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November 27, 2013

Robert W. Chester, Regional Director
United States Government
National Labor Relations Board
Region 06
1000 Liberty Avenue, Room 904
Pittsburgh, PA 15222-4111

RE: Armstrong County Memorial Hospital
Case No. 06-RC-112648

Dear Mr. Chester:

Enclosed for filing please find the **Intervenor's Request for Review of Decision and Direction of Election and Request to Stay Proceedings** in the above-captioned matter.

Please feel free to contact me if you have any questions regarding this matter.

Yours truly,

Richard S. McEwen
Staff Attorney

RSM:db

Enclosure

pc: Brian Balonick, Esquire, w/encl.
Joseph Quinn, Esquire, w/encl.
Bill Cruice, Executive Director, PASNAP, w/encl.
Michael J. Healey, Esquire, w/encl.
Barbara Henning, Region Field Director, PSEA, w/encl.
Brooke Witt, UniServ Representative, PSEA, w/encl.
Justin Tzuanos, Representative, AFT-Healthcare, w/encl.
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The PSEA Mission
To advocate for quality public education and our members through collective action.
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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

ARMSTRONG COUNTY MEMORIAL HOSPITAL, D/B/A ACMH HOSPITAL Employer	:	
and	:	
PENNSYLVANIA ASSOCIATION OF STAFF NURSES AND ALLIED PROFESSIONALS (PASNAP) Petitioner	:	Case 06-RC-112648
and	:	
ARMSTRONG NURSES ASSOCIATION, HEALTHCARE/PSEA, AFT HEALTHCARE, LOCAL 5120, AFL-CIO Intervenor	:	

INTERVENOR'S REQUEST FOR REVIEW OF DECISION AND DIRECTION OF ELECTION AND REQUEST TO STAY ELECTION

I. INTRODUCTION

Pursuant to Section 102.67 of the National Labor Relations Board's ("NLRB" or "Board") Rules and Regulations, Armstrong Nurses Association, Healthcare/PSEA, AFT Healthcare Local 5120, AFL-CIO (hereinafter, "Association") respectfully submits this Request for Review of Regional Director Robert W. Chester's Decision and Direction of Election (the "Decision")[1] in the above-captioned case. Compelling reasons exist for grating this Request for Review based on the following grounds: (1) the Regional Director's decision on substantial factual issues was clearly erroneous on the record, and such error prejudicially affected the rights

[1] References herein to the Decision and Direction of Election will be abbreviated as "Dec. (page number)."

of the Association; (2) substantial questions of law and policy were raised because of the Regional Director's departure from officially reported Board precedent; and (3) the Regional Director's ruling implicates the conduct of the hearing resulting in prejudicial error. For these reasons, discussed below, the NLRB should grant Association's Request for Review.

II. RELEVANT PROCEDURAL AND FACTUAL HISTORY

The Armstrong Nurses Association, HealthCare-PSEA ("Armstrong Nurses Association" or "Association") affiliated with AFT Healthcare, Local 5120 and the AFL-CIO, is currently the exclusive certified bargaining representative for all full-time and part-time registered Nurses at the Armstrong County Memorial Hospital (Hospital).

On September 5, 2013, the Pennsylvania Association of Staff Nurses and Allied Professionals ("PASNAP"), through its Executive Director Bill Cruice, filed a Petition with the National Labor Relations Board ("NLRB" or "Board") seeking to represent registered Nurses employed by the Armstrong County Memorial Hospital who are currently represented by the Armstrong Nurses Association. P. Exh.1. The Petition erroneously identified the existing bargaining representative as "Health Care PSEA," identified the Petitioner only as PASNAP and left the line designated for identifying any unions that the Petitioner is affiliated with or a constituent of blank. Ibid.

