

North Shore-LIJ Health System is now **Northwell Health**

OFFICE OF LEGAL AFFAIRS

Joshua Rose
Senior Associate General Counsel

January 28, 2016

VIA E-FILING

Gary Shiners
Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570

Re: Staten Island University Hospital and
Special and Superior Officers Benevolent Association (29-RM-167608)

Dear Mr. Shiners:

The undersigned represents Staten Island University Hospital (“SIUH”) in connection with the above-referenced matter. SIUH respectfully requests that the Board review and reverse the Regional Director’s order dismissing the RM petition because SIUH purportedly failed to demonstrate an adequate showing of interest supporting the petition. Contrary to the Regional Director’s misanalysis of the supporting evidence, as discussed more fully below, there is an ample basis for processing SIUH’s RM petition and conducting an election in the unit of Security Officers employed by SIUH for the purpose of confirming whether a majority of unit members no longer want the Special and Superior Officers Benevolent Association (“SSOBA”) to represent them.

Factual Background

SSOBA was certified on December 4, 2014 following an election held on November 24, 2014 in Case No. 29-RC-138942. After its certification as the representative of the designated unit, SSOBA requested that SIUH meet to negotiate an initial collective bargaining agreement. On December 1, 2015, SIUH and SSOBA reached a tentative agreement on terms for an initial contract and signed a Memorandum of Agreement, which was expressly conditional on ratification by the bargaining unit members. During the first day of the scheduled two-day ratification vote, a bargaining unit member stopped by SIUH’s Human Resources department on December 21, 2015 looking to speak with someone regarding a decertification

petition. When a petition was presented, that member was told Human Resources could not accept such petition and advised to contact the National Labor Relations Board (“NLRB”).

By email dated December 24, 2015, SSOBA notified SIUH that the contract failed to ratify.¹ On January 6, 2016, a bargaining unit member delivered to SIUH’s Human Resources department the documentation comprising SIUH’s supporting evidence underlying its RM petition. That member stated there were 62 signatures on a petition—representing nearly 60% of the unit—of members wanting to decertify SSOBA. According to the member, the NLRB refused to accept the petition because it did not have the employer’s signature on file and instructed the member to give the petition to SIUH’s Human Resources department.

More specifically, the documentation delivered to SIUH’s HR department consisted of the following:

- The Board’s “Description of Representation Case Procedures in Certification and Decertification Cases” (undated)
- A one-page printout from an Internet website on the subject “What steps are required in order to file a petition with the NLRB to certify or decertify a union?” (dated December 3, 2015);
- A five-page printout from an Internet website containing information about decertification elections (dated December 3, 2015);
- The Board’s blank RD petition form (undated); and
- Petition for Withdrawal of Union Shop Authority -- Deauthorization Election -- UD (signed by 62 bargaining unit members on various dates in December 2015).

Based on the foregoing documentation, it appeared to SIUH that the majority of bargaining unit members no longer wished to be represented by SSOBA. SIUH filed its RM petition on January 13, 2016, including filing all the aforementioned documents as its supporting evidence.

The Regional Director issued an order, dated January 15, 2016, dismissing SIUH’s RM petition. In his January 16, 2016 letter, the Regional Director gave the following reason for the dismissal:

¹ The bargaining unit members rejected the proposed contract a second time on January 15, 2016.

“The documents provided to the Region in support of the petition involve a petition signed by employees seeking to take away the Union’s authorization to enforce a union security clause. However, such a petition does not show that employees no longer wish to be represented by the Union. Therefore, the showing is not adequate to support an RM petition.”

SIUH hereby seeks Board review of that action.

Legal Argument

As described above, SIUH had good-faith reasonable uncertainty regarding SSOBA’s continued majority status. The dismissal of SIUH’s RM petition should be reviewed and reversed because a substantial question of law is raised due to the Regional Director’s departure from officially reported Board precedent. In making his determination, the Regional Director focused exclusively on the title of the petition that the bargaining unit members signed, ignoring the other documents provided and statements made to SIUH’s Human Resources department manifesting the unit members’ desire to decertify SSOBA. That narrow focus contravenes the Board’s directive that “regional offices should take into account all of the evidence which, viewed in its entirety, might establish uncertainty as to unions’ continued majority status.” Levitz Furniture Co. of the Pacific, Inc., 333 N.L.R.B. 717, 728 (2001). By considering the signed petition in isolation, the Regional Director missed the mark and the forest for the trees.

Taking a holistic view consistent with Levitz, the signed petition strongly suggests a loss of majority support. The supporting evidence reveals an effort to research the Board’s decertification process, complete with a blank RD form. While the bargaining unit members did sign a petition entitled “Withdrawal of Union Shop Authority,” plainly that was not their intent inasmuch as at the time there was—and still is—no collective bargaining agreement in effect containing a union security provision. Rather, the far more plausible interpretation is that these bargaining unit members, who are not experts in labor law, simply signed the wrong kind of petition.² Significantly, both times the bargaining unit member approached SIUH’s Human Resources Department about the petition, that member characterized it as a decertification petition.

Viewing the signed petition in conjunction with the other supporting evidence and bargaining unit member’s statements, under the totality of the circumstances there is at a minimum good-faith reasonable uncertainty over SSOBA’s continued majority

² Indeed, they are not the only ones to mistake a deauthorization petition for a decertification petition. See Cargill Nutrena, Inc., 344 N.L.R.B. 1125, 1125 at n.1 (2005) (noting that “[a]lthough the Petitioner marked the union deauthorization (UD) box on the petition, the Regional Director determined that the Petition seeks a decertification (RD) election.”); R.P.C., Inc., 311 N.L.R.B. 232, 232 at n.1 (1993) (correcting administrative law judge’s “inadvertent error describing a deauthorization petition . . . as a decertification petition.”).

Gary Shinnars, Executive Secretary

January 28, 2016

Page 4

status. The Regional Director's decision not to schedule an election impedes employee free choice. As recognized in Levitz, "[t]he Board and the courts have consistently said that Board elections are the preferred method of testing employees' support for unions." 333 N.L.R.B. at 727.

Accordingly, SIUH respectfully requests that the Board review and reverse the Regional Director's denial of SIUH's RM petition.

Sincerely,

A handwritten signature in black ink, appearing to read "Joshua Rose", with a long horizontal flourish extending to the right.

Joshua Rose

cc: Hon. James Paulsen (via overnight delivery)
Ronald Fedrizzi (via overnight delivery)
James Grisi, Esq. (via overnight delivery)