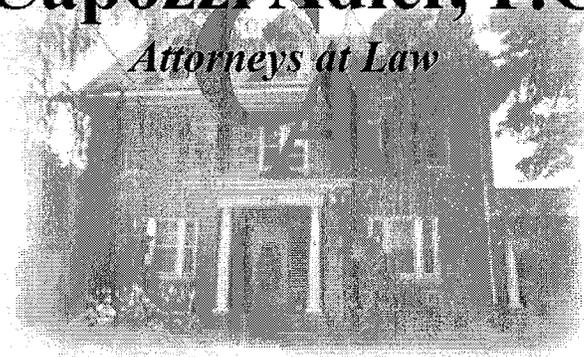


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September 2, 2015

Executive Secretary  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001

*Electronically Filed*

RE: REQUEST FOR BOARD REVIEW  
Order Postponing Hearing Indefinitely (August 18, 2015) and  
Decision Explaining Order (August 19, 2015)  
Entered by Dennis P. Walsh, Regional Director, Fourth Region  
Case 04-RD-157892 (Linwood Care Center) as filed by Sandra L. Transue  
on August 13, 2015  
Our Matter No. 549-15

Dear Executive Secretary:

Our Firm represents the Employer (Linwood Care Center), a party in the above-captioned matter. On behalf of the Employer and pursuant to the Board's Rules and Regulations at Sections 102.67 and 102.71(b), we hereby request the Board review the Regional Director's Order of August 18, 2015 (copy attached as Exhibit A) and his confirmation and explanation of that decision on August 19, 2015 (copy attached as Exhibit B). Since these determinations are plainly prejudicial to the rights to the parties, including violation of the Employer's duty not to recognize a union that has lost majority support from the bargaining unit, *see: Levitz Furniture of the Pacific, Inc.*, 333 NLRB 717, 720, 724 (2001) ("The Board has held that an employer violates Section 8(a)(2) by recognizing a union that lacks majority support or by continuing to recognize an incumbent union that it knows has lost majority support.") ("Under Board law, if a union actually has lost majority support, the employer must cease recognizing it, both to give effect to the employees' free choice and to avoid violating Section 8(a)(2) by continuing to recognize a minority union."), Board review is necessary and appropriate.

While in *Levitz*, the Board, at FN1, adhered to its policy that employers may not withdraw recognition in a context of severe unremedied unfair labor practices tending to cause employees to become disaffected from the union, the Board in *Levitz* recognized that employee-initiated RD Petitions – such as that present in this case – present special circumstances that require protection of employee rights to self-determination guaranteed by the NLRA. Since the Regional Director’s determinations fail to consider the facts underlying the employees’ RD Petition or to apply any test previously established by the Board or the Courts to measure how or whether the prior existing unfair labor practices have any relationship to the employees’ filing their RD Petition on August 13, 2015, these determinations are arbitrary and capricious on their face such that they merit and require Board review pursuant to the criteria in Section 102.71(b)(1-3). In this case, the record is clear that employee dissatisfaction with the union is the result of inaction by the union since its certification on December 13, 2013, including the continuing lack of a collective bargaining agreement or any side agreements providing for increases in employee benefits or wages for more than a year and a half prior to the employees’ RD Petition.

There are, as stated by the Regional Director, pending unfair labor practice charges against the Employer that have been consolidated for hearing presently scheduled for December 2, 2015. These unfair labor practice charges are described in the Consolidated Complaint and Answer filed in that separate matter (copies attached as Exhibit C and Exhibit D, respectively). None of these charges relates to actions by the Employer with respect to the employees’ RD Petition involved in this matter. No unfair labor practice charge has been filed against the Employer with respect to the RD Petition.

The first of the consolidated charges involves allegations with respect to the previously dismissed RM Petition filed by the Employer (the Employer previously requested Board review of the dismissal of that RM Petition) and events in January and February 2015. There is no allegation that any of the actions complained of continued thereafter.

The second of the consolidated charges involves a dispute concerning union access to the Employer’s facility as to which the Employer has tried to bargain with the union, so far without success, after the union continued to violate the terms of the parties’ prior access agreement. The actions in this charge have not been resolved to date despite Employer’s repeated attempts to negotiate an interim access agreement. There is no allegation that this continuing dispute affects or tends to affect employees’ free choice as to their RD Petition rights.

