NATIONAL LABOR RELATIONS BOARD

The Bay at North Ridge Health and Rehabilitation Employer and Maggie Burns Petitioner and SEIU Healthcare Wisconsin Union	Case No. 18-RD-208565

EMPLOYER'S REQUEST FOR REVIEW

The Bay at North Ridge Health and Rehabilitation, LLC, (hereinafter "Bay" or "the Employer"), through undersigned attorney, submits the present Employer's Response to Notice to Show Cause.

INTRODUCTION

Pursuant to Rule 102.67 of the National Labor Relations Board (NLRB), the Employer, The Bay at North Ridge Health and Rehabilitation, LLC files this Request for Review of the Regional Director's November 17, 2017, dismissal of the decertification petition of Maggie Burns, a Bay at North Ridge employee (RD Petition Case No. 18-RD-208565).

This Request for Review seeks to vacate the NLRB's "successor bar" doctrine as articulated in *UGL-UNICCO Service Co.,* 357 NLRB 801 (2011). As explained in detail below, the "successor bar" doctrine is not supported by the National Labor Relations Act (NLRA) and, in fact, it infringes upon the very rights the NLRA was designed to protect: the employees' free choice for or against union representation.

FACTS AND PROCEDURAL BACKGOUND

Bay began operations on July 1, 2017. Previously, the facility was owned by North Ridge Health Care, LLC ("North Ridge") from June 1, 2014 to June 30, 2017, and prior to that by Kindred

Healthcare, Inc. ("Kindred"). SEIU Healthcare Wisconsin was the designated exclusive bargaining representative for employees at Kindred and the parties entered into a collective bargaining agreement (CBA) effective from January 1, 2014 to December 31, 2015.

After taking over Kindred, North Ridge implemented its own initial terms and conditions and did not adopt the Kindred CBA. North Ridge bargained with SEIU for approximately two years but the parties were unable to reach a CBA.

In August 2016, North Ridge employees filed an RD Petition with NLRB seeking to decertify SEIU (Case No. 18-RD-181790). The union won the election by a narrow margin on August 30, 2016. Still, the union was not able to reach a CBA for the following year.

On July 1, 2017, Bay took over ownership of the facility from North Ridge Health Care, LLC. No CBA was in place by then, as the prior owner, North Ridge, had not implemented the Kindred CBA. Despite extensive efforts to bargain with SEIU, North Ridge was unable to reach a new CBA by the time Bay at North Ridge took over.

Upon assuming operations on July 1, 2017, Bay at North Ridge imposed its own initial terms and conditions of employment that were materially different than those of North Ridge Health Care and those of Kindred. Bay at North Ridge has been operating under those terms and conditions since July 1st. In addition, Bay at North Ridge offered most North Ridge employees new employment under terms and conditions that are materially different than their prior employer. Employees were required to submit employment applications for Bay at North Ridge subject to the new terms and conditions. Most employees were hired.

On June 21, 2017, prior to assuming operations, Bay first met with SEIU to bargain over the initial terms and conditions of employment[1]. Exhibit ("Ex") 1. Bay and SEIU continued

[1] In response to the Board's Notice to Show Cause, Bay inadvertently stated that bargaining did not begin until July 2017. The parties had, in fact, met to bargain as early as June 21, 2017.

discussions in July when the parties were scheduled to meet again, but SEIU cancelled that meeting. The parties met again on August 9, 2017 and were scheduled to meet once more on September 27, 2017.

However, on or about September 21, 2017, a majority of the unit employees at Bay filed a decertification petition with the National Labor Relations Board (NLRB), Case No. 18-RD-207798. Ex. 2. The NLRB did not issue a notice to the employer and, as of September 26, 2017, neither the employer nor the SEIU had information from the NLRB regarding this RD petition. Ex. 3. Given the uncertainty of the situation, Bay decided to "pause bargaining until this latest development at North Ridge plays out."[2] *Id.* Bay made it clear that "that is not to say that we won't bargain, but until we get more information about the situation (I've heard nothing from the Board, Renee tells me she hasn't heard anything too) we should not meet." *Id.* Nevertheless, Bay continued to work with SEIU to provide any pertinent documents while they were waiting for the Board to clarify the situation. *Id.* That RD petition briefly appeared on the NLRB's online docket but was later removed without additional processing.