A hearing on the Petition was originally scheduled for September 12, 2013. On September 9, 2013, the Regional Director delayed formal action by the Regional Office for up to 30 days to permit use of settlement provisions of the proceedings to be conducted pursuant to Article XX of the AFL-CIO's Constitution. On September 26, 2013, PASNAP filed a Motion to Revoke Deferral and to Proceed to an Election after which, on September 27, 2013, the Regional

Director issued an Order Rescheduling Hearing in which he rescheduled the hearing in this matter for October 9, 2013.

However, on October 1, 2013, the Regional Director issued an Order postponing the hearing scheduled for October 9 due to the shutdown of the Federal Government. On October 17, 2013, the Regional Director issued an Order Rescheduling Hearing to Thursday, October 24, 2013. All parties appeared at the October 24 hearing and were unable to arrive at a stipulated election agreement.

The sole issue in dispute at the hearing was whether PASNAP's name for purposes of its identification on the election ballot would include any or all of its affiliated unions. Tr. 8-9. At the hearing, the Intervenor expressly identified itself as the Armstrong Nurses Association, HealthCare-PSEA, AFT Healthcare, Local 5120, and the AFL-CIO. Tr. 5-6. There was no objection to intervention of the union as identified by this name and intervention by this name was granted. Tr. 6.

On November 13, 2013, Regional Director Robert W. Chester issued a Decision and Direction of Election in which he held that the Petitioner, Pennsylvania Association of Staff Nurses and Allied Professionals (PASNAP) would, as it had desired, be identified only by that name on the election ballot without regard to its affiliated unions, California Nurses Association (CNA)/National Nurses Organizing Committee (NNOC), National Nurses United (NNU) and the AFL-CIO. The Association is not contesting this portion of the Regional Director's Decision.

However, in addition to resolving the sole issue placed before him by the parties, the Regional Director, acting *sua sponte*, determined that the Intervenor would not be identified on the ballot by the name by which it appeared at the hearing and that it wishes to be identified as on the ballot. Instead, without taking any testimony or evidence on the issue, the Regional

Director declared that the Intervenor would appear on the ballot as only Armstrong Nurses Association, HealthCare-PSEA. Dec. 10. The Intervenor files this Request for Review of the Decision and Direction of Election asking to have this portion of the Decision reversed and to direct an election where the Intervenor will be identified on the ballot by the name in which it intervened without objection, as the Armstrong Nurses Association, HealthCare-PSEA, AFT Healthcare, Local 5120, and the AFL-CIO.

III. SUMMARY OF ARGUMENT

At the hearing in this case, the Intervenor, without objection of the parties, identified itself as Armstrong Nurses Association, HealthCare-PSEA, AFT Healthcare Local 5120, AFL-CIO. Tr. 5-6. This is the name in which it participated in the proceedings and which it fully expected to have appear on any election ballot. The sole issue under consideration at the hearing was whether the names of PASNAP's affiliates would also appear with them on the ballot. Tr. 8-9.

Nevertheless, without the benefit of notice or an opportunity to be heard on the issue by the Association, the Regional Director issued an election order holding that PASNAP would be identified without its affiliates and the Intervenor would be identified merely as Armstrong Nurses Association, HealthCare-PSEA. Dec. 10. The Association submits this Request for Review on the basis that the Regional Director's Decision contains clear errors of factual findings, specifically the finding that there is little or no evidence in the record of AFT Healthcare and the AFL-CIO's participation in representational functions and desire to be listed on the ballot. This ruling represents a manifest error of factual findings that should be reversed.

Secondly, the Regional Director's Decision is contrary to existing law. Ironically, the existing law is the exact case the Regional Director relied upon in making its ruling on PASNAP.

As the Regional Director acknowledged, Lane Wells Company, 79 NLRB 252 (1948), holds that the Board is not authorized to interfere in the internal activities of the union, particularly pertaining to the name of the union appearing on an election ballot. Just as the Regional Director found that he could not order PASNAP to include its affiliates, the same logic directs that the Regional Director should not be permitted to order the Intervenor to be identified without its chosen affiliates.