The third of the consolidated charges involves allegations of discretionary discipline imposed by the Employer without notice or bargaining between March 5, 2014 and January 19, 2015. There is no allegation that any of the actions complained of continued thereafter or that the union has sought to bargain over any of the disciplines involved. The Employer's position in this part of the consolidated case is that it had no duty to bargain over these disciplines under currently effective Board and U.S. Supreme Court precedent. There is no allegation that this continuing dispute affects or tends to affect employees' free choice as to their RD Petition rights.

The fourth of the consolidated charges involves a delay in furnishing the union with information not requested until after the Employer filed its RM Petition. The consolidated complaint concedes that the Employer did provide all of the information to the union and makes no allegation that the delay affected or tends to affect employees' free choice as to their RD Petition rights.

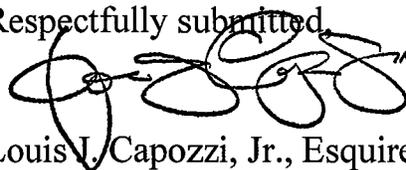
The Board has previously required some analysis of the extent to which pre-existing unfair labor practices actually taint or impair employee free choice. *See: Columbia Pictures Corporation*, 81 NLRB 1313 (1949) (finding special circumstances); *Maramont Corp.*, 317 NLRB 1035, 1036 (1995) (applying law of the case where the Board had previously determine there was no impairment); *see also: Master Slack Corp.*, 271 NLRB 78 (1984) (establishing test to evaluate causal connection between unremedied ULPs and subsequent employee expression of dissatisfaction with a union). The failure of the Regional Director to base his determinations on any of the Board's precedent or established factors is arbitrary and capricious on its face. *See: Motor Vehicles Mfgs. Assoc. of the U.S. v. State Farm Mut. Auto, Ins. Co.*, 463 U.S. 29, 43 (1983); *NLRB v. Beverly Enterprises-Mass., Inc.*, 174 F.3d 13, 23 (1<sup>st</sup> Cir. 1999) (Agency must consider relevant factors). There has to be some basis to indicate that the pending ULPs significantly contributed to the employees' petition for decertification. *See: Tenneco Automotive, Inc. v. NLRB*, 716 F.3d 640 (D.C. Cir. 2013). The Regional Director cites none; the record discloses none; and, there is no basis to infer any such connection. In fact, there does not seem to have been any investigation, or even an offer of proof from the Union, subsequent to the RD Petition being filed. Without an investigation, the Regional Director could not have determined that there was a causal relationship between the above-referenced allegations of taint, which are alleged to have occurred many months ago, and the employees' Petition.

Continuing to delay the election is antithetical to the goals of the Board's recently adopted changes in election procedure. In Guidance Memorandum GC 15-06, issued on April 6, 2015, shortly before the new election rules went in to effect, Board General Counsel, Richard F. Griffin, Jr., noted that the new election rules are intended to "remove

unnecessary barriers to the fair and expeditious resolution of representation cases . . . ,” reduce “unnecessary delay” and make elections “more transparent.” The Regional Director’s abeyance order will cause unneeded delay and the decision lacks any transparency given the apparent failure to even investigate any causal connection between the prior alleged taint, and the much more recent RD Petition through which the employees are trying to exercise their rights.

Since there are no such connections alleged or evident in the record, the Regional Director’s abeyance order should be vacated and the employees’ RD Petition processed for the scheduling of an election. The employees have waited for results from their union long enough and the Board should protect the employees’ right to self-determination here, especially given the policies reflected in the Board’s new election rules and in Section 8(a)(2) of the Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Louis J. Capozzi, Jr.", written over the typed name below.

Louis J. Capozzi, Jr., Esquire  
[Employer’s Legal Representative]

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

LINWOOD CARE CENTER

Employer

and

SANDRA L. TRANSUE

Case 4-RD-157892

Petitioner

and

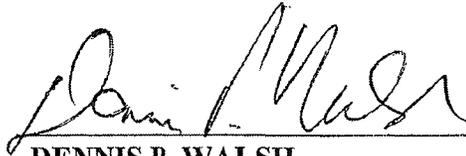
SEIU 1199 NEW JERSEY

Union Involved

**ORDER POSTPONING HEARING INDEFINITELY**

PLEASE TAKE NOTICE that the hearing in the above-entitled matter scheduled for August 21, 2015 is hereby postponed until further notice.

Signed at Philadelphia, Pennsylvania this 18<sup>th</sup> day of August, 2015.



