List: one list of all employees in the bargaining unit by seniority with compensated hours and one list alphabetically to be sent two times per year – January and July.

2.5 The Employer shall work with the Union to process dues and reporting of hours via media.

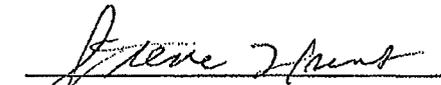
29. CONTRACT DURATION

This Agreement shall become effective on December 1, 2009, and shall continue in full force and effect through November 30, 2011. It shall be automatically renewed from year to year thereafter unless either party gives written notice of a desire to modify, amend or terminate it at least ninety (90) days, but no more than one hundred twenty (120) days prior to November 30, 2011 or any November 30 thereafter if it is automatically renewed.

This Agreement shall be reopened effective December 1, 2010 for wages and the No - Strike - No Lockout Article.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives indicated below, on the dates so indicated.

  
\_\_\_\_\_  
Excelsior Golden Living Center

  
\_\_\_\_\_  
SEIU Healthcare Minnesota

\_\_\_\_\_  
Excelsior Golden Living Center

3-19-10  
Date

3/8/10  
Date

# Collective Bargaining Agreement

between

Golden Living Center, Excelsior

and

SEIU Healthcare Minnesota  
Nurses



Effective  
December 1, 2009  
through  
November 30, 2011

## **1. AGREEMENT**

This Agreement is made and entered into by and between Beverly Enterprises, Inc. Minnesota, doing business as **Excelsior Golden Living Center**, 515 Division Street, Excelsior, Minnesota (hereinafter referred to as the "Employer") and Minnesota's Health Care Union, **SEIU Healthcare Minnesota** (hereinafter referred to as the "Union").

## **2. RECOGNITION**

The Employer recognizes the Union as the sole representative of its regularly scheduled professional employees in the bargaining unit certified by the National Labor Relations Board in Case Numbers 18 RC 136 72 and 18 RC 136 73; said bargaining unit includes all full-time and regular part-time registered nurses and licensed practical nurses employed by the Employer at its Excelsior, Minnesota facility; excluding managerial employees, office clerical employees, all other employees, temporary and casual employees, guards and supervisors as defined in the Act, and specifically excluding the resident care coordinator. Such recognition is mutually made for the express purpose of collective bargaining with respect to the hours of labor, rates of pay and working conditions herein specified.

### **2.1 NO CHANGE TO DEFEAT CONTRACT**

No classification or title shall be changed or new classification or title created to defeat the spirit of this Agreement. The Employer agrees to notify the Union promptly of all changes or additions in classifications or titles whenever possible, notice shall be in writing and given no later than five (5) days prior to implementation.

### **2.2 NONDISCRIMINATION**

No employee covered by this Agreement shall be discriminated against because of membership in the Union or activities on behalf of the Union. Neither the Employer nor the Union shall discriminate against any employee covered by this Agreement on account of race, color, religious creed, national origin, age, sex, sexual orientation or handicap.

### **2.3 NO CONTRADICTORY RULE**

The Employer agrees not to enter into any agreement or contract with its employees (who are in the classifications herein noted), either individually or collectively, which conflicts with any of the provisions of this contract. No statement or rule shall be made or established by the Employer or the Union which conflicts with or contradicts any of the provisions of this contract. The Employer shall have the right to make and enforce reasonable rules in accordance with Article IV.

### 3. UNION SECURITY

3.1 There is a Collective Bargaining Agreement Between the Employer and SEIU Healthcare Minnesota, Minnesota's Health Care Union, covering wages, hours of work, and other terms and conditions of employment. The Collective Bargaining Agreement provides that the Union is the sole representative for the classification of work for which the Employee is hired. After completion of ninety (90) calendar days of employment, the Collective Bargaining Agreement provides the Employee with the following two choices:

1. Employees may elect to become a Union member and participate fully in the affairs of the Union by paying an initiation fee and monthly dues.
2. Employees may choose not to become a Union member and pay a service fee and monthly fees. These employees shall not be able to attend membership meetings or participate in contract negotiations.

