

**Nos. 15-1110, 15-1129**

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**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**HEALTHBRIDGE MANAGEMENT, LLC;  
710 LONG RIDGE ROAD OPERATING COMPANY II, LLC  
D/B/A LONG RIDGE OF STAMFORD**

**PETITIONERS/CROSS-RESPONDENTS**

**V.**

**NATIONAL LABOR RELATIONS BOARD**

**RESPONDENT/CROSS-PETITIONER**

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**ON PETITION FOR REVIEW AND CROSS-APPLICATION  
FOR ENFORCEMENT OF AN ORDER OF  
THE NATIONAL LABOR RELATIONS BOARD**

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**BRIEF FOR  
THE NATIONAL LABOR RELATIONS BOARD**

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## **CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES**

Pursuant to Local Rule 28(a)(1) of the Rules of this Court, counsel for the National Labor Relations Board (“the Board”) certifies the following:

### **A. Parties and Amici**

HealthBridge Management, LLC and 710 Long Ridge Road Operating Co. II, LLC d/b/a Long Ridge of Stamford (“the Company”), were the Respondents before the Board and are Petitioners/Cross-Respondents before the Court. The Board is the Respondent/Cross-Petitioner before the Court; its General Counsel was a party before the Board. New England Health Care Employees Union, District 1199, SEIU, AFL-CIO (“the Union”), was the charging party before the Board. There were no intervenors or amici before the Board, and there are none in this Court.

### **B. Ruling Under Review**

The ruling under review is a decision and order of the Board in *HealthBridge Management, LLC; 710 Long Ridge Road Operating Co. II, LLC d/b/a Long Ridge of Stamford*, 362 NLRB No. 33 (March 24, 2015).

### **C. Related Cases**

This case has not previously been before this or any other court. Board counsel is not aware of any related cases.

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## **GLOSSARY**

The Act	National Labor Relations Act, 29 U.S.C. § 151, et seq.
The Board	National Labor Relations Board
The Order	<i>HealthBridge Management, LLC; 710 Long Ridge Road Operating Co. II, LLC d/b/a Long Ridge of Stamford</i> , 362 NLRB No. 33 (March 24, 2015)
The Union	New England Health Care Employees Union, District 1199, SEIU, AFL-CIO
Long Ridge	710 Long Ridge Road Operating Co. II, LLC d/b/a Long Ridge of Stamford
The Company	HealthBridge Management, LLC; 710 Long Ridge Road Operating Co. II, LLC d/b/a Long Ridge of Stamford
Br.	The Company's opening brief
A.	The Joint Appendix

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**ON PETITION FOR REVIEW AND CROSS-APPLICATION  
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**BRIEF FOR  
THE NATIONAL LABOR RELATIONS BOARD**

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**STATEMENT OF SUBJECT MATTER AND  
APPELLATE JURISDICTION**

This case is before the Court on the petition of HealthBridge Management, LLC and 710 Long Ridge Road Operating Company II, LLC, d/b/a Long Ridge of Stamford (collectively “the Company”) for review, and the cross-application of the National Labor Relations Board (“the Board”) for enforcement, of a Board

Decision and Order issued against the Company on March 24, 2015, and reported at 362 NLRB No. 33. (A. 249.)<sup>1</sup> The Board had subject-matter jurisdiction over the proceeding below under Section 10(a), 29 U.S.C. § 160(a), of the National Labor Relations Act, as amended (“the Act”), 29 U.S.C. § 151, et seq. The Court has jurisdiction over this proceeding under Section 10(e) and (f) of the Act, 29 U.S.C. § 160(e) and (f), which provides for the filing of petitions for review and cross-applications for enforcement of final Board orders in this Circuit. The Company’s petition and the Board’s cross-application were timely because the Act places no time limit on the initiation of review or enforcement proceedings.

### **STATEMENT OF THE ISSUE**

Whether substantial evidence supports the Board’s finding that the Company violated Section 8(a)(3) and (1) of the Act by discharging Patrick Atkinson because of his protected activity in leading a union protest concerning conditions of employment. Because the Company admittedly discharged Atkinson for conduct during a protected union protest, that question turns on the subsidiary issue of whether, examining Atkinson’s conduct during the union protest under the Board’s balancing test, Atkinson lost the protection of the Act.

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<sup>1</sup> “A.” references are to the joint appendix. “Br.” references are to the Company’s opening brief. References preceding a semicolon are to the Board’s findings; those following are to the supporting evidence.

## **RELEVANT STATUTORY PROVISIONS**

The relevant statutory provisions are contained in the attached Addendum.

### **STATEMENT OF THE CASE**

#### **I. PROCEDURAL HISTORY**

Based on charges filed by New England Health Care Employees Union, District 1199, SEIU, AFL-CIO (“the Union”), the Board’s Acting General Counsel issued an amended consolidated complaint alleging that the Company had violated the Act by discharging two employees. (A. 252; A. 18.) After a hearing, an administrative law judge found that the Company had violated Section 8(a)(3) and (1) of the Act, 29 U.S.C. § 158(a)(3) and (1), by discharging one of the employees, Patrick Atkinson, and dismissed the allegations with respect to the second employee. (A. 255-56.) On review, the Board affirmed the judge’s rulings, findings, and conclusions, and adopted the recommended Order, with modifications. (A. 249-51.)

#### **II. THE BOARD’S FINDINGS OF FACT**

##### **A. Background**

Starting in 1993, Patrick Atkinson worked as a cook/dietary aide at Long Ridge of Stamford (“Long Ridge”), a rehabilitation and long-term care facility. (A. 254; A. 100, 123.) He also served as a long-time union delegate, a role functionally equivalent to a shop steward and, in that capacity, he actively

participated in numerous grievance proceedings. As a delegate, Atkinson also organized many “walk-ins,” a union protest where a group of employees proceed to a manager’s office to present their concerns over conditions of employment. (A. 254; A. 123-25, 134-35, 138.)

