



United States Government

**NATIONAL LABOR RELATIONS BOARD**

**OFFICE OF THE GENERAL COUNSEL**

Washington, D.C. 20570

March 14, 2015

Deborah S. Hunt  
Clerk, United States Court of Appeals  
for the Sixth Circuit  
540 Potter Stewart U.S. Courthouse  
100 E. Fifth Street  
Cincinnati, OH 45202-3988

Re: *NLRB v. Lakepointe Senior Care and Rehab Center, LLC*  
Board Case No. 07-CA-162939

Dear Mrs. Hunt:

I am enclosing an original and four copies of the National Labor Relations Board's application for enforcement of its order in this case. Within 40 days of the Court's docketing of this application, I will file the agency record and a certified list of its contents.

Please serve a copy of this application on the Respondent, Lakepointe Senior Care and Rehab Center, LLC, whose address appears on the service list. I have served a copy of the application on each party admitted to participate in the Board proceedings, and their names and addresses also appear on the service list.

I am counsel of record for the Board, and all correspondence should be addressed to me. I would appreciate your furnishing the Board's Regional Director, whose name and address also appear on the service list, with a copy of any correspondence the Court sends to counsel in this case. The Board attorneys

directly responsible for this case are Vol Dellinger Kira (202) 273-0656 and Jared D. Cantor (202) 273-0016.

Very truly yours,

A handwritten signature in cursive script that reads "Linda Dreeben".

Linda Dreeben  
Deputy Associate General Counsel  
NATIONAL LABOR RELATIONS BOARD  
1015 Half Street, SE  
Washington, D.C. 20570  
(202) 273-2960

Encls.

SERVICE LIST

NLRB v. Lakepointe Senior Care and Rehab Center, LLC  
Board Case No. 07-CA-162939

Grant T. Pecor, Esquire  
Clark Hill PLC  
200 Ottawa Avenue NW  
Suite 500  
Grand Rapids, MI 49503

Respondent's Counsel

Ann Kochanski, Administrator  
Lakepointe Senior Care and Rehab  
Center, LLC  
37700 Harper Road  
Clinton Township, MI 48036

Respondent

Benjamin Curl, Law Clerk  
SEIU Healthcare Michigan  
2604 Fourth Street  
Detroit, MI 48201-2546

Charging Party

Terry Morgan  
477 Michigan Avenue  
Room 300  
Detroit, MI 48226-2543

Regional Director

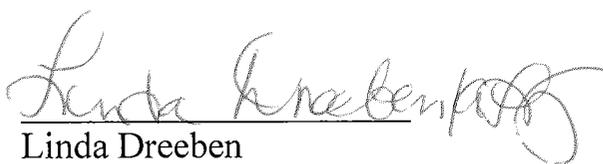
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS )  
BOARD )  
                                  ) Petitioner )  
                                  ) )  
                                  ) v. )  
                                  ) )  
LAKEPOINTE SENIOR CARE )  
AND REHAB CENTER, LLC )  
                                  ) Respondent )

APPLICATION FOR ENFORCEMENT  
OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board hereby applies to the Court for enforcement of its Order issued against Lakepointe Senior Care and Rehab Center, LLC, on February 11, 2016, in Board Case No. 07-CA-162939, reported at 363 NLRB No. 114. The Board seeks enforcement of its Order in full.

The Court has jurisdiction over this application pursuant to Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. § 151, 160(e)). Venue is proper in this Circuit because the unfair labor practices occurred in Clinton Township, Michigan.



Linda Dreeben  
Deputy Associate General Counsel  
NATIONAL LABOR RELATIONS BOARD  
1015 Half Street, SE  
Washington, D.C. 20570  
(202) 273-2960

Dated at Washington, D.C.  
this 14<sup>th</sup> day of March, 2016



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

**Lakepointe Senior Care and Rehab Center, LLC and  
SEIU Healthcare Michigan. Case 07-CA-  
162939**

February 11, 2016

**DECISION AND ORDER**

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA  
AND HIROZAWA

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on October 28, 2015, by SEIU Healthcare Michigan (the Union), the General Counsel issued the complaint on November 10, 2015, alleging that Lakepointe Senior Care and Rehab Center, LLC (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain following the Union's certification in Case 07-RC-143710. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On November 24, 2015, the General Counsel filed a Motion for Summary Judgment. On November 25, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

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

**Ruling on Motion for Summary Judgment**

The Respondent admits its refusal to bargain, but contests the validity of the Union's certification based on its contentions, raised and rejected below, that the petition in the underlying representation proceeding should have been dismissed because of the controlling determination made in a prior representation matter involving the same parties, in which the then-Regional Director found the nurses at issue to be statutory supervisors. The Respondent further contends that the bargaining unit in this proceeding is comprised of nurses who are supervisors within the meaning of the Act, and is therefore inappropriate.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to ad-

duce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.<sup>1</sup>

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent has been a corporation with an office and place of business in Clinton Township, Michigan (the Respondent's facility), and has been engaged in the operation of a residential nursing facility.

In conducting its operations during the 12-month period ending October 31, 2015, a representative period, the Respondent derived gross revenues in excess of \$100,000, and purchased and received at its facility products, goods, and materials in excess of \$5000 directly from points outside the State of Michigan.

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

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

**II. ALLEGED UNFAIR LABOR PRACTICES**

*A. The Certification*

Following the representation election held on June 26, 2015, the Union was certified on July 7, 2015, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time, regular part-time, and contingent charge nurses and wound care nurses employed by the Respondent at its facility located at 37700 Harper, Clinton Township, Michigan; but excluding all MDS nurses, all other employees, guards and supervisors as defined in the Act.

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

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<sup>1</sup> The Respondent's requests that the complaint be dismissed and that it be awarded its actual attorney fees and costs under the Equal Access to Justice Act are therefore denied.

### B. Refusal to Bargain

Since about August 20, 2015, by electronic mail messages to the Respondent's designated labor counsel, the Union requested that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the unit. Since about August 20, 2015, the Respondent has failed and refused to recognize and bargain with the Union. We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By failing and refusing since August 20, 2015, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964).

#### ORDER

The National Labor Relations Board orders that the Respondent, Lakepointe Senior Care and Rehab Center, LLC, Clinton Township, Michigan, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to recognize and bargain with SEIU Healthcare Michigan as the exclusive collective-bargaining representative of the employees in the bargaining unit.

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

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

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

All full-time, regular part-time, and contingent charge nurses and wound care nurses employed by the Respondent at its facility located at 37700 Harper, Clinton Township, Michigan; but excluding all MDS nurses, all other employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility at 37700 Harper, Clinton Township, Michigan, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 20, 2015.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 11, 2016

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Mark Gaston Pearce, Chairman

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Philip A. Miscimarra, Member

\_\_\_\_\_  
Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD  
APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with SEIU Healthcare Michigan as the exclusive collective-bargaining representative of the employees in the bargaining unit.

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

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

All full-time, regular part-time, and contingent charge nurses and wound care nurses employed by us at our facility located at 37700 Harper, Clinton Township, Michigan; but excluding all MDS nurses, all other employees, guards and supervisors as defined in the Act.

LAKEPOINTE SENIOR CARE AND REHAB CENTER, LLC

The Board's decision can be found at [www.nlr.gov/case/07-CA-162939](http://www.nlr.gov/case/07-CA-162939) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