Thereafter, on October 25, 2017, a majority of the unit employees again filed a petition for decertification, Case No. 18-RD-208565 (the present case). On October 31, 2017, the Board issued a Notice to Show Cause in this case and suspended processing while it considered whether the petition was precluded by the successor bar.

On November 17, 2017, the NLRB Regional Director dismissed the RD petition finding that it was precluded by the successor bar. Ex. 4. The Regional Director reiterated the NLRB position in *UGL* that a union representative is entitled to represent employees with a successor

[2] On October 27, 2017, two days after the employees re-filed the RD Petition, SEIU filed the charge against Bay alleging unfair labor practices for refusing to bargain (Case No. 18-CA-208822). That case is still pending and Bay has challenged the charge, as its decision to temporarily pause bargaining was well within its prerogative, per *Lexus of Concord, Inc.,* 343 NLRB 851, 854 (2004).

employer without challenge to its representative status, for a period of six to twelve months after the first bargaining meeting held with the successor. *Id.,* p. 2.

As of November 30, 2017, Bay and SEIU were in the process of scheduling another bargaining meeting to take place in December 2017.

LAW AND ARGUMENT

1. The "successor bar" doctrine is contrary to the law and infringes upon employees' legal rights

The NLRA is devoid of any provision supporting the "successor bar" doctrine. In fact, the core purpose of the NLRA is to allow employees to freely and voluntarily accept or reject union representation. That much is clear from the text of the NLRA itself. The Act allows employees to self-organize and bargain collectively, but it also states that employees "shall also have the right to refrain from any or all of such activities…." 29 U.S.C. § 157. By using the term "shall" instead of "may," Congress intended for the right to reject representation to be mandatory, not discretionary. Furthermore, when employees do choose to be represented, the NLRA specifically states that employees have the right to designate "representatives of their own choosing…." 29 U.S.C. § 151.

The "successor bar" doctrine forces employees to engage into activities from which the NLRA, namely 29 U.S.C. § 157, specifically states they have an absolute right to refrain. In addition, the "successor bar" doctrine forces employees to continue with an unwanted union representative, which is contrary to the very scope of NLRA, as defined in 29 U.S.C. § 151, of allowing employees to choose their own representative. The Board must ensure that it is "properly carrying out its duty under the National Labor Relations Act to see that the free choice of the unit

employees is not being frustrated." *NLRB v. B.A. Mullican Lumber and Mfg. Co.*, 535 F.3d 271, 284 (4th Cir. 2008).

2. A change in employers does not prolong the union's conclusive presumption of majority

The Seventh Circuit Court of Appeals makes it clear that "a successor employer, like any other employer, may withdraw its recognition of a union at any time after one year from the union's original certification." *Randall Div. of Textron, Inc. v. N.L.R.B.*, 965 F.2d 141, 148 (7th Cir., 1992), citing *Landmark Intern. Trucks, Inc. v. N.L.R.B.*, 699 F.2d 815, 818–19 (6th Cir.,1983). Therefore, the "successor bar" doctrine would directly contradict the Seventh Circuit's directive that successor employers are not treated any differently than predecessor employers. *See Randall Div.*, at 148. The reason for this interpretation is accurately explained in *Landmark Intern. Trucks*, at 818-19.

In *Landmark Intern. Trucks*, at 818-19, the Sixth Circuit ruled that "[t]here is no reason to treat a change in ownership of the employer as the equivalent of a certification or voluntary recognition of a union following an organization drive." That is because the change in company ownership only changes the relationship between the employees and the employer. *Id.* "[W]here the union has represented the employees for a year or more a change in ownership of the employer does not disturb the relationship between employees and the union." *Id.* That is even more so in this case, where the union has bargained on behalf of the unit employees for years and has not been able to agree to a new collective bargaining agreement since the last one expired in December 2015, which was two employers ago.

Therefore, as a new employer does not change the relationship between SEIU and the Bay employees, Bay's "duty to continue recognition under such circumstances is no different from that

of any other employer after the certification year expires. Recognition under these circumstances carries with it no irrebuttable presumption of continued majority status." *Landmark Intern. Trucks*, at 818-19.