**B. Atkinson’s Protected Union Activity: Leading the January Walk-in**

On January 19, 2012, Atkinson organized approximately 15 employees to conduct a union walk-in at the office of the administrator of Long Ridge, Polly Schnell. (A. 254; A. 124, 127-29, 131, 152, 161, 175, 177, 186, 195-96, 199.) The group walked to Schnell’s office, knocked, entered when she said to come in, and stood silently along the wall as Atkinson spoke. (A. 254; A. 129-30, 139, 152, 154, 163, 172-73, 180-81, 187-88, 196.) When they arrived, Schnell was sitting at her desk and working on her computer. (A. 254; A. 131, 139-41, 152, 163, 171, 178, 187, 197-98, 201.) On behalf of the group, Atkinson informed Schnell that they were there to raise concerns about employees being unfairly suspended. (A. 254; A. 130, 142, 152-53, 166, 179, 190.) He also stated that employees had lost confidence in her leadership. (A. 254; A. 143.) While speaking, Atkinson held a grievance in his right hand and touched his left palm with it in a gesture indicating emphasis. (A. 254; A. 86, 126, 142, 145-47, 165, 174.)

Schnell stated that she was uncomfortable with the situation and walked out. (A. 254; A. 132, 153, 167, 172, 179, 182, 190, 198, 201.) Atkinson did not prevent

Schnell from leaving. (A. 254, 6; A. 141-42, 149-50, 153, 165, 178, 180, 188, 191.) When she did not return after a few moments, the assembled employees began to depart. (A. 254; A. 132, 154, 167, 172, 192, 198, 203-04.) As the group was leaving her office, Atkinson saw Schnell and declared “no justice, no peace.” (A. 254; A. 132, 150, 154, 205.)

Shortly thereafter, the Company placed Atkinson on suspension pending an investigation into his allegedly verbally abusive and physically threatening conduct toward Schnell during the walk-in. Following its investigation, the Company discharged Atkinson for that same purported misconduct. (A. 249 n.6; A. 70.)

### **III. THE BOARD’S CONCLUSIONS AND ORDER**

Based on the foregoing facts, the Board (Chairman Pearce, Members Johnson and McFerran) affirmed the administrative law judge’s findings that the Company violated Section 8(a)(3) and (1) of the Act by discharging Atkinson because of his protected concerted activity in leading a union protest concerning conditions of employment. (A. 249.) The Board’s Order requires the Company to cease and desist from the unfair labor practices found and from, 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, 29 U.S.C. § 157. (A. 250.)

Affirmatively, the Order requires the Company to: offer full reinstatement to Atkinson to his former job or, if that position no longer exists, to a substantially

equivalent position; make him whole for any loss of earnings or benefits suffered as a result of the unlawful discrimination; remove from its files any references to his unlawful discharge and notify him in writing that the discharge will not be used against him in any way; and post a remedial notice. (A. 250-51.)

### **STANDARD OF REVIEW**

This Court's review of the Board's unfair-labor-practice determinations is "quite narrow." *Traction Wholesale Ctr. Co. v. NLRB*, 216 F.3d 92, 99 (D.C. Cir. 2000). When supported by substantial evidence on the record as a whole, the Board's findings of fact are "conclusive." 29 U.S.C. § 160(e); *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951); *Kiewit Power Constr. Co. v. NLRB*, 652 F.3d 22, 25 (D.C. Cir. 2011). The Court also applies that test to the Board's "application of law to the facts, and accords due deference to the reasonable inferences that the Board draws from the evidence, regardless of whether the court might have reached a different conclusion *de novo*." *United States Testing Co. v. NLRB*, 160 F.3d 14, 19 (D.C. Cir. 1998) (internal citations omitted). Finally, the Board's assessment of witness credibility is given great deference and must be upheld unless it is "hopelessly incredible, self-contradictory, or patently unsupportable." *Stephens Media, LLC v. NLRB*, 677 F.3d 1241, 1250 (D.C. Cir. 2012) (quoting *Federated Logistics & Operations v. NLRB*, 400 F.3d 920, 924 (D.C. Cir. 2005)).

## SUMMARY OF ARGUMENT

The Company admittedly discharged Atkinson because of his protected activity in leading a union protest—the walk-in—concerning conditions of employment; as its sole defense, it argues that Atkinson’s conduct during the walk-in was so egregious that he forfeited the Act’s protection. Substantial evidence, including the mutually corroborative, credited testimony of multiple employee witnesses, supports the Board’s finding that, under the factors of *Atlantic Steel Co.*, 245 NLRB 814 (1979), Atkinson did not lose the protection of the Act. Specifically, as the Board found: the walk-in occurred in private, away from patients or visitors; it raised employees’ concerns over working conditions including unfair suspensions, bad leadership, and a pending grievance; and Atkinson’s remarks were mild and his conduct devoid of menace or threats. The Board’s conclusion—that those circumstances, all of which strongly support protection, were not outweighed by the absence of an unlawful or egregious company action provoking the walk-in or Atkinson’s conduct—is eminently reasonable.

In challenging the Board’s findings, the Company relies on so-called undisputed facts, which in actuality lack evidentiary support or are contrary to the Board’s express findings. It further urges the Court to accept an alternate, second-hand account of the walk-in that the Board discredited. The majority of its

arguments are, therefore, factually baseless. In any event, even accepting either of the Company's versions of the walk-in, Atkinson's conduct falls comfortably within the spectrum of conduct that, although intemperate, the Courts and the Board have found insufficiently egregious to destroy protection.