**DENNIS P. WALSH**

Regional Director, Fourth Region  
National Labor Relations Board  
615 Chestnut Street, Suite 710  
Philadelphia, PA 19106





UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 04  
615 Chestnut St Ste 710  
Philadelphia, PA 19106-4413

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (215)597-7601  
Fax: (215)597-7658

August 19, 2015

Sandra L. Transue  
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Egg Harbor Township, NJ 08234-2252

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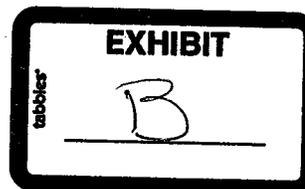
Re: Linwood Care Center  
Case 04-RD-157892

Gentlemen and Ms. Transue:

This is to confirm that the petition in the above-captioned case will be held in abeyance pending the resolution of the unfair labor practice charges in Cases 04-CA-146362, 04-CA146670 and 04-CA-148705. These charges allege that the Employer violated employees' Section 7 rights by soliciting employees to sign a petition against the Union; promising improved working conditions or benefits to employees in order to discourage them from supporting the Union; creating the impression of surveillance of employee Union and protected concerted activity; interrogating and polling employees; and making a number of coercive statements to employees. The charges further allege several violations of Section 8(a)(5) of the Act by engaging in bad faith bargaining or making unilateral changes in employees' terms and conditions of employment.

The National Labor Relations Board maintains a policy of holding in abeyance any representation case where pending unfair labor practice charges are filed by a party to the representation case, and such charges allege conduct of a nature which would have a tendency to interfere with the free choice of the employees if an election were to be conducted. See *United States Coal & Coke Company*, 3 NLRB 398, 399 (1937); *Carson Pirie Scott & Company*, 69 NLRB 935, 938-939 (1946); *Columbia Pictures Corporation, et al*, 81 NLRB 1313, 1314 (1949); *NLRB Case Handling Manual*, Section 11730. As the alleged unlawful conduct would tend to interfere with the free choice of employees in an election, further processing of the petition will be held in abeyance pending the resolution of the unfair labor practice charges.

**Right to Request Review:** Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.



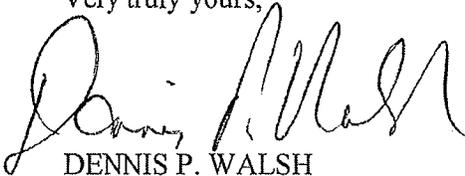
***Procedures for Filing Request for Review:*** A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on Wednesday, September 2, 2015, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on Wednesday, September 2, 2015.

**Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically.** Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review 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, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,



DENNIS P. WALSH  
Regional Director

cc: Office of the Executive Secretary (by e-mail)

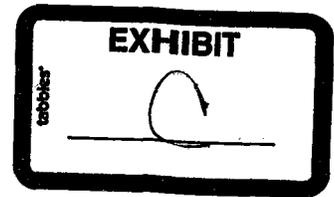
Linwood Care Center  
Case 04-RD-157892

- 3 -

Rose Przychodzki  
Linwood Care Center  
201 New Road  
Linwood, NJ 08221-1296

Jay Jaffe  
New York's Health & Human Service Union 1199/SEIU  
310 West 43<sup>rd</sup> Street, 9<sup>th</sup> Floor  
New York, NY 10036

SEIU 1199 New Jersey  
555 Rt 1 S Fl 3  
Iselin, NJ 08830-3179



UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 4

CPL (LINWOOD) LLC D/B/A  
LINWOOD CARE CENTER

Cases 04-CA-146362  
04-CA-146670 and  
04-CA-148705

and

1199 SEIU UNITED HEALTHCARE  
WORKERS EAST

**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 Cases 04-CA-146362, 04-CA-146670 and 04-CA-148705, which are based on charges filed by 1199 SEIU United Healthcare Workers East (the Union), against CPL (Linwood) LLC d/b/a Linwood Care Center (Respondent) 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 (the Act), 29 U.S.C. § 151 et seq. and Section 102.15 of the Board's Rules and Regulations, and alleges that Respondent has violated the Act as described below.

1. (a) The charge in Case 04-CA-146362 was filed by the Union on February 12, 2015, and a copy was served by first class mail on Respondent on February 13, 2015.
- (b) The first amended charge in Case 04-CA-146362 was filed by the Union on February 27, 2015, and a copy was served by first class mail on Respondent on February 27, 2015.
- (c) The second amended charge in Case 04-CA-146362 was filed by the Union on April 15, 2015, and a copy was served on Respondent by U.S. mail on April 15, 2015.
- (d) The charge in Case 04-CA-146670 was filed by the Union on February 19, 2015, and a copy was served by first class mail on Respondent on February 20, 2015.