In light of the Regional Director's conclusion that insufficient evidence appeared in the record to justify a finding that Intervenor's affiliates should be included in their name on the ballot, the failure to solicit evidence regarding this issue at the hearing represents a serious procedural defect. If the Board determines that there is insufficient evidence in the record for the Regional Director to make a determination regarding the Intervenor's name to appear on the ballot, the Intervenor is entitled to notice and an opportunity to be heard on that specific issue. That opportunity was not provided in the original hearing, which dealt only with the issue of PASNAP's name. Therefore, depending on the outcome of the Board's review and determination, it may be appropriate to reopen the record to obtain additional evidence so that the Regional Director's decision regarding the Intervenor's name to appear on the ballot is made with the benefit of a full record.

The name of the union appearing on the ballot is a fundamental issue which affects every ballot. Consequently, in order to avoid unnecessary expense and disruption, the Intervenor requests that the Board issue a stay of this matter pending its review.

IV. ARGUMENT

A. Legal Standard

The Board may grant review of a Regional Director's unit determination in certain circumstances. Specifically, review may be granted where:

1. a substantial question of law or policy is raised because of: (i) the absence of; or (ii) departure from, officially reported Board precedent;
2. the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the right of a party;
3. the conduct of a hearing or any ruling made in connection with the proceeding has resulted in prejudicial error; or
4. there are compelling reasons for reconsideration of an important Board rule or policy.

See NLRB Rules & Regulations § 102.67(c). The Company's Request for Review in this case is premised on three grounds: (1) the Regional Director's decisions on substantial factual issues are clearly erroneous on the record, and such errors prejudicially affect the rights of the Association; (2) substantial questions of law are raised because of the Regional Director's departure from officially reported Board precedent; and (3) the Regional Director's ruling has resulted in prejudicial procedural defects.

B. The Regional Director's Factual Finding that the Intervenor's Affiliated Unions have no Representative Functions is Clearly Erroneous.

On page nine of the Decision, the Regional Director states, "To the extent that the Intervenor wishes to be identified on the ballot with the other labor organizations with which it is affiliated, I note that there is *no evidence of representation functions for this unit being*

performed by these other labor organizations … ." Decision at 9 (emphasis added). This factual finding is clearly erroneous and should be reversed.

How the Regional Director reached this factual conclusion is inexplicable. The sole witness on behalf of the Association at the hearing was Justin Tzuanos, who identified himself as a "National Representative in the Organization and Field Services Department with the AFT." Tr. 25. Mr. Tzuanos also testified that in his capacity with the AFT he had been working for several months directly with the Armstrong Nurses Association assisting the members with their organizing activities. Tr. 25-26. Consequently, the fact that the sole witness for the Association, a witness who testified to working directly with the local, was an employee of AFT Healthcare, provides irrefutable evidence that the organization serves in a representative capacity with the local Association. Consequently, the record directly refutes the Regional Director's conclusion on page 9 of the Decision.

Moreover, as the Regional Director acknowledged, the front page of the collective bargaining agreement between the Association and the Hospital displays a large logo reading HealthCare-PSEA, Local 5120 AFT, AFL-CIO. Dec. 3-4, Tr. 3; Emp. Ex. 1. Clearly, by permitting this logo to appear on the front cover of the collective bargaining agreement, the Hospital recognizes that HealthCare-PSEA, Local 5120 AFT and the AFL-CIO comprise an integral part of the group of unions representing the Armstrong Nurses Association.

In addition, other language in the contract also demonstrates the representational role of HealthCare-PSEA and Local 5120 of the AFT. Appendix E of the CBA contains the current contractual grievance procedure. It is entitled Armstrong Nurses Association/HealthCare-PSEA/*AFT* Grievance Committee Operational Guidelines for Professing Grievances. In the body of the policy it refers to bargaining unit employees represented by ANA/HealthCare-

PSEA/*AFT*. Under Section IV(D) of the Grievance Policy, it states, "The HealthCare-PSEA/*AFT* Staff Representative will be consulted from this step forward," referencing Steps 2 through 4 of the process. Emp. Ex. 1 at E-1 (Emphasis added). In Section IV(H) of the Grievance Policy, the decision to send a grievance to arbitration is to be made by the "Grievance Chair and/or the Executive Committee and HealthCare-PSEA/*AFT* Staff Representative." Ibid.