## ARGUMENT

### **SUBSTANTIAL EVIDENCE SUPPORTS THE BOARD’S FINDING THAT THE COMPANY VIOLATED SECTION 8(a)(3) AND (1) OF THE ACT BY DISCHARGING PATRICK ATKINSON BECAUSE OF HIS PROTECTED ACTIVITY IN LEADING A UNION PROTEST CONCERNING CONDITIONS OF EMPLOYMENT**

The Company admittedly (Br. 15-16) discharged Atkinson for leading the January walk-in concerning conditions of employment at Long Ridge—conduct that plainly constituted protected union activity under the Act. Moreover, as shown below, nothing about Atkinson’s behavior during the walk-in was so egregious as to forfeit the Act’s protection. Accordingly, the Board reasonably found (A. 249-50, 255) that the Company violated Section 8(a)(3) and (1) of the Act by discharging Atkinson because of his protected union activity.

#### **A. The Company Admittedly Discharged Atkinson for His Conduct During the Protected Union Walk-in**

Section 7 of the Act, 29 U.S.C. § 157, guarantees employees “the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . .” To protect employees’ Section 7 rights, Section 8(a)(3) of the Act, 29 U.S.C. § 158(a)(3), prohibits employers from discriminating “in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.” Unless an employee loses

the protection of the Act by engaging in sufficiently egregious conduct, an employer violates Section 8(a)(3) by discharging an employee for participating in union activity.<sup>2</sup> *See Stephens Media*, 677 F.3d at 1251; *Stanford Hotel*, 344 NLRB 558, 558, 565 (2005).

The record fully supports—and the Company does not contest (Br. 16)—the Board’s finding that, by leading the union protest, Atkinson engaged in protected activity. (A. 255; 297, 331-32, 416-17, 500, 521, 538.) Because the Company admittedly (Br. 16, 34) discharged Atkinson for conduct that was part of the res gestae of that protected union activity, the only issue that remained for the Board’s determination was whether his conduct during the walk-in was sufficiently egregious to cause him to lose the Act’s protection. *See Stanford Hotel*, 344 NLRB at 558 (“When an employee is discharged for conduct that is part of the res gestae of protected concerted activities, the pertinent question is whether the conduct is sufficiently egregious to remove it from the protection of the Act.”)

### **B. Atkinson Did Not Forfeit the Protection of the Act**

It is well-established that an employee’s right to engage in Section 7 activity “may permit some leeway for impulsive behavior, which must be balanced against

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<sup>2</sup> A violation of Section 8(a)(3) results in a derivative violation of Section 8(a)(1) of the Act, 29 U.S.C. § 158(a)(1), which makes it an unfair labor practice for an employer “to interfere with, restrain, or coerce employees in the exercise of the[ir statutory] rights . . . .” *See Metro. Edison Co. v. NLRB*, 460 U.S. 693, 698 n.4 (1983).

the employer's right to maintain order and respect." *Kiewit Power*, 652 F.3d at 26. Consequently, an employee engaged in protected concerted or union activity loses the Act's protection only if his conduct is "so egregious as to be indefensible." *Stephens Media*, 677 F.3d at 1253. In determining whether conduct satisfies that standard, the Board weighs the following factors: (1) the place of the discussion, (2) the subject matter of the discussion, (3) the nature of the employee's outburst, and (4) whether the outburst was provoked in any way by an employer's unfair labor practices. *Atl. Steel*, 245 NLRB at 816; accord *Stephens Media*, 677 F.3d at 1253 (applying *Atlantic Steel*). The Court will not disturb the Board's determination of whether an employee retains the Act's protection unless it is arbitrary, capricious, or unsupported by substantial evidence. *Stephens Media*, 677 F.3d at 1253; *Kiewit Power*, 652 F.3d at 27.

Substantial evidence supports the Board's determination (A. 249-50, 255) that the first three *Atlantic Steel* factors "strongly favor finding that Atkinson's conduct remained protected" and that, collectively, the strength of those factors outweighs the fourth factor which, as the Board acknowledged, weighs against continuing protection. Consequently, Atkinson did not lose the Act's protection and his discharge violated Section 8(a)(3) and (1) of the Act.

**1. Factor 1: The place of the walk-in—a private office, away from patients or visitors—strongly favors protection**

The Board reasonably determined (A. 249) that the place of the walk-in strongly favored Atkinson retaining the protection of the Act. When the disputed conduct occurs in a private setting, away from work areas and customers, and there is no disruption to work or employee discipline, the Board, with court approval, will find that this first *Atlantic Steel* factor weighs in favor of protection. *See, e.g., Inova Health Sys.*, 360 NLRB No. 135, 2014 WL 3367243, at \*9 (2014) (non-work area—hallway; no disruption), *enforced*, 2015 WL 4490275, at \*14 (D.C. Cir. 2015) (hallway in front of administrative offices where no patients or members of public could be disturbed); *Datwyler Rubber & Plastics, Inc.*, 350 NLRB 669, 670 (2007) (employee break room, away from work area); *Stanford Hotel*, 344 NLRB at 558 (employee lunchroom away from work area; employee closed door in effort to maintain privacy, although coworker inadvertently overheard); *see also Wal-Mart Stores, Inc.*, 341 NLRB 796, 808 (2004) (although employee used profanity during discussion in retail area of store, place still weighed in favor of protection because no other employees or customers overheard discussion), *enforced*, 137 F. App'x 360 (D.C. Cir. 2005) (per curium). As the Board found, the walk-in occurred in Schnell's office, an administrative space removed from any patient-care areas. (A. 249, 254; A. 129-30, 132, 152, 154, 161, 171, 177, 186-87, 192, 195, 200-01, 204.) There is no evidence that Atkinson's remarks were overheard

by, or that the gathering was witnessed by or affected, any patients or visitors, or otherwise disrupted Long Ridge's operations.