(e) The amended charge in Case 04-CA-146670 was filed by the Union on April 15, 2015, and a copy was served by first class mail on Respondent on April 15, 2015.

(f) The charge in Case 04-CA-148705 was filed by the Union on March 20, 2015, and a copy was served by first class mail on Respondent on March 20, 2015.

(g) The first amended charge in Case 04-CA-148705 was filed by the Union on April 15, 2015, and a copy was served by first class mail on Respondent on April 15, 2015.

(h) The second amended charge in Case 04-CA-148705 was filed by the Union on April 20, 2015, and a copy was served on Respondent by U.S. mail on April 20, 2015.

(i) The third amended charge in Case 04-CA-148705 was filed by the Union on May 29, 2015, and a copy was served on Respondent by U.S. mail on June 1, 2015.

2. (a) At all material times, Respondent, a Delaware limited liability company, has operated a skilled nursing facility in Linwood, New Jersey (the Center).

(b) During the past year, Respondent, in conducting its business operations described above in subparagraph (a), received gross revenues in excess of \$100,000 and purchased and received at the Center goods valued in excess of \$5000 directly from points outside the State of New Jersey.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and has been a health care institution within the meaning of Section 2(14) of the Act.

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

4. (a) At all material times, the following individuals held the positions with Respondent at the Center set forth opposite their names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Diane Delaney	-	Executive Director
Lisa McConnell	-	Regional Director-Human Resources
Rose Przychodzki	-	Human Resources Director
Valerie Lowman	-	Director of Nursing

(b) At all material times, Jon Bures and Dan Bryan were employed by Labor Management Consultants LLC (LMC) to persuade Respondent's employees to file a petition against Union representation, and, in that capacity, the individuals were agents of Respondent and of LMC within the meaning of Section 2(13) of the Act.

5. (a) The following employees of Respondent at the Center, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time, regular part-time and per diem Certified Nursing Assistants (CNAs), Unit Clerks and Licensed Practical Nurses (LPNs) employed by the Employer at its 210 New Road and Central Road, Linwood, New Jersey facility, *but excluding* all other employees, guards and supervisors as defined by the Act.

(b) On December 4, 2013, a representation election was conducted among the employees in the Unit and, on December 13, 2013, the Union was certified as the exclusive collective-bargaining representative of the Unit.

(c) At all times since December 13, 2013, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6. In December 2014, Respondent, by Rose Przychodzki, told an employee that Respondent could not make schedule changes because the employees had chosen the Union to be their exclusive collective-bargaining representative.

7. Respondent, by Jon Buress, engaged in the following conduct at the Center:

(a) In or about mid-January 2015, at the Center, solicited an employee to sign a petition against the Union.

(b) On or about January 28, 2015: (1) solicited an employee's complaints and grievances, thereby promising the employee improved working conditions; (2) told an employee that Respondent could not improve working conditions and terms of employment because the employees had chosen the Union to represent them; (3) promised an employee better working conditions and terms of employment if employees voted to get rid of the Union; (4) promised to increase staffing, train management and give employees retroactive pay increases in order to discourage employee's support for the union; (5) told an employee that the changes in subparagraph (4) could not be made because of the Union; (6) told an employee that employees cannot get a raise if the employees go out on a strike; (7) solicited an employee to sign a petition against the Union; (8) created the impression of surveillance by naming the employees who supported the Union; and (9) threatened that it was futile to support the Union because negotiations could go on for years.

8. Respondent, by Dan Bryan, engaged in the following conduct at the Center in order to discourage its employees from seeking Union representation:

(a) On or about January 23, 2015, in order to discourage employees from supporting the Union: (a) made an implied promise to an employee of improved working conditions and terms of employment; (2) solicited an employee's complaints and grievances; (3) promised to discharge a disliked supervisor; and (4) promised to improve working conditions.

(b) In or about late January 2015, in order to discourage employees from supporting the Union: (1) told an employee that employees should get rid of the Union; (2) interrogated an employee concerning the employee's opinions on the Union; (3) created the impression of surveillance concerning employee support for the Union; (4) solicited employees to sign a petition against the Union; (5) solicited an employee's complaints and grievances, promising to make things better; (6) promised to discharge a disliked supervisor; (vii) promised

to improve working conditions by training a supervisor; (7) impliedly promised to grant benefits by discharging disliked supervisors; and (8) promised a wage increase and changes in management.