The Board also has long established that "where the 'employing industry' remains essentially the same after a transfer of legal ownership, the certification continues effective for **the normal operative period** and the obligation to bargain devolves upon the successor employer." *Johnson Ready Mix Co.*, 142 NLRB 437, 442, (1963), (emphasis added). Per 29 U.S.C. § 159(c)(3), the normal operative period in this case is twelve months since the last valid election at the North Ridge facility, regardless of ownership. The last election took place on August 30, 2016.

3. The method of calculating the start of the "successor bar" in inapplicable to this case

In cases such as this, where the successor employer recognized the union but established its own initial terms and conditions, the Board declared in *UGL* that the "successor bar" should run for a "reasonable period of bargaining" of no less than six months and no more than one year "from the date of the first bargaining meeting between the union and the employer." *UGL,* at 809. The Board adopted the multifactor analysis in *Lee Lumber*, 334 NLRB 399, 402, to determine whether the period of bargaining that has already elapsed is reasonable. *UGL*, at 809.

However, the *Lee Lumber* test cannot be applied to this case. The *Lee Lumber* test was designed for cases "when an employer has *unlawfully* failed or refused to recognize or bargain with an incumbent union…." *Lee Lumber,* at 402 (emphasis added). The Board felt that the employer's bad faith should justify a predefined period when the union's presumption of majority should not be questioned. *Id.* The Board explained that the purpose of instituting and quantifying an insulated period was to "remove from employers the temptation to test unions' representative

status prematurely, either by withdrawing recognition or filing RM petitions, and thus should help to minimize litigation." *Id.*

There is no *unlawful* failure or refusal to recognize or bargain on the part of Bay at North Ridge, the current employer in the case at hand. As mentioned above, Bay met with SEIU to bargain on June 21, 2017 and on August 9, 2017, respectively, and was scheduled to meet two other times in July and September 2017, respectively. Bay and SEIU are also currently in the process of scheduling another bargaining meeting in December 2017. In addition, while Bay temporarily paused bargaining meetings while the Board was sorting the employees' RD petitions, this did not amount to an "unlawful failure or refusal to recognize or bargain" as required by *Lee Lumber.*

In *Lexus of Concord, Inc.,* 343 NLRB 851, 854 (2004), the Board found that the employer did not violate the NLRA when it temporarily suspended negotiations in light of the following (non-exclusive) sequence of events: a majority of the unit employees notified the employer that they no longer wished to be represented; three weeks later, the employees filed a decertification petition; the Regional director suspended processing of the RD petition when the union filed a refusal-to-bargain charge; employer suspended bargaining temporarily to allow the issues surrounding the RD petition to be clarified. *Id.,* at 851. The Board found the employer was reasonable in delaying bargaining "until it sorted out the situation." *Id.* at 853. "Given the complexity of the developments … and the Respondent's clear need to understand the situation … the Respondent's delay in bargaining was not a repudiation of its bargaining responsibilities." *Id.,* at 854.

Bay has been confronted with a similar set of facts: it had two RD petitions filed by employees within one month of each other, with one of those petitions being inexplicably removed

from the docket, while the remaining petition was suspended while the Board assessed whether to impose a successor bar. Bay twice received objective evidence that employees were trying to decertify the union, with approximately 60% of the bargaining unit employees twice signing the petition. Therefore, it was not unreasonable for Bay to temporarily delay bargaining "until it sorted out the situation." *See Lexus of Concord,* supra, at 853.

In addition, although Bay temporarily suspended bargaining *meetings*, it nevertheless continued to work with SEIU to provide it with any necessary documents. Lastly, as of the date of this filing, Bay was in the process of scheduling another bargaining meeting with SEIU to take place in December 2017. Therefore, as Bay did not *unlawfully* refuse to bargain, no insulated period is warranted. *See Lexus of Concord,* supra, at 853; *Lee Lumber,* supra, at 402.

4. The *Lee Lumber* test cannot be applied to RD petitions

The *Lee Lumber* standard was designed to prevent bad faith employ***ers*** from challenging union majority, not to bar employ***ees*** from filing RD petitions and exercising and their absolute right under the NLRA to be free from union representation or to choose their own representative, as mandated by 29 U.S.C. §§ 157, 151. Indeed, *Lee Lumber* was decided in the context of an employee engaging in unfair labor practices, not in the context of a decertification petition. *See Lee Lumber,* 334 NLRB 399-400. Therefore, the *Lee Lumber* standard is not applicable in the present case, which was initiated by the employees through their RD petition.