The Company claims (Br. 35-36) that employees' presence during the walk-in dictates that this factor weighs against protection. That claim is misplaced, because those employees were participants in the protected concerted activity (the union walk-in), not uninvolved bystanders. That distinguishes this case from cases, such as those cited by the Company (Br. 35-36), where the Board has weighed location against protection because an employee's outburst was witnessed by employees not participating in the conduct under review, triggering the Board's concern over disruptions to work or employee discipline.<sup>3</sup> *See Starbucks Corp.*, 354 NLRB 876, 877-78 & n.8 (2009) (factor weighed against protection where broke away from a public rally and, in view of other current employees, pursued and threatened manager), *affirmed*, 355 NLRB 636 (2010), *enforcement denied on other grounds*, 679 F.3d 70 (2d Cir. 2012); *DaimlerChrysler Corp.*, 344 NLRB 1324, 1328-29 (2005) (factor weighed against protection where employee, acting

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<sup>3</sup> The Company does not advance its claim by relying on the distinguishable *Trus Joist Macmillan*, 341 NLRB 369, 370-71 (2004). There, the location weighed against protection because, although the employee's outburst occurred in a private office, he had purposely requested the attendance of other managers to further his prearranged plan of embarrassing a supervisor.

alone, made profane outburst to supervisor in open cubicle, which was overheard by other employees working in nearby cubicles).<sup>4</sup>

Those concerns are not present when, as here, the employees witnessing an outburst are themselves participants in the contemporaneous protected concerted activity. Indeed, if, as the Company urges, this factor always weighed against protection under such circumstances, it would act as a disincentive to the *concerted* aspect of Section 7 activity—contravening the policies underlying the Act—by mechanically penalizing any disputed conduct in the presence of participating coworkers, no matter how removed from customers or other employees in the workplace.<sup>5</sup> Accordingly, the Board has found that location weighed in favor of protection when employee “witnesses” were in fact participants in the protected concerted activity. *See, e.g., Staffing Network Holdings, LLC*, 362 NLRB No. 12, 2015 WL 471428, at \*1-2 (2015) (employee was allegedly insubordinate toward supervisor in presence of coworkers when employees were collectively pleading with supervisor to rescind discharge of fellow employee), *petition and cross-*

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<sup>4</sup> Moreover, as discussed below (Part B.3), there was no “misconduct” for the employees participating in the walk-in to witness, much less an egregious outburst characterized by the sort of profane or threatening actions observed by uninvolved employees in *Starbucks* and *DaimlerChrysler*.

<sup>5</sup> There is no support for the Company’s claim (Br. 37-38) that this factor weighs against protection because, having relayed the group’s concerns to Schnell, Atkinson subsequently declined to engage in a discussion with Schnell in the public hallway; indeed, based on the Company’s own rationale, that public space would have been inappropriate for such a discussion.

*application filed*, Nos. 15-1354 & 15-1582 (7th Cir.) (Board brief filed Aug. 20, 2015); *Inova Health Sys.*, 2014 WL 3367243, at \*9-10 (employee allegedly aggressively touched human resources representative in presence of 6-7 nurses who were collectively supporting suspended coworker); *see also Datwyler Rubber & Plastics*, 350 NLRB at 669-70, 672 (employee's outburst took place at staff meeting attended by nearly 70 employees; Board highlighted that meeting was in location that would not disturb work process, i.e., non-participating employees).

There is also no merit to the Company's claim (Br. 36-37) that the walk-in deserves less protection because it was "an impromptu protest for the purpose of castigating Schnell," as opposed to an airing of specific issues during a regularly scheduled meeting called by the Company to discuss work-related concerns. Initially, the evidence establishes that the walk-in was in fact organized in advanced to convey a message, consistent with the Union's practice of raising employees' concerns over terms and conditions of employment through walk-ins. More fundamentally, a core purpose of Section 7-protected concerted activity—such as a union walk-in—is to bring issues to management's attention regardless of whether management has elected to solicit feedback. Accordingly, the Board routinely finds the first *Atlantic Steel* factor weighs in favor of protection where the concerted activity was initiated by employees or occurred outside of a regularly

scheduled meeting called by management.<sup>6</sup> *See, e.g., Inova Health Sys.*, 2014 WL 3367243, at \*9-10; *Wal-Mart Stores*, 341 NLRB at 804, 808.

**2. Factor 2: The subject matter of the walk-in—employees’ concerns over unfair suspensions and other conditions of employment—strongly favors protection**

The Board next reasonably determined (A. 249-50) that the subject matter of the walk-in strongly favored Atkinson retaining the protection of the Act. Under this second *Atlantic Steel* factor, the subject matter of the discussion weighs heavily in favor of protection when an employee’s disputed outburst occurs while he is raising union or concerted, work-related concerns to his employer. *See Felix Indus., Inc.*, 339 NLRB 195, 196 (2003) (finding it “very significant” in favor of protection that employee was engaging in protected activity—asserting his contractual rights—when he made disputed outburst), *enforced mem.*, 2004 WL 1498151 (D.C. Cir. 2004); *see, e.g., Inova Health Sys.*, 2014 WL 3367243, at \*9-10 (urging employer to reconsider terminating suspended employee was protected subject matter); *Beverly Health & Rehab. Servs., Inc.*, 346 NLRB 1319, 1322 (2006) (discussion of merits of grievance seeking reinstatement of coworker was protected subject matter); *Consumers Power Co.*, 282 NLRB 130, 131 (1986)

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<sup>6</sup> In claiming that this factor weighs against protection, the Company makes assertions (Br. 37) that lack proper evidentiary support, namely, that the employees entered Schnell’s office “unannounced” (*see* p. 4) and closed the door behind them (*see* pp. 21-22).

(criticizing management for failing to provide coworker with police escort when reading meter at location with known violent homeowner). Here, substantial evidence supports the Board's finding (A. 249-50, 255) that Atkinson was, in his role as union delegate, conveying to Schnell, on behalf of himself and other employees engaged in the union walk-in, concerns respecting unfair suspensions, faltering confidence in her leadership at Long Ridge, as well as his pending grievance. (A. 129-30, 132, 142-43, 152-53, 166, 179, 190.)