At the time of employment, a new employee who shall be subject to this Agreement shall be informed of this by the Employer and the Union.

It is the Employee's responsibility and a condition of employment to ensure that payments to the Union are made on a timely basis. The Collective Bargaining Agreement provides that Employees may voluntarily elect to have Union dues and fees deducted from their checks and sent to the Union.

3.2 All employees covered by this Agreement who are now or may hereafter become members of the Union shall during the life of this Agreement, remain members of the Union in good standing as a condition of employment. "In good standing", for the purposes of this Agreement, is defined to mean the payment of a standard initiation fee and standard regular monthly dues, uniformly required as a condition of acquiring or retaining membership in the Union.

Employees covered by this Agreement who elect not to become Union members shall pay to the Union an enrollment fee in an amount equal to the standard initiation fee paid by Employees who become Union members and a monthly service fee equal to the standard monthly dues paid by Union members. This payment in no event shall exceed the regular monthly Union dues paid by Union members working an equivalent number of hours.

Payments required by this section shall be made only after an Employee has completed ninety (90) days of employment. The fee required by paragraph one shall be due and payable upon the ninety-first (91) day of employment and must be paid within ten (10) days thereafter. Monthly payments required by paragraph two are due and payable the first (1<sup>st</sup>) day of the month following the completion of ninety (90) days of employment and shall be paid by the tenth (10<sup>th</sup>) day of each month.

Any employee who is delinquent in making payments of the Collective Bargaining Fee, required herein, for more than thirty (30) days shall be subject to termination by the Employer. The Union shall provide written notice to such employee of the delinquency and provide the employee with sufficient opportunity to correct the delinquency. The Union shall provide copies to the Employer of any warning notice sent to such employee, a reasonable time prior to any demand for discharge for non-payment and the employer shall have a reasonable time within which to discuss the obligations with the employee before discharge actually occurs. The Union shall save the Employer harmless from any claims of an employee so terminated under this Article.

### 3.3 Dues Deductions

The Employer agrees to deduct Union dues and Initiation fees, or comparable enrollment and service fees for employees electing not to become Union members, from the wages of employees who voluntarily provide the Employer with a written authorization to make such deductions. The written authorization shall not be irrevocable for a period of more than one (1) year or beyond the termination date of this Agreement, whichever occurs sooner. Deductions shall be made from the wages of employees in the first (1<sup>st</sup>) pay period of the month in which the payment is due. Withheld amounts will be forwarded to the Union by the tenth (10<sup>th</sup>) day of the month following the actual withholding, together with a record for the amount, social security number, and name of those for who such deductions have been made.

In the event no wages are due the employee or that they are insufficient to cover the required deduction, the deduction for such month will nevertheless be made from the first wages of adequate amount next due the employee and will thereupon be transmitted to the Union.

The Union agrees to promptly refund any dues found to have been improperly deducted and transmitted to the Union.

### 3.4 Employee Lists

Each month, the Employer will send the Union a list with the following information:

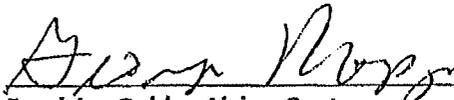
- New Hires: name, hire date, address, phone number, classification, rate of pay, social security number and number of hours worked per pay period.
- Non-Contract: name, social security number, date of job transfer, position the employee is transferring from and into, new hire information if the employee is transferring into the bargaining unit.
- Terminated Employees: name, termination date, classification and social security number.
- Employees on Leave of Absence: name, date leave begins, date of return and social security number.

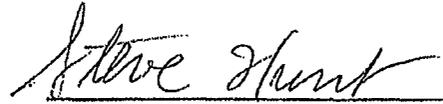
**36. DURATION OF AGREEMENT**

This Agreement shall become effective on December 1, 2009, and shall continue in full force and effect through November 30, 2011. It shall be automatically renewed from year to year thereafter unless either party gives written notice of a desire to modify, amend or terminate it at least ninety (90) days, but no more than one hundred twenty (120) days prior to November 30, 2011 or any November 30 thereafter if it is automatically renewed.