The *Lee Lumber* factors are further inapplicable here because they involve factors over which the employees have absolutely no control. Specifically, the NLRB adopted the following *Lee Lumber* factors in its *UGL-UNICCO* decision:

> The determination of whether a reasonable period had elapsed after 6 months depends on a "multifactor analysis, which considers '(1) whether

> the parties are bargaining for an initial contract; (2) the complexity of the issues being negotiated and of the parties' bargaining processes; (3) the amount of time elapsed since bargaining commenced and the number of bargaining sessions; (4) the amount of progress made in negotiations and how near the parties are to concluding an agreement; and (5) whether the parties are at impasse."

In re UGL-UNICCO Service Company, 357 NLRB 801, 808–09, quoting *Lee Lumber,* 334 NLRB at 402. The employees seeking to file an RD petition have zero control over most or all of these factors. The employees do not control whether the parties are bargaining over an initial contract; they do not control the amount of time between bargaining sessions or how many sessions take place; they do not control the amount of progress made in negotiations; and they do not control if the parties are at an impasse.

Therefore, by applying the *Lee Lumber* factors, as adopted in *UGL-UNICCO,* to RD petitions, the Board makes it impossible for employees to ascertain or control the timing of when they can exercise their rights under the NLRA. Given the discretionary nature of the *Lee Lumber* factors, employees have no means of knowing whether the Board will deem the bargaining efforts sufficient to even trigger the bar period, let alone end it, leading to the "successor bar" being applied ex post facto.

The fact that the NLRB applied *Lee Lumber* in the *UGL-UNICCO* matter is not dispositive, because *UGL-UNICCO* was a representation (RC) case that was initiated by the union. *See* NLRB Case No. 1-RC-22447. To the extent the union has considerable control or, at a minimum, knowledge about, the progress of bargaining negotiations, applying the *Lee Lumber* factors in that case made sense. But holding bargaining progress against a party that has absolutely no control over the bargaining process, such as the Bay employees, defies every purpose of the NLRA.

Compiling the RD petition and obtaining the requisite number of signatures is a considerable task for the Petitioner, especially since the signatory employees work on three different shifts. Considering that the employees have no control over, and are often not even privy to, bargaining meetings, and considering that the Board may or may not consider progress sufficient per *Lee Lumber*, the employees are forced to file or re-file RD petitions several times. Forcing the employees to prepare multiple petitions effectively creates a barrier to exercising the employees' rights under the NLRA or, at a minimum, acts as a deterrent to exercising their rights.

CONCLUSION

For the reasons detailed above, the employer, The Bay at North Ridge Health and Rehabilitation, LLC, respectfully requests that the Reginal Director's November 17, 2017, decision dismissing the RD Petition be set aside and the "successor bar" doctrine be vacated.

Dated this 1st day of December, 2017.

DEWITT ROSS & STEVENS S.C.

By:_____

William E. McCardell (#1014770)
Raluca Vais-Ottosen (#1087718)
DEWITT ROSS & STEVENS S.C.
Two East Mifflin Street, Suite 600
Madison, WI 53703-2865
Phone: 608-255-8891
Email: wem@dewittross.com
rvo@dewittross.com
ATTORNEYS FOR EMPLOYER, BAY AT NORTH RIDGE HEALTH AND REHABILITATION, LLC

NATIONAL LABOR RELATIONS BOARD

The Bay at North Ridge Health and Rehabilitation Employer and Maggie Burns Petitioner and SEIU Healthcare Wisconsin Union	Case No. 18-RD-208565

STATEMENT OF SERVICE

I certify that I have electronically filed the Employer's Request for Review via the Board's E-File system and that a copy thereof is being served via email to the following parties:

Maggie Burns
burnsmaggie53@gmail.com
Petitioner

and

Barbara Quindel
Hawks Quindel S.C.
bquindel@hq-law.com
Attorney for SEIU

and

e-filed with the National Labor Relations Board
Regional Director

Dated this 1st day of December, 2017.

DEWITT ROSS & STEVENS S.C.

