



UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

15-1155

PARKVIEW COMMUNITY  
HOSPITAL MEDICAL CENTER,

*Petitioner,*

v.

NATIONAL LABOR RELATIONS  
BOARD,

*Respondent.*

Case No. \_\_\_\_\_

**PETITION FOR REVIEW OF DECISION AND ORDER OF  
THE NATIONAL LABOR RELATIONS BOARD**

Petitioner, Parkview Community Hospital Medical Center, hereby petitions the United States Court of Appeals for the District of Columbia Circuit for review of, and respectfully requests that the Court modify or set aside in its entirety, the Decision and Order entered by Respondent National Labor Relations Board on May 27, 2015, in Case 21-CA-147256. A copy of the Decision and Order, reported at 362 NLRB No. 97, is attached as Exhibit A.

Dated: May 28, 2015

Respectfully submitted,

s/Jedd Mendelson

Jedd Mendelson (DC Bar 47648)

Littler Mendelson P.C.  
Counsel for Petitioner  
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**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, the undersigned counsel for Petitioner states that Parkview Community Hospital Medical Center is a California public benefit corporation that has neither a parent corporation nor shareholders (publicly-held corporations or otherwise) of any kind.

Dated: May 28, 2015

Respectfully submitted,

s/Jedd Mendelson

Jedd Mendelson

Littler Mendelson P.C.

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**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing Petition for Review of Decision and Order of the National Labor Relations Board and Corporate Disclosure Statement was served via Federal Express, overnight delivery, on this date and addressed to:

Linda Dreeben  
Deputy Associate General Counsel  
Appellate and Supreme Court Litigation Branch  
National Labor Relations Board  
1099 14<sup>th</sup> Street NW  
Washington, DC 20570

Counsel for Respondent

Bruce Harland, Esq.  
Weinberg, Roger & Rosenfeld  
1001 Marina Village Parkway, Suite 200  
Alameda, CA 94501

Counsel for Service Employees International Union, United Healthcare  
Workers-West (SEIU-UHW)

Dated: May 28, 2015

Respectfully submitted,

s/Jedd Mendelson  
Jedd Mendelson  
Littler Mendelson P.C.  
Counsel for Petitioner  
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Washington, DC 20036  
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# EXHIBIT A

*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, DC 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Parkview Community Hospital Medical Center and Service Employees International Union, United Healthcare Workers-West (SEIU-UHW). Case 21-CA-147256**

May 27, 2015

**DECISION AND ORDER**

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON  
AND MCFERRAN

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by Service Employees International Union, United Healthcare Workers-West (SEIU-UHW) (the Union) on February 26, 2015, the General Counsel issued the complaint on March 20, 2015, alleging that Parkview Community Hospital Medical Center (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request for recognition and to bargain following the Union's certification in Case 21-RC-121299. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations of the complaint, and asserting affirmative defenses.

On April 7, 2015, the General Counsel filed a Motion for Summary Judgment. On April 9, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response, in which it agreed that summary judgment was appropriate here.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

The Respondent admits its refusal to bargain but contests the validity of the Union's certification on the basis of its objections to the conduct of the election.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this un-

fair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.<sup>1</sup>

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent has been a not-for-profit California corporation, with its principal offices and an acute care hospital located at 3865 Jackson Street, Riverside, California, and has been engaged in the business of providing healthcare services.

During the 12-month period ending March 19, 2015, a representative period, the Respondent derived gross revenues in excess of \$250,000, and purchased and received at the Riverside, California facility goods valued in excess of \$5000 directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act.