This Agreement shall be reopened December 1, 2010 for wages and the No Strike-No Lock-out Article.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement on the date indicated below.

  
\_\_\_\_\_  
Excelsior Golden Living Center

  
\_\_\_\_\_  
SEIU Healthcare Minnesota

\_\_\_\_\_  
Excelsior Golden Living Center

3-19-10  
Date

3/8/10  
Date

# **EXHIBIT E**

**Letter of Understanding**

**Between**

**Excelsior Golden Living Center**

**and**

**SEIU Healthcare Minnesota  
Service & Maintenance**

The parties have agreed to extend all LOU's and the current bargaining agreement, dated December 1, 2009 through November 30, 2011 in full force and effect through January 31<sup>st</sup>, 2012.

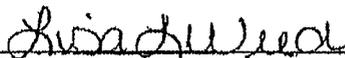
Both parties agree that negotiations may continue during this extension and that this Letter of Understanding may be extended by mutual agreement between the parties. In all other aspects the collective bargaining agreement remains unchanged.



\_\_\_\_\_  
Excelsior Golden Living Center

1-12-12

Dated



\_\_\_\_\_  
SEIU Healthcare Minnesota

1/11/12

Dated

JAN-11-2012 WED 11:08 AM SEIU HealthCare MN

FAX NO. 6512948200

P. 02

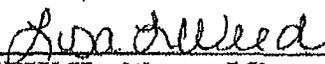
**Letter of Understanding**  
**Between**  
**Excelsior Golden Living Center**  
**and**  
**SEIU Healthcare Minnesota**  
**Nurses**

The parties have agreed to extend all LOU's and the current bargaining agreement, dated December 1, 2009 through November 30, 2011 in full force and effect through January 31<sup>st</sup>, 2012.

Both parties agree that negotiations may continue during this extension and that this Letter of Understanding may be extended by mutual agreement between the parties. In all other aspects the collective bargaining agreement remains unchanged.

  
\_\_\_\_\_  
Excelsior Golden Living Center

1-12-12  
Dated

  
\_\_\_\_\_  
SEIU Healthcare Minnesota

1/11/12  
Dated

# **EXHIBIT F**

fac 2325

# Collective Bargaining Agreement

between

Golden LivingCenter – Lake Ridge

and

SEIU Healthcare Minnesota



Effective  
September 1, 2010  
through  
October 1, 2011

## **1. INTRODUCTION**

This Agreement, is made and entered into by and between GGNSC St. Paul Lake Ridge LLC, d/b/a Golden LivingCenter - Lake Ridge Health Care Center, 2727 North Victoria Street, St. Paul, MN 55113 (hereinafter referred to as the "Employer") and Local Healthcare Minnesota (hereinafter referred to as the "Union").

## **2. SUCCESSORSHIP**

In the event of a transfer, sale or assignment of the Employer's facility, the Union shall be notified expediently, and in advance, of such action. The Employer will advise a prospective buyer of the existence of the collective bargaining agreement and request the buyer retain all current employees and maintain the wages, benefits and conditions constituting the Agreement.

## **3. RECOGNITION**

The Employer recognizes the Union as the sole representative of its regularly scheduled nonprofessional employees in the bargaining unit certified by the National Labor Relations Board in Case Number 18-RC9336, said bargaining unit including all regular full-time, regular part-time, and casual certified nursing assistants, trained medication aides, housekeeping aides, kitchen aides, maintenance, cooks, activity assistants, activity aides, laundry aides, adult day program aides, transport aides, therapeutic recreation specialists, music therapists, and store clerks employed by the Employer at its Lake Ridge, Minnesota facility; excluding managerial employees, office clerical employees, all other employees, guards, and supervisors as defined in the National Labor Relations Act. Such recognition is mutually made for the express purpose of collective bargaining with respect to the hours of labor, rates of pay and working conditions herein specified.

### **3.1 No Change to Defeat Agreement**

No classification or title shall be changed or new classification or title created to defeat the spirit of this Agreement. No classification or title shall be changed or created, and no employee transferred or promoted, either to positions covered by this Agreement or outside it except upon at least ten (10) days written notice to the Union prior to the effective date of the same, which notice shall specify in detail the proposed change, establishment, transfer or promotion. Temporary transfers may be made in emergency situations, in which case written notice will be given to the Union as soon as is possible.