Although the Company concedes (Br. 38, 40) that this factor weighs in favor of protection, it seeks (Br. 38-40) to minimize its significance by claiming (Br. 38) that Atkinson's remarks did not pertain to "ongoing contract negotiations, grievance investigations, or specific complaints about terms and conditions of employment."<sup>7</sup> It has, however, cited no authority for the proposition that concerted employee efforts to start a dialogue with their employer respecting terms and conditions of employment are less protected when undertaken outside the formal frameworks of bargaining or grievance investigation, or if insufficiently "specific." And, to the contrary, the Board has recognized that employees may pursue union and protected activities in a variety of informal contexts (*see* pp. 14-16 & cited cases) and, moreover, that they need not necessarily spell out their

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<sup>7</sup> Although the Company cites (Br. 39) discredited evidence (*see* pp. 25-28) in describing the subject matter of the discussion, it does not argue that, even accepting its version of events, the conversation was unprotected.

concerns in great detail (*see* p. 16 & cited cases). *See Kysor/Cadillac*, 309 NLRB 237, 238 (1992) (holding employees' failure to explain source of confusion underlying concerted inquiry did not preclude protection); *accord NLRB v. Wash. Aluminum Co.*, 370 U.S. 9, 14-15 (1962) (concerted work stoppage by unrepresented employees protected even if protesting employees fail to articulate a specific remedial demand to their employer); *cf. NLRB v. City Disposal Sys. Inc.*, 465 U.S. 822, 840 (1984) ("In the context of a workplace dispute, where the participants are likely to be unsophisticated in collective-bargaining matters, a requirement that the employee explicitly refer to the collective-bargaining agreement is likely to serve as nothing more than a trap for the unwary.")

In any event, the Company's characterization of the walk-in as non-specific and not related to a grievance or to Atkinson's role as a union representative is factually inaccurate. As shown, Atkinson organized and led the walk-in in his capacity as a union delegate, and there was a history of employees using similar union walk-ins to communicate their concerns respecting terms and conditions of employment to management in this particular workplace. During the walk-in, Atkinson raised a specific complaint about conditions of employment—employees' perception that coworkers were being unfairly suspended. He also

cited his pending grievance against Schnell, which he undisputedly had in his hand.<sup>8</sup>

In sum, there is no legal or factual support for the Company's claim that the Board weighed this factor too heavily in support of finding that Atkinson's conduct retained protection.

**3. Factor 3: The nature of Atkinson's conduct strongly favors protection**

The Board also reasonably determined (A. 250) that the nature of Atkinson's conduct strongly favored continuing protection. Generally, this third *Atlantic Steel* factor weighs against protection only where the conduct is opprobrious, involving factors such as extraordinary profanity, extreme insubordination, violence, or explicit physical threats. *See Kiewit Power*, 652 F.3d at 27-29; *see also Stanford*

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<sup>8</sup> Seeking to minimize Atkinson's grievance, the Company asserts (Br. 39-40) that it was "completely personal" to him. It has long been established, however, that employees are protected in protesting alleged mistreatment of coworkers. *See, e.g., NLRB v. Peter Cailler Kohler Swiss Chocolates Co.*, 130 F.2d 503, 505 (2d Cir. 1942) ("When all the other workmen in a shop make common cause with a fellow workman over his separate grievance, and go out on strike in his support, they engage in a 'concerted activity' for 'mutual aid or protection,' although the aggrieved workman is the only one of them who has any immediate stake in the outcome."); *Consumers Power*, 282 NLRB at 131 (protesting that coworker sent without police escort to read meter at location with known violent homeowner). Moreover, the grievance protested Schnell's treatment of Atkinson, in his official role as a union delegate, during a meeting concerning her investigation of another employee, who she suspended the next day. (A. 253; A. 86.) Thus, it also implicated employees' strong interest in ensuring that their union delegates are treated fairly by their employer, especially when representing them in investigative or disciplinary matters.

*Hotel*, 344 NLRB at 564 (“offensive, vulgar, defamatory or opprobrious remarks uttered during the course of protected activities will not remove activities from the Act’s protection unless they are so flagrant, violent, or extreme as to render the individual unfit for further service.” (citation omitted)).

In the present case, Atkinson’s conduct during the union walk-in displayed none of the markers of an outburst egregious enough to weigh against continued protection. Thus, ample evidence supports the Board’s finding that the January walk-in was similar to prior walk-ins and that Atkinson’s remarks “were extremely mild, merely informing Schnell that the group was there to discuss concerns about employees being suspended unfairly and that the employees had lost confidence in Schnell’s leadership.” (A. 250; A. 129-30, 132, 134-36, 142-43, 152-53, 166, 174, 179, 182, 190.) While talking, Atkinson held a grievance in his right hand and touched his left palm with it for emphasis. (A. 250, 254; A. 130, 142, 145-47.) At no time during the walk-in did he make any menacing statements or gestures, position himself in such a way so as to prevent Schnell from leaving her office, or refuse to leave Schnell’s office; indeed, he was never asked to leave. (A. 250, 254; A. 133-34, 143, 146-50, 153-55, 168, 182, 194.) Accordingly, because there was “no credited evidence that Atkinson engaged in any menacing or abusive behavior of the kind that the Board has elsewhere found weighs against continued

protection,” the Board reasonably determined (A. 250) that the third *Atlantic Steel* factor weighed strongly in favor of continued protection.

As demonstrated below, there is no merit to the Company’s various attacks on the Board’s assessment of the nature of Atkinson’s conduct. Its argument that undisputed evidence proves that his conduct was outrageous or threatening enough to weigh against protection is based on mistaken or unsupported factual assertions. Its reliance on a second-hand description of Schnell’s report of the walk-in is also misguided. The Board discredited that testimony which, in any event, would not undermine the Board’s analysis even if admissible and accepted as true.