(c) On or about February 11 or 12, 2015, created the impression of surveillance concerning employee support for the Union.

9. In or about late January or early February 2015, Respondent, by Valerie Lowman, (i) told employees that the Employer interrogated new employees about their support for a union; and (ii) created an impression of surveillance of employees' support for a union.

10. (a) On or about May 14, 2014, Respondent, the Employer and the Union entered into an oral agreement (Access Agreement) allowing the Union access to the Center.

(b) By letter dated March 13, 2015, Respondent imposed new conditions on the terms of the Access Agreement.

(c) On or about March 17, 2015, Respondent, by Lisa McConnell, imposed additional changes to the Access Agreement.

(d) On or about March 18, 2015, Respondent unilaterally revoked the Access Agreement and denied access to the Union to the Center.

11. On or about the dates listed below, Respondent imposed discretionary discipline and suspended and/or discharged the following employees:

Dawn Apella	-	Discharged January 19, 2015
Rose Brewer	-	Discharged October 14, 2014
Anthony Barker	-	Discharged September 15, 2014
Luis Rios	-	Suspended August 25, 2014
		Discharged September 3, 2014
Harry Waugh	-	Suspended March 5, 2014
Debbie Johnson	-	Discharged September 3, 2014
David Fabel	-	Suspended June 27, 2014

12. The subjects set forth above in paragraphs 10(b), 10(c), 10(d) and 11, relate to wages, hours and other terms and conditions of employment and are mandatory subjects for the purposes of collective bargaining.

13. Respondent engaged in the conduct described above in paragraphs 10(b), 10(c), 10(d) and 11, without prior notice to the Union and without affording the Union the opportunity to bargain with Respondent concerning this conduct.

14. (a) On or about February 6, 2015, the Union, by letter, requested that Respondent furnish the following information set forth in the letter:

2. (f) For each current Company employee holding a bargaining unit position, date and amount of all wage increases and/or bonuses paid since December 1, 2013.

9. A list of all bargaining unit employees who have been formally reprimanded, warned, suspended or discharged (including resignation in lieu of discharge) from December 1, 2013 through the present, as well as the following:

- a. The complete personnel and departmental files for each such employee, including prior disciplinary action and employee evaluations;
- b. The notice of reprimand, warning, suspension or dismissal in connection with each employee;
- c. A detailed explanation of the reason each employee was reprimanded, warned suspended or discharged;
- d. All notes, policies, statements, reports, witness statement, video, audio, electronic evidence, and other documentation that the company referred to or relied on its decision to reprimand, warn, suspend or discharge each employee.

(b) By letter dated March 12, 2014, the Employer provided the following information concerning bargaining unit employees: the names of the employees who received increases and the corresponding date of increases, but failed to provide the requested amounts of the increases; and refused to provide the requested disciplinary information for items 9(a-d).

(c) On or about March 23, 2015, the Employer provided the requested amounts of the increases and disciplinary logs.

(d) On or about April 2, 2015, the Employer provided corrected disciplinary logs.

(e) On or about May 14, 2015, the Employer provided the remaining disciplinary information requested in subparagraph (a) above.

(f) The information requested by the Union, as referred to above in subparagraph (a), is necessary for and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(g) Since on or about March 12, 2015, Respondent has delayed furnishing the Union with the information requested in the Union's letter of February 6, 2015.

15. By the conduct described above in paragraphs 6, 7, 8, and 9, Respondent has been interfering with, restraining and coercing employees in the exercise of the rights guaranteed in Section of the Act in violation of Section 8(a)(1) of the Act.

16. By the conduct described above in paragraphs 10(b), 10(c), 10(d), 11, 12 and 14, Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

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

**WHEREFORE**, as part of the remedy for the unfair labor practices alleged above in paragraphs 11 and 16, the General Counsel seeks: an Order (1) requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination; and (2) requiring Respondent to submit the appropriate documentation to the Social Security Administration so that, when backpay is paid, it will be allocated to the appropriate periods. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

#### **ANSWER REQUIREMENT**

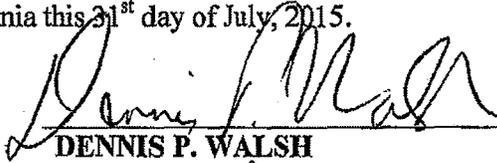
Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Consolidated Complaint. The answer must be **received by this office on or before August 14, 2015, or postmarked on or before August 13, 2015.** Respondent should file 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 **E-File 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 are true.

