



FREEDMAN
&
LORRY, P.C.

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August 29, 2016

VIA E-FILING

Gary Shinnors, Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

**RE: Powerback Rehabilitation
Case 4-RC-161250
Opposition to Request for Review**

Dear Executive Secretary Shinnors:

This firm is counsel to District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO. The Union writes to oppose the Employer's Request for Review. The Union relies on its opposition to the Employer's Exceptions to the Hearing Officer's decision, as well as its closing arguments at the Objections hearing. The Union's letter to the RD opposing exceptions is attached.

This appeal is frivolous. Principally, the Employer seeks to enforce a subpoena which it improperly served on one of its own managers, who had made an offhand comment about the Union at some unspecified time. The Employer's main witness at the hearing, upon whom it relies heavily, Ms. Kelly McCarthy, was discredited by the hearing officer. Otherwise, the Employer depends on unsubstantiated generalizations about the level of authority of individuals who did not participate in unlawful conduct, in the face of a very aggressive anti-union campaign. (The Employer had served subpoenas on a worker and the Union organizer in an effort to gather their communications, but those subpoenas were properly quashed as, *inter alia*, an infringement on Section 7 rights.)

In acknowledging that the care managers, the putative supervisors, lack real authority and are not held accountable for the work of others, whom they allegedly assign and direct, the Employer seeks to have the rules rewritten. This request should be rejected. Finally, to the extent that the Employer relies

on secondary indicia in order to label its workers as 2(11) supervisors, excluded from the protection of the Act, that effort should also be rejected.

Thank you in advance for your consideration.

Very truly yours,

FREEDMAN AND LORRY, P.C.

A handwritten signature in cursive script, reading "Lisa Leshinski". The signature is written in black ink and is positioned below the typed name of the firm.

LISA LESHINSKI

CERTIFICATE OF SERVICE

I, LISA LESHINSKI, caused a copy of the foregoing Opposition to Request for Review to be delivered via email on the date and to the addresses below:

Jedd Mendelson, Esq.
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Attorney for Powerback

Harold Maier, Esq.
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Acting Regional Director NLRB Region Four



LISA LESHINSKI

Dated: August 29, 2016