**a. The Company’s description of the “undisputed” evidence is both inaccurate and inapposite**

The Company’s first contention (Br. 40-44), that even the “undisputed” evidence shows the nature of Atkinson’s conduct to be opprobrious enough to weigh against protection, is fundamentally flawed. Many, if not all, of the Company’s so-called undisputed facts lack any evidentiary support, are contrary to the weight of the evidence or the Board’s express findings, or mischaracterize testimony. Moreover, even if accepted, the Company’s description of the walk-in does not paint a picture of the type of egregious conduct that weighs against protection under the third *Atlantic Steel* factor.

To begin, the Company’s assertions (Br. 41, 43) that Schnell was “surrounded” during the walk-in, and that Atkinson placed himself “between” her

and the door, which the employees closed, are contrary to the Board's findings and to the weight of the evidence. The Board found—and the evidence shows—that the employees stood back from Schnell's desk and along the walls of her office, and that Atkinson made no attempt to prevent Schnell from exiting her office, but merely stood near the door. (A. 250, 254; A. 139, 141-42, 149-50, 152-54, 163, 165, 173, 178, 180-81, 188, 191, 202-03.) Moreover, the Board did not find that the employees closed the door, and the weight of the record evidence indicates that they did not. (A. 178, 197, 201.)

As to Atkinson, while the Company asserts (Br. 41) that he “admittedly spoke loudly in the closed office,” he only testified that he spoke loudly enough for everyone in the room to hear him, and specifically denied speaking “pretty loud.” (A. 142-43.) Similarly, the Company makes much (Br. 42-43) of Atkinson's use of the word “pounded” to describe his gestures. Again, however, his full testimony supports the Board's finding (A. 250, 254) that he touched his left palm with the grievance he was holding in his right hand to indicate emphasis. Specifically, Atkinson stated that he has a mannerism where he “pounds” on his fingers, pushing them into his hands while talking, and went on to clarify that his hand movements during the walk-in served to count off the group's concerns. (A. 133, 146-47.) That complete description belies the Company's assertion (Br. 43) that

Atkinson’s movement contributed to “creating an intimidating and threatening atmosphere.”<sup>9</sup>

The Company’s cavalier treatment of the facts is exemplified by its repeated contention (Br. 16, 24 n.9, 44) that, “shortly after the ‘Walk-in,’ and *as a result of* Atkinson’s intimidating and threatening behavior, Schnell took medical leave and never returned to her position.” (Br. 44 (emphasis added).) The Company does not cite—nor is there any—record evidence supporting that bold assertion. To the contrary, the Company’s own witnesses testified that Schnell went on medical leave in January 2013—a full year after the January 2012 walk-in—and that she left her position at Long Ridge just two or three months before the June 2013 hearing. (A. 118-19, 225-26.)

In any event, Schnell’s medical issues would not necessarily dictate that the Board weigh the nature of Atkinson’s conduct against protection even if the Company could show some connection between those issues and the walk-in. The Board, with this Court’s approval, employs an objective standard to analyze the egregiousness of employee conduct under *Atlantic Steel*, rather than focusing on the employer’s subjective perception. *See Kiewit Power*, 652 F.3d at 29 n.2

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<sup>9</sup> Likewise, there is much hyperbole—laced with sexist overtones—in the Company’s baseless accusation (Br. 37, 43) that “Atkinson, the much larger male, *intended* to intimidate and threaten Schnell, the smaller female alone in her office, in front of the other employees in a demonstration of *force* and *power*.” (Emphasis added.)

(although supervisor testified that he felt “threatened,” Board properly determined that statements were objectively not a threat); *Plaza Auto Ctr., Inc.*, 360 NLRB No. 117, 2014 WL 2213747, at \*5 (2014) (owner’s testimony that he feared for his safety and safety of employees not determinative in objectively analyzing employee’s conduct). For that reason, the Company’s focus (Br. 41-42) on Schnell’s undisputed statement that she felt uncomfortable or frightened during the walk-in is also misguided.

Moreover, as the Company highlights, employees participating in the walk-in with Atkinson specifically reassured Schnell, following her expression of discomfort, that they were not there to be violent and that she could go get another manager if she wanted, which, according to the Company (Br. 8-9), is exactly what she did. In other words, even if—contrary to the Board’s well-supported factual findings—Schnell could reasonably have interpreted the walk-in as threatening at its inception, the participants took care to ameliorate her discomfort and dispel any such notion. And, although Schnell may have felt uncomfortable, her personal feelings do not undermine the Board’s reasonable, objective analysis of Atkinson’s conduct.<sup>10</sup>

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<sup>10</sup> Contrary to the Company’s rather astonishing assertion (Br. 44), that “in any reasonable context” Atkinson’s conduct constituted “criminally threatening” behavior under Connecticut law, even the description of the walk-in propounded by the Company falls well short of establishing the elements of the criminal provision it cites.

Accordingly, there is no merit to the Company's assertions that the "undisputed" evidence dictates that the third *Atlantic Steel* factor weighs against protection and that the Board erred in finding otherwise.