By:_____

William E. McCardell (#1014770)
Raluca Vais-Ottosen (#1087718)
DEWITT ROSS & STEVENS S.C.
Two East Mifflin Street, Suite 600
Madison, WI 53703-2865
Phone: 608-255-8891
Email: wem@dewittross.com
rvo@dewittross.com
ATTORNEYS FOR EMPLOYER, BAY AT NORTH RIDGE HEALTH AND REHABILITATION, LLC

Raluca Vais-Ottosen

From: Bill McCardell
Sent: Wednesday, November 29, 2017 9:27 AM
To: Raluca Vais-Ottosen
Subject: FW: July Meeting Dates

From: Renee Gagner [mailto:reneeg@seiuhcwi.org]
Sent: Thursday, June 22, 2017 5:24 PM
To: Mark Ruvel <Mark@championhcare.com>; Bill McCardell <wem@dewittross.com>
Cc: Bonnie Strauss <bonnies@seiuhcwi.org>
Subject: July Meeting Dates

Mark and Bill,

It was great to meet with you yesterday. For our July follow-up meeting, we can offer the following dates: 7/14, 7/18, 7/19, 7/21, 7/24, 7/25, 7/27, and 7/28. Please let us know if there is a time that works for you on any of these dates.

Thank you,

Renée Gagner
Staff Representative/Organizer
SEIU Healthcare Wisconsin
633 S. Hawley Road, Suite 106
Milwaukee, WI 53214
Office: (414) 455-3840 ext. 12
Cell: (414) 491-7039
Fax: (414) 763-5156

Ex. 1

FORM NLRB-502 (RD)
(4-15)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

RD PETITION

DO NOT WRITE IN THIS SPACE	
Case No.	Date Filed

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlrb.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RD- DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer Bay at NorthRidge	2b. Address(es) of Establishment(s) involved (*Street and number, city, State, ZIP code*) 1445 N7th street Manitowoc WI 54220
3a. Employer Representative -- Name and Title Sandra Barbeau	3b. Address (If same as 2b – state same) Same

3c. Tel. No.	3d. Cell No.	3e. Fax No.	3f. E-Mail Address
9206820314	9202429519	9206220553	

4a. Type of Establishment (*Factory, mine, wholesaler, etc.*)	4b. Principal product or service	5a. *City and State where unit is located:*
Nursing Home & Rehab	Long Term Care	Manitowoc WI

5b. Description of Unit Involved

Included: CNA's Food Service Housekeeping Laundry

Excluded: Nurses Activity Aide Receptionist concierge managerial Supervisors Staff

6a. No. of Employees in Unit: 30

6b. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative? Yes [✓] No [ ]

Check One: [ ] 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about _____ (Date) (*If no reply received, so state*).

[✓] 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent	8b. Address
SEIU Health Care Wisconsin	260 E Highland Ave Milwaukee WI 53202

8c. Tel No.	8d Cell No.	8e. Fax No.	8f. E-Mail Address
14144553840		14147635156	sagart@seiuhcwi.org

8g. Affiliation, If any	8h. Date of Recognition or Certification	8i. Expiration Date of Current or Most Recent Contract, If any (*Month, Day, Year*)

9. Is there now a strike or picketing at the Employer's establishment(s) involved? no If so, approximately how many employees are participating? _____

(*Name of labor organization*) _____, has picketed the Employer since (*Month, Day, Year*) _____

10. Organizations or individuals other than those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (*If none, so state*)

10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.
Sagar Tolani	260 E. Highland Ave Suite 300 Milwaukee WI 53202	14144553840	
		10e. Fax No. 14147635156	10f. E-Mail Address

11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.

11a. Election Type: [ ] Manual [ ] Mail [ ] Mixed Manual/Mail

11b. Election Date(s):

11c. Election Time(s):

11d. Election Location(s):

12a. Full Name of Petitioner	12b. Address (*street and number, city, state, and ZIP code*)
Maggie Burns	2501 Johnston Dr #7 Manitowoc WI 54220

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (*if none, so state*)
None

12d. Tel No.	12e. Cell No.	12f. Fax No.	12g. E-Mail Address
n/a	9209015661	n/a	burnsmaggie53@gmail.com

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title	13b. Address (*street and number, city, state, and ZIP code*)
Sandra Barbeau Administrator	1445 N7TH Street Manitowoc WI 54220

13c. Tel No.	13d. Cell No.	13e. Fax No.	13f. E-Mail Address
9206820314	9202429519	9206820553	burnsmaggie@gmail.com