We find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following a representation election held on March 13, 2014, the Union was certified on January 30, 2015, as the exclusive collective-bargaining representative of employees in the following appropriate unit:

All bio medical engineering techs II, bio medical engineers, C.T. techs, C.T. techs per diem, dexta scan techs, ER techs, ER techs per diem, GI lab techs, mammography techs, monitor techs, nuclear med techs, neurology techs, O/P radiology clinic CT/MRI techs, O/P radiology clinic radiology techs I, O/P radiology clinic radiology techs II, O/P radiology clinic sonographers, OB techs, pharmacy techs, phlebotomy I, phlebotomy II, cardio pulmonary (EKG techs/assistants), radiology techs, respiratory care practitioners I, respiratory care practitioners II, respiratory care practitioners III per diem, respiratory coordinators, sonographers, sonographers per diem, surgery techs, ultrasound techs, administrative secretaries, ASC unit secretaries, birth certificate specialists, buyers, CNAs, CNA per diems, caf-

<sup>1</sup> In granting the General Counsel's motion, we pass only on the allegations in the complaint. Therefore, we do not grant summary judgment with respect to the erroneous statement at par. 13 of the motion that the complaint alleges that the Respondent is failing and refusing to supply the Union with requested information in violation of Sec 8(a)(5) and (1) of the Act.

eteria staff, catering staff, catering/med staff dining supervisors, clerical coordinators, dietary supervisors, cooks, cooks assistants (cold production), diet office staff, dietary secretaries, food service workers, gift shop cashiers, guest services, joint care coordinators, kitchen porters, lab assistants, lead baristas, lead pathology, lead respiratory practitioners, LVNs, LVNs newborn, LVN per diem leads I, nuclear med assistants, O/P radiology clinic X-ray clerks, OR assistants, OR schedule secretaries, OR supply/anesthesiologists LVNs, patient care attendants, perinatal/lactation educators, pharmacy clerks, rehabilitation aides, room service attendants, senior dietary clerks, social service/discharge planners, transporter/clerks, unit secretaries, coders I, coders II, coding supervisors, archivist/print shop techs H.I.M., discharge analysts, H.I.M. clerks, H.I.M. correspondents, H.I.M. techs, H.I.M. operation, pathologist transcriptionists, pathology assistants, physician representatives, receivers, stock expeditors, transcriptionists, transcription clerks, transcription supervisors, staffing coordinators, SPD techs, SPD techs per diem, SPD coordinators, and x-ray attendants employed by the Employer at its facility located at 3865 Jackson Street, Riverside, California; but excluding all other employees, information services employees, admitting personnel, clinical lab scientists, nutritionists, marketing employees, medical staff employees, chaplains, human resource employees, insurance verifiers, Pyxis coordinators, master social workers, occupational therapists, accounting department employees, utilization review employees, physical therapists, PBX operators, speech therapists, business office clerical employees, skilled maintenance employees, professional employees, registered nurses, physicians, confidential employees, managers, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

#### *B. Refusal to Bargain*

By letter dated February 2, 2015,<sup>2</sup> the Union requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since about February 2, 2015, the Respondent has failed and refused to do so.

We find that this failure and refusal constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

<sup>2</sup> The Union's letter to Respondent is mistakenly dated "February 2, 2015," but there is no dispute that the correct date is in 2015.

#### CONCLUSION OF LAW

By failing and refusing since February 2, 2015, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. To ensure that employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date that the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

#### ORDER

The National Labor Relations Board orders that the Respondent, Parkview Community Hospital Medical Center, Riverside, California, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Service Employees International Union, United Healthcare Workers-West (SEIU-UHW) as the exclusive collective-bargaining representative of employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All bio medical engineering techs II, bio medical engineers, C.T. techs, C.T. techs per diem, dexta scan techs, ER techs, ER techs per diem, GI lab techs, mammography techs, monitor techs, nuclear med techs, neurology techs, O/P radiology clinic CT/MRI techs, O/P radiology clinic radiology techs I, O/P radiology clinic ra-