### 3.2 No Contradictory Rule

The Employer agrees not to enter into any agreement or contract with its employees (who are in the classifications herein noted), either individually or collectively, which conflicts with any of the provisions of this contract. No statement or rule shall be made or established by the Employer or the Union which conflicts with or contradicts any of the provisions of this contract. The Employer shall have the right to make and enforce reasonable rules in accordance with Article 9.

## 4. UNION SECURITY

### 4.1 Union Security

There is a Collective Bargaining Agreement between the Employer and SEIU Healthcare Minnesota covering wages, hours of work, and other terms and conditions of employment. The Collective Bargaining Agreement provides that the Union is the sole representative for the classification of work for which the Employee is hired. After completion of ninety (90) calendar days of employment, the Collective Bargaining Agreement provides the Employee with the following two choices:

1. Employees may elect to become a Union member and participate fully in the affairs of the Union by paying an initiation fee and monthly dues.
2. Employees may choose not to become a Union member and pay a service fee and monthly fees. These Employees shall not be able to attend membership meetings or participate in contract negotiations.

At the time of employment, a new employee who shall be subject to this Agreement shall be informed of this by the Employer and the Union.

It is the Employee's responsibility and a condition of employment to ensure that payments to the Union are made on a timely basis. The Collective Bargaining Agreement provides that Employees may voluntarily elect to have Union dues and fees deducted from their checks and sent to the Union.

### 4.2 Good Standing

All Employees covered by this Agreement who are now or may hereafter become members of the Union shall during the life of this Agreement, remain members of the Union in good standing as a condition of employment. "In good standing," for the purpose of this Agreement, is defined to mean the payment of a standard initiation fee and standard regular monthly dues, uniformly required as a condition of acquiring or retaining membership in the Union.

Employees covered by this Agreement who elect not to become Union members shall pay to the Union an enrollment fee in an amount equal to the standard initiation fee paid by Employees who become Union members and a monthly service fee equal to the standard monthly dues paid by Union members. This payment in no event shall exceed the regular monthly Union dues paid by Union members working an equivalent number of hours.

Payments required by this section shall be made only after an Employee has completed ninety (90) days of employment. The fee required by paragraph one shall be due and payable upon the ninety-first (91<sup>st</sup>) day of employment and must be paid within ten (10) days thereafter. Monthly payments required by paragraph two are due and payable the first (1<sup>st</sup>) day of the month following the completion of ninety (90) days of employment and shall be paid by the tenth (10<sup>th</sup>) day of each month.

Any Union member or Employee electing to pay the enrollment and service fee who is delinquent in making the payments required herein for more than thirty (30) days shall be terminated by the Employer without any notice to the delinquent Employee. Termination shall occur within three (3) days after receipt of written notice from the Union to the Employer of such delinquency. The Union shall save the Employer harmless from any claims of an Employee so terminated.

#### 4.3 Dues Deductions

The Employer agrees to deduct Union dues and initiation fees, or comparable enrollment and service fees for employees electing not to become Union members, from the wages of employees who voluntarily provide the Employer with a written authorization to make such deductions. The written authorization shall not be irrevocable for a period of more than one (1) year or beyond the termination date of this Agreement, whichever occurs sooner. Deductions shall be made from the wages of employees in the first (1<sup>st</sup>) pay period of the month in which the payment is due. Withheld amounts will be forwarded to the Union by the tenth (10<sup>th</sup>) day of the month following the actual withholding, together with a record of the amount, social security number, and name of those for whom such deductions have been made. The Union will hold the Employer harmless from any dispute with an Employee concerning deductions made.

In the event that no wages are due the employee or that they are insufficient to cover the required deduction, the deduction for such month will nevertheless be made from the first wages of adequate amount next due the employee and will thereupon be transmitted to the Union.

The Union agrees to refund promptly any dues found to have been improperly deducted and transmitted to the Union.