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (*Print*)	Signature	Title	Date
Maggie Burns	Maggie Burns	CNA	9/21/17

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Ex. 2

Form NLRB-5544
(5-2015)

CERTIFICATE OF SERVICE

Employer Name:

Service on the Employer

I hereby certify that on 9/21/2017 (date), a copy of the petition involving the Employer named above, a Statement of Position (Form NLRB-505), and a Description of Procedures (Form NLRB-4812) were served on the Employer by: (check whichever is applicable)

- ☐ e-mail to the email address shown on the petition.
- ☐ facsimile (with the permission of the Employer) to the facsimile number shown on the petition.
- ☐ overnight mail to the mailing address shown on the petition.
- ☒ hand-delivery to Sandra Barbeau (name of Employer's representative) at the following address: 1445 N 7th St. Manitowoc WI 54220.

Service on the Other Party Named in the Petition

I hereby certify that on 9/21/2017 (date), a copy of the petition involving the Employer named above, a Statement of Position (Form NLRB-505), and a Description of Procedures (Form NLRB-4812) were also served on SEIU HealthCare Wisconsin (name of party or parties) by: (check whichever is applicable)

- ☐ email to the email address shown on the petition.
- ☒ facsimile (with the permission of the party) to the facsimile number shown on the petition.
- ☐ overnight mail to the mailing address shown on the petition.
- ☐ hand-delivery to _____ (name of party's representative) at the following address: _____.

Service on the Other Party Named in the Petition

I hereby certify that on _____ (date), a copy of the petition involving the Employer named above, a Statement of Position (Form NLRB-505), and a Description of Procedures (Form NLRB-4812) were also served on _____ (name of party or parties) by: (check whichever is applicable)

- ☐ email to the email address shown on the petition.
- ☐ facsimile (with the permission of the party) to the facsimile number shown on the petition.
- ☐ overnight mail to the mailing address shown on the petition.
- ☐ hand-delivery to _____ (name of party's representative) at the following address: _____.

Anne Kubicka
Signature

Anne Kubicka CNA
Name and Title

9/21/2017
Date

Raluca Vais-Ottosen

From: Bill McCardell
Sent: Monday, November 20, 2017 10:01 AM
To: Raluca Vais-Ottosen
Subject: FW: Bargaining Tomorrow

From: Bonnie Strauss [mailto:bonnies@seiuhcwi.org]
Sent: Tuesday, September 26, 2017 7:16 PM
To: Mark Ruvel <Mark@championhcare.com>
Cc: Bill McCardell <wem@dewittross.com>; Renee Gagner <reneeg@seiuhcwi.org>
Subject: Re: Bargaining Tomorrow

Thank you Mark!

Sent from my iPhone
Bonnie Strauss
Project Director Emeritus
SEIU Healthcare WI
4513 Vernon Blvd Suite 300
Madison WI 53705
608-225-3491 (mobile)
608-270-2025 (fax)
bonnies@seiuhcwi.org

On Sep 26, 2017, at 6:28 PM, Mark Ruvel <Mark@championhcare.com> wrote:

Hi Bonnie,

That is fair, I will make sure that all the employees on both bargaining teams are paid 8 hours of straight time pay.

Mark Ruvel, LNHA
Managing Partner
Champion Care
(516) 605-9800 Ext. 1000
165 N. Village Ave, Suite 126
Rockville Centre, NY 11570
Mark@championHcare.com

On Sep 26, 2017, at 5:52 PM, Bonnie Strauss <bonnies@seiuhcwi.org> wrote:

Bill and Mark,

Ex. 3

Our members need to be paid by Champion for tomorrow for canceling at the last minute.
This is the second cancellation. There is no reason to stop bargaining, in fact, you have an obligation to bargain no matter if there is a petition or not. This is majorly disappointing.

I thought we had an agreement to move this along quickly when we last spoke. What happened to that commitment?

Please provide dates in the next two weeks to get started. Thanks.