Clearly, the important role of the AFT in the grievance process and its central role in the crucial decision whether a grievance will be pursued to arbitration represents one of the most significant responsibilities of the representational process. Thus, this evidence directly contradicts the Regional Director's finding that there is no evidence of representational functions in the record. Accordingly, this finding is erroneous and should be reversed.

In another frankly unfathomable finding, the Regional Director states that there is "no evidence that these other organizations wish to be placed on the ballot." Decision at 9. To the contrary, the oral motion for intervention in this matter was explicitly made on behalf of the Armstrong Nurses Association, HealthCare-PSEA, AFT Healthcare, Local 5120, and the AFL-CIO. Tr. 5-6. Moreover, there were no objections to intervention by this name. Tr. 6. This indicates that the Employer and the Petitioner recognize that HealthCare-PSEA and Local 5120 of the AFT play an integral role in the activities of the Armstrong Nurses Association.

Not only is the Regional Director's decision to prevent the Intervenor from being identified by its full name on the ballot without factual support in the record, it is also prejudicial to the upcoming representation campaign. The Intervenor believes that the relative strength of its relationships within the broader labor community is a crucial distinction of substantial importance to the membership when selecting its bargaining representative. PASNAP has made it clear that it is eager to repudiate its affiliations within the labor community. That is its right as

the Regional Director decreed. At the same time, the Association embraces its union affiliations and includes them as an intrinsic part of its identity. There is no logical reason why the Association should be required to avoid identification with the national affiliations that it embraces. If PASNAP can be identified by the name it chooses, so too should the Association.

The inability of the casual employee who has not closely followed the representational campaign to be able to quickly identify, simply by looking at the Association's name, that it is affiliated with multiple regional and national labor organizations places the Association at a distinct disadvantage in a representational battle where the employees must decide which union entity is most capable and competent to represent them on an ongoing basis. Hence, the Regional Director's Decision striking Local 5120 AFT and AFL-CIO from the Association's name on the ballot is highly prejudicial and destructive to the Association. Accordingly, the Regional Director's Decision in this regard should be reversed and the Association permitted to appear on the ballot in the manner in which it identified itself at the hearing.

C. The Regional Director's Decision Regarding the Intervenor's Name is Contrary to Law.

The union satisfies the prerequisites to be an Intervenor in a representation case if, among other things, it is the certified or currently recognized bargaining agent of the employees involved or if it is the party to a currently effective or recently expired exclusive collective bargaining agreement covering the employees involved. Representation Case Manual §11022.1(c)(d). The Intervenor under its chosen name, Armstrong Nurses Association, HealthCare-PSEA, Local 5120 AFT Healthcare, AFL-CIO, satisfies this requirement. Consequently, there is no reason why its name cannot appear in that manner on the election ballot.

As noted previously, the CBA introduced into the record as Employer Exhibit 1 clearly identifies the name of the bargaining unit as the Armstrong Nurses Association, HealthCare-PSEA, Local 5120 AFT, AFL-CIO. Moreover, inside the collective bargaining agreement the grievance policy clearly makes repeated references to AFT's involvement in the grievance process. See Emp. Ex. 1, Appendix E. Thus, the evidence of record clearly suggests that the Hospital, by acknowledging the role of the AFT in both the text and title of the collective bargaining agreement has recognized Local 5120 AFT as an integral part of the bargaining agent of the Hospital employees.