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that on November 4, 2015, at 10:00 a.m. and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board in a hearing room of the National Labor Relations Board, Region 4, 615 Chestnut Street, Suite 710, Philadelphia., Pennsylvania. 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.

Signed at Philadelphia, Pennsylvania this 31<sup>st</sup> day of July, 2015.



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**DENNIS P. WALSH**  
Regional Director, Fourth Region  
National Labor Relations Board

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
NOTICE

Case 04-CA-146362

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

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

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

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

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Camp Hill, PA 17011-3700

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PO Box 5866  
Harrisburg, PA 17110-0866

Diane Delaney, Executive Director  
Linwood Care Center  
201 New Road  
Linwood, NJ 08221-1296

## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in

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(OVER)

**evidence.** If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.

- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

### III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.

- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.

- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 4

CPL (LINWOOD) LLC d/b/a  
LINWOOD CARE CENTER

Cases 04-CA-146362  
04-CA-146670 and  
04-CA-148705

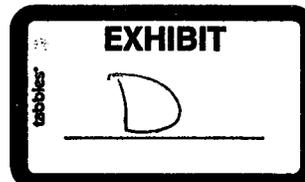
and

1199 SEIU UNITED HEALTHCARE  
WORKERS EAST

**EMPLOYER'S ANSWER TO CONSOLIDATED COMPLAINT**

Respondent, CPL (Linwood) LLC d/b/a Linwood Care Center (Employer), pursuant to Section 102.20 of the Board's Rules and Regulations, to answer the consolidated complaint issued in these matters by the Regional Director, hereby responds and answers as to the allegations of the consolidated complaint as follows:

1. Admitted in part and Denied in part. It is denied that the Amended Charge referred to in (g) is a proper amendment to the Charge initially filed such that it should be given a retroactive effective date; rather, the added charges should be treated as new initially filed charges, since additional and unrelated events were added and retroactivity would be inconsistent with the time limits on bringing charges in the NLRA.
2. Admitted.
3. Admitted.



4. (a) Admitted in part and denied in part. By way of further answer, Employer states that Valerie Lowman is no longer employed by Employer and that Lisa McConnell's title is Regional Director of Human Resources.

(b) Denied. On information belief, Jon Buress and Dan Bryan were independent contractors. Denied that either Jon Buress or Dan Bryan were employed to persuade employees at Linwood Care Center to file a petition against Union representation and that either was an agent of Employer for such within the meaning of Section 2(13) of the NLRA. Proof of such allegations is hereby demanded at the hearing.

5. Admitted.

6. Denied that such a statement was made. Proof of such is hereby demanded at the hearing.

7. Denied that Jon Buress was an agent of Employer and therefore that Employer "by Jon Buress" did anything alleged below.

(a-b). After investigation, Employer is without knowledge of the alleged facts; and, each is therefore denied and proof thereof is demanded at the hearing.

8. Denied that Dan Bryan was an agent of Employer and therefore that Employer "by Dan Bryan" did anything alleged below.

(a-c). After investigation, Employer is without knowledge of the alleged facts; and, each is therefore denied and proof thereof is demanded at the hearing.

9. Denied that at any time during the period alleged or ever Valerie Lowman made the statement alleged in (i) and denied that Valerie Lowman created an impression of surveillance of employees' support for a union during that period. The allegation in (ii) is also denied because it is too vague for further response. Proof of such allegations is demanded at the hearing.

10. (a) Denied. The Employer and the Union had discussions about access to the facility on or about April 17, 2014, which was the date of the Union's first meeting with employees at the facility, which were modifications made by the parties to the protocol on or about November 7, 2014.

(b) Denied. As of the date specified, the Union had already breached the parties' prior access agreement and the Employer began negotiations with the Union to establish a new agreement and made bargaining demands on the Union which were ignored by the Union. On the date specified, the Employer notified the Union that the Union had breached the agreement and

demanded that the Union adhere to the prior agreement; however, the Union did not respond and continued to breach the agreement.

(c) Denied. As of the date specified, the Union again breached the parties' prior access agreement and the Employer was seeking to negotiate a new agreement with the Union and made bargaining demands on the Union which were ignored by the Union. The Employer notified the Union, as they continued to breach the parties' prior access agreement, that their access to the facility was suspended pending negotiations due to the Union's repeated and continuing violations of the access agreement. This was again ignored by the Union as they continued to breach the parties' prior access agreement and returned to the facility the next day and did not attempt to contact the Employer to negotiate access and continued to ignore attempts to negotiate.