Sent from my iPhone
Bonnie Strauss
Project Director Emeritus
SEIU Healthcare WI
4513 Vernon Blvd Suite 300
Madison WI 53705
608-225-3491 (mobile)
608-270-2025 (fax)
bonnies@seiuhcwi.org

On Sep 26, 2017, at 5:24 PM, Bill McCardell <wem@dewittross.com> wrote:

> All,
> Having just seen an RD Petition filed by employees at North Ridge yesterday, I've advised my client that we should pause bargaining until this latest development at North Ridge plays out. Hence, we won't meet tomorrow morning. Of course that is not to say that we won't bargain, but until we get more information about the situation (I've heard nothing from the Board, Renee tells me she hasn't heard anything too) we should not meet. In the meantime, I've advised Champion to continue to provide relevant requested information to the SEIU.
> Thanks.
> Bill
>
> **From:** Renee Gagner [mailto:reneeg@seiuhcwi.org]
> **Sent:** Tuesday, September 26, 2017 2:46 PM
> **To:** Mark Ruvel <Mark@championhcare.com>; Bonnie Strauss <bonnies@seiuhcwi.org>
> **Cc:** Bill McCardell <wem@dewittross.com>
> **Subject:** RE: Information Request
>
> Thanks, Mark. Can you also send us a breakdown of how the total cost is distributed (what the employee pays and what the employer pays) for each plan? If it's a uniform percentage (ie employee pays 50% of total plan cost for all plans) and you want to just send us that, that's fine.
>
> Renée Gagner
> Staff Representative/Organizer
> SEIU Healthcare Wisconsin
> 633 S. Hawley Road, Suite 106

Milwaukee, WI 53214
Office: (414) 455-3840 ext. 12
Cell: (414) 491-7039
Fax: (414) 763-5156

From: Mark Ruvel [mailto:Mark@championhcare.com]
Sent: Tuesday, September 26, 2017 2:37 PM
To: Renee Gagner; Bonnie Strauss
Cc: Bill McCardell
Subject: Fwd: Information Request

Please see attached

Mark Ruvel, LNHA
Managing Partner
Champion Care
(516) 605-9800 Ext. 1000
165 N. Village Ave, Suite 126
Rockville Centre, NY 11570
Mark@championHcare.com

Begin forwarded message:

> **From:** "Josh Feldberg" <j.feldberg@championhcare.com>
> **To:** "Mark Ruvel" <Mark@championhcare.com>
> **Cc:** "Izzy Weinberg" <Izzy@championhcare.com>
> **Subject: RE: Information Request**
>
> Let me know what else you need.
>
> Josh Feldberg
> Director of Payroll & Accounts Payable
> 165 N. Village Avenue, STE 126
> Rockville Centre, NY, 11570
> 516-605-9800 EX 1003-O
> 718-753-4012-C
> j.feldberg@championhcare.com
>
> **From:** Mark Ruvel
> **Sent:** Tuesday, September 26, 2017 1:34 PM
> **To:** Josh Feldberg <j.feldberg@championhcare.com>
> **Cc:** Izzy Weinberg <Izzy@championhcare.com>
> **Subject:** Fwd: Information Request
>
> Josh, please see below and attached. Can you send to me please? Thanks
>
> Mark Ruvel, LNHA
> Managing Partner

Champion Care
(516) 605-9800 Ext. 1000
165 N. Village Ave, Suite 126
Rockville Centre, NY 11570
Mark@championHcare.com

Begin forwarded message:

From: Renee Gagner <reneeg@seiuhcwi.org>
Date: September 26, 2017 at 10:43:05 AM CDT
To: Mark Ruvel <Mark@championhcare.com>
Subject: Information Request

Mark,

Just a quick information request before tomorrow – can you send us copies of the full health insurance plan descriptions (all documents that were given to employees during enrollment) and a breakdown of the plan costs (the employee contribution and employer contribution) for each plan level and type? We received the attached document from you earlier, but we'd like a more detailed rundown to get a better picture of the plans and costs.

Please let me know if you have any questions about what we're asking for. We're looking forward to starting our negotiations tomorrow.

Thanks!

Renée Gagner
Staff Representative/Organizer
SEIU Healthcare Wisconsin
633 S. Hawley Road, Suite 106
Milwaukee, WI 53214
Office: (414) 455-3840 ext. 12
Cell: (414) 491-7039
Fax: (414) 763-5156

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 30
310 West Wisconsin Avenue, Suite 450W
Milwaukee, WI 53203-2246

Agency Website: www.nlrb.gov
Telephone: (414)297-3861
Fax: (414)297-3880

November 17, 2017

MAGGIE BURNS
2501 JOHNSTON DR, UNIT 7
MANITOWOC, WI 54220-9686

Re: BAY AT NORTH RIDGE
Case 18-RD-208565

Dear Ms. Burns:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

Decision to Dismiss: As a result of the investigation, I find that further proceedings are unwarranted.