Moreover, the fact that AFT is identified in the CBA as a party satisfies Section 11022.1(d) of the Case Management Manual and AFT thus qualifies to be named both as Intervenor and as representative on the ballot in the upcoming election. The Regional Director's complete reliance on the certification entered into the record is misplaced. By its plain language, Section 11022.1(c) states that, in order to qualify as a party, a union can be either the certified bargaining agent <u>or</u> the currently recognized bargaining agent. NLRB Casehandling Manual, Part 2, § 11022.1. As the CBA proves, the AFT and AFL-CIO are recognized bargaining agents of the Nurses at Armstrong County Memorial Hospital. Because the certification is not dispositive, the Regional Director's analysis is incomplete and ultimately inaccurate. A mere oversight by the Association in amending its certification should not prevent the AFT and the AFL-CIO, who are active participants with HealthCare-PSEA in the regular activities of the Armstrong Nurses Association, from inclusion in the identified name of the representative on the ballot.

The Regional Director relied on <u>Lane Wells Company</u>, 79 NLRB 252 (1948) in concluding that the Board lacked the authority to require PASNAP to include its affiliations in its

name as it appears on the ballot. Dec. at 6. Upon further examination, the Lane Wells case similarly supports the Intervenor's position that it has the right to be identified by its full name, including affiliates, if it so chooses. In fact, the actual issue in Lane Wells was whether or not an international union affiliated with a local could appear as the sole union on the ballot in a representation election. The Board held that it could not prevent the petitioning union from appearing by its chosen name in the absence of any disqualification for failure to comply with the Act.

In its Decision, the Board stated:

> Under existing law, the division of function and responsibility between international and local unions with respect to bargaining is clearly a matter of their internal affairs. The right of an international union to seek certification, and of employees to vote for it, is protected ... unless some other policy of the Act is clearly contravened.

79 NLRB at 259.

Consequently, the Board concluded that there was nothing in the Act "which vests in the Board any general authority to subtract from the right of employees to select *any* labor organization they wish as exclusive bargaining representative." Id. at 254. Under the Act, employees are to have "full freedom" to designate bargaining "representative*s* of their own choosing." Id. at 253 (emphasis added).

The clear holding of Lane Wells is that the designation of the affiliate unions to appear on a ballot in which employees will choose their certified representative is entirely a matter of internal union prerogative in which the Board is not to intrude. This is precisely the logic used by the Regional Director in holding that PASNAP may appear on the ballot without its affiliates listed. By this same logic, the Regional Director erred and overreached when he held that the Intervenor could not appear under the name in which it desires. The Intervenor emphatically

believes that the employees of the Armstrong County Memorial Hospital have the right to know the full identity of their potential representatives before they are chosen. If the Board must acquiesce to PASNAP's desires to appear on the election ballot as it wishes, there is no logical reason why the Intervenor cannot appear under the name it chooses when the labor organizations involved all satisfy the requirements of the Act.

This unusual failure to consistently follow the legal precedent established in Lane Wells Company represents a significant error of law by the Regional Director which must be reversed and corrected before any election is held. Accordingly, the Intervenor respectfully requests that the Board accept this matter for review and that it reverse the Decision of the Regional Director regarding the appearance of the name of the Intervenor on the election ballot.

D. The Regional Director's Ruling on Issues not Included in the Hearing Violates Due Process and is Prejudicial Error.

In the Decision, the Regional Director makes repeated comments that there is "a paucity of evidence" that the Intervenor has held itself out to employees as "AFT Healthcare" and that "there is no evidence of representation functions for this Unit being performed by these other labor organizations and no evidence that these other organizations wish to be placed on their ballot." Dec. 7, 9. Although the Intervenor firmly believes that there is in fact sufficient evidence in the record to demonstrate the representation functions of the affiliates, including AFT Healthcare and the AFL-CIO, if there is any deficit in the evidence, this is due to a simple fact. The name of the Intervenor was never at issue at the hearing and thus any evidence regarding these issues was irrelevant and unnecessary. The sole issue was PASNAP's name; therefore, no evidence regarding the Intervenor's name, which was stipulated to by all parties, was sought nor offered.