(d) Denied. As of the date specified, the Union had breached the parties' prior access agreement and the Employer was seeking to negotiate a new agreement with the Union and made bargaining demands on the Union which were ignored by the Union.

11. Denied. The discipline imposed was not "discretionary" but was consistent with the existing terms and conditions and disciplinary policies of the Employer at each of the times stated, which standards are capable of verification. All of the discipline imposed was consistent with the terms

contained in the employee handbook in effect at the time. By way of further response, since neither the Union nor the Consolidated Complaint alleges otherwise and since each of the disciplines imposed was “for cause,” neither reinstatement nor backpay may be ordered pursuant to Section 10(c) of the NLRA. By way of further response, neither the Union nor the Consolidated Complaint alleges that the discipline imposed was inconsistent with or any substantial departure from past practice and policy; and, therefore fails to state a basis for an unfair labor practice under the principles established by the Supreme Court of the United States. By way of further response, the Employer notes that the Union has not requested or offered to bargain as to any of the disciplines identified in ¶11 after they were imposed and the Union had notice of them to date, including during any bargaining sessions held between the parties to date. As to the specific disciplines cited:

Dawn Apella – was discharged on January 19, 2015 for cause (excessive absenteeism/latest after warnings).

Rose Brewer – was discharged on October 14, 2014 for cause (poor time management and nursing skills) and was in her probationary period. The Employer has no obligation to bargain over probationary employees even if a valid CBA existed.

Anthony Barker – was discharged on September 15, 2014 for cause (failure to provide care for a nursing home resident) and was in his probationary period. The Employer has no obligation to bargain over probationary employees even if a valid CBA existed.

Luis Rios – there is no employee named Luis Rios; and, these allegations are therefore denied. The Employer terminated Luz Rios for cause (verbally fighting with coworker in front of nursing home residents, threatening violence and cursing) on September 3, 2014 and notice of such was provided to the Union. By way of further reply, this Charge is untimely since, on information and belief, the Union had notice of this action more than six (6) months before this Charge was filed.

Harry Waugh – was not suspended on March 5, 2014 and proof of such imposition of discipline is demanded at the hearing and these allegations are therefore denied. Harry Waugh received a written warning for cause (failure to report a nursing home resident's change in condition and prepare the required incident report of that change) on April 3, 2015 after he had been suspended pending investigation of the incident and missed two (2) days on his schedule for which he was not paid.

Debbie Johnson – was discharged on September 3, 2014 for cause (verbally fighting with coworker in front of nursing home residents, threatening

violence) and notice of such was provided to the Union. By way of further reply, this Charge is untimely since, on information and belief, the Union had notice of this action more than six (6) months before this Charge was filed.

David Fabel – Denied. David Fabel was discharged on July 2, 2014 for cause (failure to complete required incident reports) and notice of such was provided to the Union. By way of further reply, this Charge is untimely since, on information and belief, the Union had notice of this action more than six (6) months before the Charge was initially filed.

12. Denied as to each of the allegations stated as to ¶¶10(b,c,d) for the reasons stated in response to such at ¶¶10(b,c,d) and because the Union has refused to date to bargain on such, despite multiple requests to bargain by the Employer. Denied as to each of the allegations stated as to ¶11, since the imposition of discipline pursuant to the existing policies and procedures in place prior to the completion of negotiations of a first collective bargaining agreement (CBA) does not relate to a mandatory subject of bargaining at such time as stated in prior and as yet not overruled decisions of the Board relied on by the Employer. Rather, the imposition of bargaining prior to the imposition of discipline would constitute a material change in the terms and conditions of employment in place until displaced by

bargaining as to the CBA and would offend the balance between employer and union rights established in the NLRA.

13. Denied for the reasons stated above as to ¶¶10(b,c,d) because the Employer did give the Union notice of the breach alleged and an opportunity to bargain for a replacement access agreement, which the Union, to date, has refused to do. As to ¶11, denied that prior notice of the imposition of the disciplines involved and a prior opportunity to bargain as to such disciplines was not provided to the Union by the Employer. Denied that the Union has not had an opportunity to bargain as to such disciplines after the imposition of the disciplines and it is further alleged that the Union has never sought to bargain about any of the disciplines involved after it had knowledge of each. Denied that the Employer has any obligation under currently effective Board precedent and the Act to provide the Union with notice and an opportunity to bargain about disciplines prior to the imposition of same by the Employer.