On October 25, 2017, you filed this decertification petition seeking to have an election in the unit of employees currently represented by SEIU Health Care Wisconsin. On October 31, 2017, I issued a Notice to Show Cause as to why the petition should not be dismissed as barred by the "successor bar" doctrine, in accordance with the National Labor Relations Board's holding in *UGL-UNICCO Service Co.*, 357 NLRB No. 76 (2011). After careful consideration, I find the "successor bar" doctrine applicable to the facts of this case, which bars further processing of this petition.

Bay at North Ridge Health and Rehabilitation Center, LLC[1] (Employer) is engaged in the business of operating a nursing home. On July 1, 2017, the Employer purchased the Manitowoc, Wisconsin nursing home facility from North Ridge Healthcare, LLC d/b/a/ North Ridge Medical and Rehab Center. The parties agree that at the time of this purchase, the Union was the collective-bargaining representative of the employees at the facility.[2] The Employer continued operation of the facility in basically unchanged form and hired, as a majority of its employees, individuals who were previously employees under North Ridge Healthcare, LLC d/b/a North Ridge Medical and Rehab Center and acknowledged the Union was the exclusive collective-bargaining representative.

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[1] Reflects Employer's Legal Name.

[2] On September 15, 2016, in Case 18-RD-181790, North Ridge Healthcare, LLC d/b/a/ North Ridge Medical and Rehab Center, the Union was certified as the collective-bargaining representative for the following unit of employees:

> All full-time, regular part-time and per diem CNAs, food service employees, housekeeping employees, laundry employees, and activity assistants employed by the Employer at its Manitowoc, Wisconsin facility; but excluding all nurses, receptionists, concierge, managerial staff, and supervisors as defined by the Act.

Ex. 4

In *UGL-UNICCO Service Co.*, 357 NLRB No. 76 (2011), the Board overruled *MV Transportation*, 337 NLRB 770 (2002), and returned, as modified, to the successor bar doctrine previously set forth in *St. Elizabeth Manor, Inc.*, 329 NLRB 341 (1999). This doctrine provides that when an employer hires a majority of employees from the predecessor and those employees perform substantially the same work, the employer is a successor and, as such, has an obligation to bargain with the incumbent representative. Additionally, that representative is entitled to represent the employees in collective bargaining with their new employer for "a reasonable period of time" without challenge to its representative status. The Board modified the successor bar doctrine as articulated in *St. Elizabeth Manor* by holding that the required "reasonable period of bargaining" would depend on whether the successor employer has expressly adopted the existing terms and conditions of employment as the starting point for bargaining. If the successor employer adopts the existing terms, the reasonable period is six months from the date of the first bargaining meeting between the successor employer and the incumbent union. On the other hand, if the successor employer unilaterally establishes initial terms of employment, the reasonable period will be a minimum of six months and a maximum of 12 months, measured from the first bargaining meeting. In the instant case, there is insufficient evidence to demonstrate that bargaining has occurred. As such, the minimum six month period has not elapsed, and therefore, the petition seeking to challenge the Union's majority status as the collective-bargaining representative is not timely filed.

Accordingly, I am dismissing the petition in this matter.

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 **December 1, 2017**, 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 **December 1, 2017**.

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 Efiling system on the Agency's website at www.nlrb.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,

JENNIFER A. HADSALL
Regional Director

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

SANDRA BARBEAU
BAY AT NORTH RIDGE
1445 N 7TH ST
MANITOWOC, WI 54220-2090

WILLIAM E. MCCARDELL, ESQ.
DEWITT ROSS & STEVENS S.C.
2 EAST MIFFLIN STREET, SUITE 600
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MADISON, WI 53703-2865

SEIU HEALTH CARE WISCONSIN
633 S. HAWLEY ROAD SUITE 106
MILWAUKEE, WI 53214

BARBARA ZACK QUINDEL, ATTORNEY
HAWKS QUINDEL S.C.
222 E. ERIE STREET
P.O. BOX 422
MILWAUKEE, WI 53201