## PARKVIEW COMMUNITY HOSPITAL MEDICAL CENTER

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diology techs II, O/P radiology clinic sonographers, OB techs, pharmacy techs, phlebotomy I, phlebotomy II, cardio pulmonary (EKG techs/assistants), radiology techs, respiratory care practitioners I, respiratory care practitioners II, respiratory care practitioners III per diem, respiratory coordinators, sonographers, sonographers per diem, surgery techs, ultrasound techs, administrative secretaries, ASC unit secretaries, birth certificate specialists, buyers, CNAs, CNA per diems, cafeteria staff, catering staff, catering/med staff dining supervisors, clerical coordinators, dietary supervisors, cooks, cooks assistants (cold production), diet office staff, dietary secretaries, food service workers, gift shop cashiers, guest services, joint care coordinators, kitchen porters, lab assistants, lead baristas, lead pathology, lead respiratory practitioners, LVNs, LVNs newborn, LVN per diem leads I, nuclear med assistants, O/P radiology clinic X-ray clerks, OR assistants, OR schedule secretaries, OR supply/anesthesiologists LVNs, patient care attendants, perinatal/lactation educators, pharmacy clerks, rehabilitation aides, room service attendants, senior dietary clerks, social service/discharge planners, transporter/clerks, unit secretaries, coders I, coders II, coding supervisors, archivist/print shop techs H.I.M., discharge analysts, H.I.M. clerks, H.I.M. correspondents, H.I.M. techs, H.I.M. operation, pathologist transcriptionists, pathology assistants, physician representatives, receivers, stock expeditors, transcriptionists, transcription clerks, transcription supervisors, staffing coordinators, SPD techs, SPD techs per diem, SPD coordinators, and x-ray attendants employed by the Employer at its facility located at 3865 Jackson Street, Riverside, California; but excluding all other employees, information services employees, admitting personnel, clinical lab scientists, nutritionists, marketing employees, medical staff employees, chaplains, human resource employees, insurance verifiers, Pyxis coordinators, master social workers, occupational therapists, accounting department employees, utilization review employees, physical therapists, PBX operators, speech therapists, business office clerical employees, skilled maintenance employees, professional employees, registered nurses, physicians, confidential employees, managers, guards, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Riverside, California, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment

provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 2, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 21 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 27, 2015

\_\_\_\_\_  
Mark Gaston Pearce, Chairman

\_\_\_\_\_  
Harry I. Johnson, III, Member

\_\_\_\_\_  
Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD  
APPENDIX  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

\_\_\_\_\_  
ment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

**FEDERAL LAW GIVES YOU THE RIGHT TO**

**Form, join, or assist a union**

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Service Employees International Union, United Healthcare Workers-West (SEIU-UHW) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for the following bargaining unit:

All bio medical engineering techs II, bio medical engineers, C.T. techs, C.T. techs per diem, dexa scan techs, ER techs, ER techs per diem, GI lab techs, mammography techs, monitor techs, nuclear med techs, neurology techs, O/P radiology clinic CT/MRI techs, O/P radiology clinic radiology techs I, O/P radiology clinic radiology techs II, O/P radiology clinic sonographers, OB techs, pharmacy techs, phlebotomy I, phlebotomy II, cardio pulmonary (EKG techs/assistants), radiology techs, respiratory care practitioners I, respiratory care practitioners II, respiratory care practitioners III per diem, respiratory coordinators, sonographers, sonographers per diem, surgery techs, ultrasound techs, administrative secretaries, ASC unit secretaries, birth certificate specialists, buyers, CNAs, CNA per diems, cafeteria staff, catering staff, catering/med staff dining supervisors, clerical coordinators, dietary supervisors, cooks, cooks assistants (cold production), diet office staff, dietary secretaries, food service workers, gift shop cashiers, guest services, joint care coordinators, kitchen porters, lab assistants, lead baristas, lead pathology, lead respiratory practitioners, LVNs, LVNs newborn, LVN per diem leads I, nuclear med assistants, O/P radiology clinic X-ray clerks, OR assistants, OR schedule secretaries, OR supply/anesthesiologists LVNs, patient

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PARKVIEW COMMUNITY HOSPITAL MEDICAL CENTER

The Board's decision can be found at [www.nlr.gov/case/21-CA-147256](http://www.nlr.gov/case/21-CA-147256) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