14. (a) Admitted. By way of further response, the Union previously requested similar information on March 28, 2014, which was provided by the Employer and never objected to by the Union.

(b) Admitted in part and Denied in part. Denied that the Employer “refused to provide the requested disciplinary information for items 9(a-d).” The letter cited speaks for itself and did not provide the information for the reasons

stated therein and pending the parties' resolution of employee confidentiality concerns and the workload demands of copying the information requested. The resolution of these issues was the subject of multiple conversations with various Board agents, all of whom sought to resolve these issues with the Union. Instead of informing the Employer that the Union was refusing to resolve these issues and give the Employer the opportunity to provide relevant information, the Board issued a complaint. Denied that any relevant letter is dated March 12, 2014, since the reply intended to be referred to is dated March 12, 2015.

(c) Admitted.

(d) Admitted.

(e) Admitted.

(f) Denied. The Union did not request any information from the Employer from the time the Employer responded to the Union's March 28, 2014 request through the time it began contract negotiations in November 2014 and thereafter until after the Employer filed an RM Petition seeking a new election in 2015. Having intentionally delayed for almost a year to request the additional information for bargaining, the time to fulfill the Union's last minute request was not prejudicial. Moreover, the Union has failed to adequately respond to the Employer's relevant requests for information.

(g) Denied, for the reasons stated in 14(b-f), above.

15. Denied for the reasons stated above as to each of the paragraphs stated.

16. Denied for the reasons stated above as to each of the paragraphs stated.

17. Denied that any unfair labor practices are described above.

WHEREFORE, the Employer requests that the Consolidated Complaint be dismissed and that the General Counsel's requested remedy concerning back pay and other payment information be denied as inconsistent with Section 10 of the NLRA.

Respectfully submitted,



Louis J. Capozzi, Jr., Esquire

Bruce G. Baron, Esquire

CAPOZZI ADLER, P.C.

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Harrisburg, PA 17110

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[Legal Representatives for Respondent,

CPL (Linwood) LLC d/b/a

Linwood Care Center]

DATE: AUGUST 12, 2015

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Section 102.21 of the Board's Rules and Regulations, a true and correct copy of this Answer was served by first-class, prepaid U.S. Mail on the date stated below to the parties to this matter addressed as follows:

Jay Jaffe, Senior Managing Counsel  
1199 SEIU United Healthcare Workers East  
310 West 43<sup>rd</sup> Street (9<sup>th</sup> floor)  
New York, NY 10036-3981 (also sent by email to: [Jayj@1199.org](mailto:Jayj@1199.org))  
(Union's Legal Counsel)

1199 SEIU United Healthcare Workers East  
555 Route 1 South (3<sup>rd</sup> Floor) (also sent by email to [Roz.Waddell@1199.org](mailto:Roz.Waddell@1199.org))  
Iselin, NJ 08830

Dennis P. Walsh, Regional Director (4<sup>th</sup> Region)  
NLRB (also sent by email to [Dennis.Walsh@nlrb.gov](mailto:Dennis.Walsh@nlrb.gov))  
615 Chestnut Street (Suite 710)  
Philadelphia, PA 19106-4404



Bruce G. Baron, Esquire

[Legal Representative for Respondent]

DATE: AUGUST 12, 2015

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 2<sup>nd</sup> day of September, 2015, a true and correct copy of the foregoing Request for Board Review of the Order dated August 18, 2015 Postponing the Hearing Indefinitely and the Decision Explaining the Order Entered by Dennis P. Walsh, Regional Director, was served on the following by the method designated:

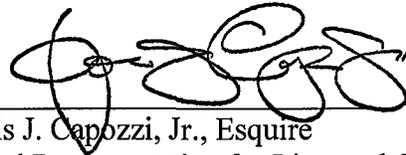
Via E-mail and US First Class Mail:

Dennis P. Walsh  
Regional Director  
National Labor Relations Board, Region 04  
615 Chestnut Street, Suite 710  
Philadelphia, PA 19106  
Email: [Dennis.Walsh@nlrb.gov](mailto:Dennis.Walsh@nlrb.gov)

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SEIU 1199 New Jersey  
555 Rt 1 S FI3  
Iselin, NJ 08830-3179  
Email to: [Roz.Waddell@1199.org](mailto:Roz.Waddell@1199.org)

Date: September 2, 2015



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Louis J. Capozzi, Jr., Esquire  
[Legal Representative for Linwood Care Center]