The Union will also send copies to the Employer of the various warning notices sent to the member pursuant to its present practice so that the Employer may take steps designed to keep the employee in good standing.

If the employee does not remain in good standing, as defined above, the Employer shall terminate the employee within three (3) days of written notice to do so from the Union.

#### 4.4 Employee Lists

Each month, the Employer will send the Union a list with the following information:

- ❖ New Hires: name, hire date, address, phone number, classification, rate of pay, social security number and number of hours worked per pay period.
- ❖ Transferred Employees: (This applies to employees transferring within the bargaining unit or transferring into or out of a bargaining unit position.) name, social security number, date of job transfer, position the employee is transferring from and into, new hire information for those employees new to the bargaining unit.
- ❖ Terminated Employees: (from the bargaining unit) name, termination date, classification and social security number.
- ❖ Employees on Leave of Absence: name, date leave begins, date of return and social security number.
- ❖ Changes: name changes, address changes, phone number changes, changes in hours per pay period, change in classification, any other changes affecting union membership or dues, and social security number
- ❖ Hourly Reports: monthly lists of all employees in the bargaining unit with actual hours worked by pay period, along with name, social security number and period the hours cover.
- ❖ Seniority List: one list of all employees in the bargaining unit by seniority with compensated hours and one list alphabetically to be sent two times per year – January and July

In January of 2007 SEIU Healthcare Minnesota will be moving to a percentage dues system which is based on each member's gross pay per pay period under the Collective Bargaining Agreement. There will continue to be minimum and maximum dues. In an effort to make the transition as smooth as possible, Local 113 is requesting the following data in addition to the member information provided above:

**28. DURATION**

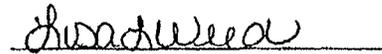
Except as otherwise provided, this Agreement shall be effective from September 1, 2010, through and including October 1, 2011. This Agreement shall remain in full force and effect from year to year thereafter unless either party notifies the other party in writing at least ninety (90) days but not more than one-hundred twenty (120) days prior to October 1, 2011, or October 1<sup>st</sup> of any year thereafter of its intention to change, modify or terminate this Agreement.

In Witness Whereof, the parties have caused their duly authorized representatives to execute this Agreement on the dates so indicated below:

For the Employer:

For the Union:

  
George Moyzis  
Golden LivingCenter

  
Lisa Weed  
SEIU Healthcare Minnesota

10-8-10  
Date

10/8/10  
Date

# EXHIBIT G

**Letter of Understanding**

**Between**

**Golden Living Center- Lake Ridge**

**and**

**SEIU Healthcare Minnesota**

The parties have agreed to extend all LOU's and the current bargaining agreement, dated September 1, 2010 through October 1, 2011 in full force and effect through January 31<sup>st</sup>, 2012.

Both parties agree that negotiations may continue during this extension and that this Letter of Understanding may be extended by mutual agreement between the parties. In all other aspects the collective bargaining agreement remains unchanged.

  
\_\_\_\_\_

**Golden Living Center- Lake Ridge**

1-12-12  
**Dated**

  
\_\_\_\_\_

**SEIU Healthcare Minnesota**

1/11/12  
**Dated**

# EXHIBIT H



Tuesday, March 14, 2012

Lisa Weed  
Internal Organizer  
SEIU Healthcare  
345 Randolph Avenue, Suite 100  
St. Paul, MN 55102

Re: Golden Living Center-Lake Ridge  
Re: Golden Living Center-Excelsior

Dear Ms. Weed:

The collective bargaining agreement and extensions at the above-referenced facility have expired. Union security and dues check-off cannot be continued. Dues check-off will cease after March 2012.

Scott Norton  
Vice President of Labor  
Golden Living

A handwritten signature in black ink, appearing to be "S. Norton", written over the typed name.

Scott D. Norton  
Vice President of Labor & Employment  
5225 Tippecanoe Road  
Canfield, Ohio 44406  
Cellular: (330) 980-5388  
Right-Fax: (479) 201-0642  
E-mail: [scott.norton@goldenliving.com](mailto:scott.norton@goldenliving.com)