**b. The Board rejected the Company's alternate version of the walk-in**

The Company next relies on (Br. 44-47) Schnell's description of the walk-in—as reported to, and recounted by, its Regional Director of Operations, Laurence Condon—to argue that the nature of Atkinson's conduct should weigh against protection. But, as the Board explained (A. 249-50 nn.2 & 8), it implicitly discredited Condon's testimony, where inconsistent with Atkinson's and other participants' descriptions of the walk-in, when it credited the employees. The Company has not shown, as it must to overturn such a determination, that the Board's decision to credit Atkinson and the other employees was "patently unsupportable." *See Stephens Media*, 677 F.3d at 1250. Indeed, as the Company concedes (Br. 45-46), several of the participating employees' accounts were mutually corroborative. Moreover, as the Company emphasizes (Br. 46), five employee participants could not remember Atkinson's specific remarks during the walk-in. That lack of recall corroborates the Board's finding that the comments were mild, i.e., not memorably offensive or threatening. There is thus no merit to

the Company's assertion (Br. 33) that the Board erred by not "independently analyz[ing] the evidence" or remanding to the judge for reconsideration.<sup>11</sup>

In light of its credibility determination, the Board did not need to reach (A. 250 n.8) the Company's argument (Br. 25-28) that Condon's testimony was admissible under the present-sense-impression exception to the hearsay rule. But, in any event, the Company has not shown that the judge abused his discretion by excluding that discredited second-hand account. *See Sunshine Piping, Inc.*, 351 NLRB 1371, 1374 (2007) ("Both the courts and the Board review rulings excluding evidence for an abuse of discretion."); *see also Desert Hosp. v. NLRB*, 91 F.3d 187, 190 (D.C. Cir. 1996) ("The burden of showing prejudice from assertedly erroneous rulings is on the party claiming injury."). The Board agreed (A. 250 n.8) with the Company that the judge erred in finding that Schnell did not report Atkinson's conduct to Condon until some days after the walk-in, contrary to evidence that she telephoned him 30-40 minutes afterward. But it did not

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<sup>11</sup> The Company's cited cases (Br. 33) are distinguishable because they do not involve credibility determinations. In those instances, the courts found that the Board had improperly excluded employers from introducing evidence materially relevant to calculating damages. *See, e.g., NLRB v. Domsey Trading Corp.*, 636 F.3d 33, 38 (2d Cir. 2011) (although employer was permitted to question discriminatees regarding immigration status during compliance proceeding to determine eligibility for backpay, judge barred employer from doing so; Board erred in not remanding to judge for reconsideration); *Manhattan Eye Ear & Throat Hosp. v. NLRB*, 942 F.2d 151, 160 (2d Cir. 1991) (improper refusal to allow employer to introduce evidence regarding prevailing parties' actual damages).

explicitly find, contrary to the judge, that Schnell’s statement constituted a present-sense impression, and it is not at all certain that her statement was sufficiently proximate to the walk-in to qualify as such. *See, e.g., United States v. Mitchell*, 145 F.3d 572, 577 (3d Cir. 1998) (40 minute lapse likely insufficiently contemporaneous); *Hilyer v. Howat Concrete Co.*, 578 F.2d 422, 426 n.7 (D.C. Cir. 1978) (present sense impression exception permits “slight lapse” in time; 15 to 45 minute lapse likely insufficiently proximate to event).<sup>12</sup>

Finally, even assuming for the sake of argument that Atkinson engaged in the conduct described by Schnell (Br. 42, 47)—pounding his fist, saying that she was a “liar,” a “cheat,” and “mismanaging” Long Ridge—that purported behavior falls well within the spectrum of conduct that, although intemperate, the courts and the Board have found insufficiently egregious to weigh against protection under

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<sup>12</sup> Although the Company also claims (Br. 21-25) that Schnell’s statement to Condon is admissible as an excited utterance, it failed to raise that argument before the Board in its exceptions to the judge’s decision. (*See* A. 246.) Consequently, the Court lacks jurisdiction to consider that claim. *See* 29 U.S.C. § 160(e) (“No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court.”); *accord Woelke & Romero Framing, Inc. v. NLRB*, 456 U.S. 645, 665-66 (1982); *KLB Indus., Inc. v. NLRB*, 700 F.3d 551, 560 (D.C. Cir. 2012). The Company mentioned the excited-utterance hearsay exception only in passing in a footnote in its brief to the Board, which is insufficient. *UFCW Union Local 204 v. NLRB*, 506 F.3d 1078, 1087 (D.C. Cir. 2007) (court has no jurisdiction to hear an argument not specifically made in exceptions); *Consol. Freightways v. NLRB*, 669 F.2d 790, 793 (D.C. Cir. 1981) (“Cases interpreting [S]ection 10(e) look to whether a party’s exceptions are sufficiently specific to apprise the Board that an issue might be pursued on appeal.”).

the third *Atlantic Steel* factor. See, e.g., *Inova Health Sys. v. NLRB*, \_\_\_ F.3d \_\_\_, 2015 WL 4490275, at \*14 (D.C. Cir. July 24, 2015) (employee allegedly aggressively touched human-resources officer); *Kiewit Power*, 652 F.3d at 25-29 (employees threatened supervisor that, if they were laid off, it was “going to get ugly,” and advised supervisor to bring “boxing gloves”); *Fairfax Hosp. v. NLRB*, 14 F.3d 594, 1993 WL 509372, at \*6, \*11 (4th Cir. 1993) (employee, in firm and louder-than-normal voice, allegedly warned supervisor to expect “retaliation” if employer continued posting anti-union posters); *Battle’s Transp., Inc.*, 362 NLRB No. 17, 2015 WL 786732, at \*1, \*6 (2015) (employee told supervisor to “shut up,” got partly out of his chair and slammed hand on table in front of supervisor, and called supervisor “stupid” and a “liar”); *Beverly Health & Rehab. Servs.*, 346 NLRB at 1322-23 (employee told coworker in loud voice to “mind [her] f–king business”); see also *Consumers Power*, 282 NLRB at 131 (employee raising his fist in response to supervisor’s gesture not so egregious as to render him unfit for further service). Accordingly, based on the credited evidence, the Board reasonably found that the third *Atlantic Steel* factor weighed in favor of protection.

#### **4. Factor 4: The walk-in was not prompted by an unfair labor practice**

The Board (A. 250) found that Atkinson’s conduct was not provoked by any unfair labor practice by the Company and, therefore, that the fourth *Atlantic Steel* factor weighed against continued protection. Although the Company agrees (Br.