At no time was the name of the Intervenor made an issue. No party objected when the Intervenor entered its appearance as Armstrong Nurses Association, HealthCare-PSEA, Local 5120 AFT Healthcare, AFL-CIO. Tr. 5-6. Consequently, no evidence regarding the Intervenor's name was relevant and whatever evidence regarding Intervenor's name that appears in the record is a mere byproduct of other evidence not directly related to that issue.

Moreover, the idea that there was no evidence that the organizations wished to be placed on the ballot is preposterous. The individuals appearing at the hearing on behalf of the Armstrong Nurses Association were in fact from HealthCare-PSEA and AFT Healthcare. If these entities had no desire to be placed on the ballot, there is no reason for them to have appeared at the hearing and contested the issue of the proper names to appear on the ballots.

While the Intervenor submits that the Regional Director erred by ignoring the evidence present in the record that is sufficient to demonstrate that AFT Healthcare and the AFL-CIO should be included in the name of the Intervenor to appear on the ballot, the Regional Director raised this issue sua sponte for the first time in the decision. If the use of the Intervenor's full name is to be made an issue in this matter by the Regional Director, due process requires that the Intervenor have sufficient notice of that fact and a full and fair opportunity to present direct evidence regarding the significant interests of AFT Healthcare Local 5120 and the AFL-CIO in the representation of the local and in the outcome of this election matter.

Because the Intervenor was denied this right, before its name should be placed at issue it must have an opportunity to present evidence. This is a prerequisite to the Regional Director making any judgment as to whether no evidence or a paucity of evidence exists to justify the inclusion of AFT Healthcare Local 5120 and the AFL-CIO in the name of the Intervenor to be placed on the ballot. The failure to provide the Association with Due Process, including no

notice that the Regional Director planned to consider Intervenor's name and lack of opportunity for the Intervenor to present evidence, represents a prejudicial error resulting from the conduct at the hearing.

Alternately, to the extent that the Regional Director's Decision was based on a purported lack of evidence, the record should be reopened and the matter remanded for further proceedings. The Regional Director may treat a request for review as a Motion for Reconsideration of the election decision. NLRB Rules and Regulations § 102.65(e)(1). If the Regional Director promptly decides to reconsider the matter, he is authorized to re-open the record. NLRB Casehandling Manual, Part 2, § 11274. If the Regional Director believes there is insufficient evidence to determine whether the Intervenor's affiliates should be included in its name, the record should be reopened and additional evidence submitted before any election is held.

E. The Board Should Stay Further Proceedings of the Petition and Holding of the Election Until it Grants the Intervenor's Request for Review and Determines that the Regional Director's Decision was Erroneous.

Because the chosen name of the Intervenor was submitted on the record without objection and because, under long-standing Board precedent exemplified by Lane Wells Company, the Intervenor has the right to participate in this matter and to appear on the ballot under its preferred name, the Regional Director exceeded his authority when he ruled on an issue not before him. That issue is the name of the Intervenor.

As the Employer indicated in its closing statement at the hearing, its desire is for its employees to have full disclosure of their choice when voting on their collective bargaining representative. Tr. 41-42. The Intervenor firmly believes that the Nurses of the Armstrong County Memorial Hospital, even those Nurses who do not closely follow the campaign leading up to the election or the statements made by the potential representatives, should have the ability

to readily identify their potential representative. By including the names of the affiliates on the ballot, the Intervenor believes this communicates to the electorate that by choosing Armstrong Nurses Association, HealthCare-PSEA, Local 5120 AFT Healthcare, AFL-CIO, the Nurses will be retaining a labor organization that is fully integrated into the broad labor community. While PASNAP is free to identify itself on the ballot by whatever designation it prefers, the fact that it prefers a limited designation should not result in an impingement of the Intervenor's right to appear on the ballot under the name it sees fit to use.