47-48) with the Board's finding, it wrongly claims (Br. 48) that the Board failed to accord the lack of provocation "appropriate weight."

The Company asserts (Br. 48) that the walk-in was not prompted by anything specific that it did, but that claim is contrary to the facts. The walk-in was, as shown (*see* pp. 16-17), designed to raise employee concerns about issues including recent unfair suspensions and an unresolved grievance. And it was planned and carried out according to the Union's regular method of presenting such issues to the Company. For that reason, there is no merit to the Company's contention (Br. 48) that the walk-in was "a planned event solely for the purpose of castigating Schnell and telling Schnell that she was doing a bad job," or that Atkinson engaged in "an ad hominem" (Br. 48) and "unprovoked personal" (Br. 49) attack on Schnell as soon as he walked into her office.<sup>13</sup> Nor do *Trus Joist Macmillan* or *Media General Operations, Inc. v. NLRB* stand for the proposition that lack of immediate provocation dictates that the final *Atlantic Steel* factor necessarily weigh heavily against protection. Rather, those decisions weighed lack of provocation against continued protection—as the Board did here—as part of the overall *Atlantic Steel* balancing, and found employees unprotected based on

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<sup>13</sup> Those arguments are also, like portions of the Company's location and subject-matter analyses (Br. 34-40), thinly veiled attempts to import its exaggerated and unfounded description of the nature of Atkinson's conduct during the walk-in into the distinct provocation analysis.

multiple factors of the test.<sup>14</sup> Accordingly, the Board accorded the lack of provocation “appropriate weight.”

### **5. The balance of the *Atlantic Steel* factors favors protection**

Substantial evidence supports the Board’s determination that Atkinson did not forfeit the protection of the Act. As the Board found, three *Atlantic Steel* factors weigh strongly in favor of protection. First, the walk-in took place in a private office away from patients, visitors, or employees not participating in the concerted union activity. Second, Atkinson’s remarks occurred in the course of protected union activity raising employee concerns over unfair suspensions and other conditions of employment. Third, Atkinson’s remarks were mild and he made no menacing statements or gestures. The fourth factor is the only factor that does not favor protection, because the walk-in was not provoked by an unfair labor practice, and the Board reasonably found that this last factor did not outweigh the first three.

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<sup>14</sup> In *Trus Joist Macmillan*, the Board found that, in addition to the third factor, the fourth factor weighed against protection because the employee—three days after the instigating event—“orchestrated” a confrontational meeting with a supervisor for the purpose of embarrassing him. 341 NLRB at 370-71. In *Media General*, the court determined that, in addition to the third factor, the fourth factor heavily weighed against protection where the employee’s egregious outburst was in response to entirely lawful letters sent by the employer, the most recent of which the employee had never even read. 560 F.3d 181, 187-89 (4th Cir. 2009).

The Board's finding of protection struck an appropriate balance between an employee's right to engage in protected union activity and an employer's right to maintain order and respect. *NLRB v. Thor Power Tool Co.*, 351 F.2d 584, 587 (7th Cir. 1965). Because the line the Board drew between those conflicting rights in this case is neither illogical nor arbitrary, and is supported by substantial evidence, this Court should not disturb it. *Allied Indus. Workers, AFL-CIO Local Union No. 289 v. NLRB*, 476 F.2d 868, 880 (D.C. Cir. 1973) (citing *Thor Power Tool*, supra). Consequently, Atkinson's discharge violated Section 8(a)(3) and (1) of the Act.

**CONCLUSION**

The Board respectfully requests that the Court enter a judgment denying the petition for review and enforcing the Board's Order in full.

Respectfully submitted,

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National Labor Relations Board

September 2015

## STATUTORY ADDENDUM

### Relevant provisions of the National Labor Relations Act, 29 U.S.C. §§ 151-69:

**Sec. 7 [Sec. 157]** Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [section 158(a)(3) of this title].

**Sec. 8(a) [Sec. 158(a)] [Unfair labor practices by employer]** It shall be an unfair labor practice for an employer--

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 [section 157 of this title];

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(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

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### **Sec. 10 [Sec. 160]**

(a) [Powers of Board generally] The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8 [section 158 of this title]) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominately local in character) even though such cases may involve labor disputes affecting

commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act [subchapter] or has received a construction inconsistent therewith.

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(e) [Petition to court for enforcement of order; proceedings; review of judgment] The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code [section 2112 of title 28]. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to question of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to

the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(f) [Review of final order of Board on petition to court] Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code [section 2112 of title 28]. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

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**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

HEALTHBRIDGE MANAGEMENT, LLC;	)	
710 LONG RIDGE ROAD OPERATING CO II, LLC	)	
d/b/a LONG RIDGE OF STAMFORD	)	
	)	
Petitioner/Cross-Respondent	)	Nos. 15-1110 & 15-1129
	)	
v.	)	
	)	Board Case Nos.
NATIONAL LABOR RELATIONS BOARD	)	34-CA-073303
	)	34-CA-080215
Respondent/Cross-Petitioner	)	

**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the Board certifies that its brief contains 7,120 words of proportionally-spaced, 14-point type, and the word processing system used was Microsoft Word 2010.

s/Linda Dreeben \_\_\_\_\_  
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Dated at Washington, DC  
this 18th day of September, 2015

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

HEALTHBRIDGE MANAGEMENT, LLC;	)	
710 LONG RIDGE ROAD OPERATING CO II, LLC	)	
d/b/a LONG RIDGE OF STAMFORD	)	
	)	
Petitioner/Cross-Respondent	)	Nos. 15-1110 & 15-1129
	)	
v.	)	
	)	Board Case Nos.
NATIONAL LABOR RELATIONS BOARD	)	34-CA-073303
	)	34-CA-080215
Respondent/Cross-Petitioner	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on September 18, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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