In order to avoid any further infringement upon the Intervenor's rights under the Act and this overreaching act by the Regional Director, it is imperative that the Board stay the further processing of the Petition and the holding of the election until the Board grants this request for review and determines that the Regional Director's Decision was erroneously decided. Proceeding with the election while the Petition for Review is pending would result in unnecessary inconvenience and expense to all parties as well as the Board. If the election proceeds while the question of the proper names on the ballot is outstanding, all eligible ballots would effectively be subject to challenge by the Intervenor. Moreover, if the election were to proceed with the wrong name on the ballot and the Intervenor prevails, it would have to be repeated following the conclusion of the Board's review process.

Consequently, because there is a significant probability that nothing would be accomplished by proceeding with the processing of the Petition and the election, Intervenor Armstrong Nurses Association, HealthCare-PSEA, Local 5120 AFT Healthcare, AFL-CIO respectfully requests that the Board stay this matter pending the outcome of the review proceedings. Angelica Healthcare Services Group, 315 NLRB 1320 (1995) (Board granted union's request for review and stayed the election).

V. CONCLUSION

The Regional Director erred and exceeded his authority by deciding issues not before him and by erroneously restricting the ability of the Intervenor to be identified by and to appear on the ballot under the name it chooses. In making this determination, the Regional Director ignored evidence, clearly present in the record, demonstrating that AFT Healthcare and the AFL-CIO are intrinsically involved in the representation of the Nurses at Armstrong Memorial Hospital and that these labor organizations have a strong desire to appear on the ballot. Despite relying upon the Lane Wells Company decision when determining that the Board could not interfere with PASNAP's choice of how it wished to be identified on the ballot, the Regional Director nevertheless, on his own prerogative, improperly restricted the Intervenor's ability to appear on the ballot by its chosen name. Consequently, the Regional Director's decision is contrary to law and should be reversed.

The Regional Director's decision is based on the clearly erroneous conclusion that there is little or no evidence in the record showing that AFT Healthcare and the AFL-CIO have a direct interest in representing the Nurses at Armstrong County Memorial Hospital and that they wish to appear on the ballot. The plain fact that the only witness to appear at the hearing on behalf of the Association was an organizing employee of AFT-Healthcare clearly refutes this inaccurate assumption.

If the Board views the record as containing inadequate evidence, the proper remedy is to reconsider and reopen the record in order to allow the Intervenor to present evidence on this issue. Because the name of the Intervenor was entered into the record without objection, its name was never at issue during the hearing. Consequently, there was no reason for any party to present evidence regarding the propriety of the Intervenor's name and any attempt to do so

would have properly been deemed irrelevant and unnecessary by the Hearing Examiner. Consequently, if the election order is based on the sufficiency of the evidence supporting the use of the Intervenor's chosen name, due process requires that the Intervenor be provided a proper opportunity to present relevant evidence before any decision is made. As a result, the Intervenor requests that the Board stay the election currently scheduled for December 13, 2013, until this matter can be considered by the Board. Failure to stay the proceedings would exacerbate the injury to the Intervenor's due process rights.

Accordingly, for the reasons cited above, the Armstrong Nurses Association, HealthCare-PSEA, Local 5120 AFT Healthcare, AFL-CIO respectfully requests that this Request for Review be granted, the election stayed pending further proceedings and that the Board reverse the Decision of the Regional Director that Local 5120 AFT Healthcare and the AFL-CIO cannot appear on the ballot as part of the Intervenor's name.

Respectfully submitted,

ARMSTRONG NURSES ASSOCIATION,
HEALTHCARE/PSEA

By:

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

ARMSTRONG COUNTY MEMORIAL HOSPITAL, D/B/A ACMH HOSPITAL Employer	:	
and	:	
PENNSYLVANIA ASSOCIATION OF STAFF NURSES AND ALLIED PROFESSIONALS (PASNAP) Petitioner	:	Case 06-RC-112648
and	:	
ARMSTRONG NURSES ASSOCIATION, HEALTHCARE/PSEA, AFT HEALTHCARE, LOCAL 5120, AFL-CIO Intervenor	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Intervenor's Request for Review of Decision and Direction of Election and Request to Stay Election was served upon the following individuals via email and First Class Mail, postage prepaid on this 27th day of November, 2013.

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By:
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