

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

SCHUYLKILL MEDICAL CENTER
SOUTH JACKSON STREET, d/b/a
LEHIGH VALLEY HOSPITAL - SCHUYLKILL
SOUTH JACKSON STREET,

Case Nos. 04-UC-200537
 04-UC-200541

and

SCHUYLKILL MEDICAL CENTER
EAST NORWEGIAN STREET, d/b/a
LEHIGH VALLEY HOSPITAL - SCHUYLKILL
EAST NORWEGIAN STREET,

Employer

and

SEIU HEALTHCARE PENNSYLVANIA,
 Petitioner

**REPRESENTED EMPLOYEES’ MOTION FOR LEAVE
TO FILE AMICUS CURIAE BRIEF**

Joseph J. Rittle, Jane DeStefano, Christine Weidensaul, Mary Ann Novack, Maureen Howard, Mary Garraway, and Karlene L. Guzick (collectively “Represented Employees”) hereby move to file the attached Amicus Curiae brief in Support of Employer. Previously, Represented Employees moved to intervene in this matter and submitted a Request for Review of the Regional Director’s October 6, 2017 decision. In granting the Employer’s¹ Request for Review, the Board denied Represented Employees’ Motion for Intervention but considered their filings as an amicus brief. (Order dated January 25, 2018).

As explained in their Motion to Intervene (filed Nov. 3, 2017), Represented Employees

¹ The existing parties stipulated at the hearing that Schuylkill Medical Center South Jackson Street, d/b/a Lehigh Valley Hospital-Schuylkill South Jackson Street and Schuylkill Medical Center East Norwegian Street, d/b/a Lehigh Valley Hospital-Schuylkill East Norwegian Street are a single employer. Collectively, these hospitals will be referred to as “Employer” or “Lehigh.”

are the individuals most directly affected by the Regional Director's unit clarification and accretion decision. They alone have rights under Sections 7 and 9. *See Lechmere v. NLRB*, 502 U.S. 527, 532 (1992) ("By its plain terms . . . the NLRA confers rights only on employees, not on unions or their nonemployee organizers"). Therefore, it is imperative that the Board consider their arguments with respect to the validity of the Regional Director's decision, an erroneous decision that thrusts 160 employees into a unionized bargaining unit with no vote and no voice.

Represented Employees submit the attached Amicus Curiae Brief in Support of Employer to demonstrate that the Regional Director erred by finding a valid accretion in this case. More importantly, Represented Employees file this brief to implore the Board to recognize and protect employees' free choice rights in this matter and any future accretion analysis.

Therefore, Represented Employees respectfully request that this Motion to File Amicus Curiae Brief be granted and their Amicus Curiae Brief in Support of Employer be accepted.

Respectfully submitted,

Date: February 8, 2017

/s/ Alyssa K. Hazelwood
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Amicus Curiae Brief

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**REPRESENTED EMPLOYEES’ AMICUS CURIAE BRIEF
IN SUPPORT OF EMPLOYER**

Joseph J. Rittle, Jane DeStefano, Christine Weidensaul, Mary Ann Novack, Maureen Howard, Mary Garraway, and Karlene L. Guzick (collectively “Represented Employees”) submit this Amicus Curiae brief in support of their Employer. The Board has already granted the Employer’s Request for Review of the Regional Director’s Decision, Order, and Clarification of Bargaining Unit, dated October 6, 2017, and briefing on the merits of the case is now underway. (*See* Board Order Granting Review, dated January 25, 2018).

Represented Employees are employed by Schuylkill Medical Center East Norwegian Street, d/b/a Lehigh Valley Hospital-Schuylkill East Norwegian Street (“East”). Represented Employees are not members of SEIU Healthcare Pennsylvania (“SEIU” or “Union”) and do not wish to be represented by it. In fact, SEIU attempted to organize East employees in 2016, but

was unsuccessful. *See* Declarations of Christine A. Weidensaul & Jane DeStefano, attached hereto.

Despite Represented Employees' and their colleagues' publically-expressed opposition to unionization by SEIU, the Union petitioned NLRB Region 4 to "clarify" its current bargaining units at Schuylkill Medical Center South Jackson Street, d/b/a Lehigh Valley Hospital-Schuylkill South Jackson Street ("South") to include the non-unionized Represented Employees and their co-workers at East.¹ Over the objection of South and East (collectively "Employer"), the Regional Director held that an accretion had occurred and "clarified" the bargaining unit represented by the Union to include East employees. Employer filed its Request for Review with the Board on November 3, 2017. Represented Employees also filed a Request for Review, as well as a Motion to Intervene. On January 25, 2018, the Board granted the Employer's Request for Review for the purpose of determining whether the Regional Director's unit clarification and accretion decision is consistent with the standard used in *Safeway Stores, Inc.*, 256 NLRB 918 (1981). The Board denied Represented Employees' Motion to Intervene; however, it considered their Request for Review as an amicus brief. (Order dated Jan. 25, 2018).

Represented Employees submit this amicus brief on the merits to demonstrate that the Regional Director erred by finding a valid accretion in this case. More importantly, Represented Employees file this brief to implore the Board to recognize and protect employees' free choice rights in any future accretion analysis. For the Board to continue to ignore these rights would allow a minority of employees transferring to a different workplace to swallow up a majority of

¹ For purposes of this Amicus Brief, the two bargaining units represented by SEIU at South will be referred to as a single bargaining unit, "employees" will be defined as individuals in job classifications that SEIU either represents or requested to represent through their Petition for Clarification, "South employees" will refer to individuals in the bargaining unit represented by SEIU notwithstanding their transfer and/or rotation to East, and "East employees" will refer to the 160 non-unionized employees at East.

employees in a historically distinct unit. Here, East employs 160 nonunion employees. Pursuant to the terms of an Integration Agreement, 68 employees from South have permanently moved to East. At most, 125 South employees have ever worked at East for any amount of time. *Jt. Ex. 2.*² The Regional Director ruled that because of the transfer of these South employees, who constitute a minority of employees working at East, the 160 East employees—who recently rejected Union representation—are now part of South’s bargaining unit. The Union’s “Trojan Horse” requires the 160 East employees to abide by a contract that has already been negotiated by SEIU to explicitly cover only South employees, merely because a minority of employees who transferred from South to East maintained their SEIU representation.

The Regional Director’s decision destroys Represented Employees’ and their East colleagues’ statutory right to decide their representational preferences under Sections 7 and 9 of the National Labor Relations Act (“NLRA” or “Act”), 29 U.S.C. §§ 157 & 159. The Regional Director’s decision utterly fails to take into account the fundamental purpose of the Act: employee free choice—he “failed to strike the correct balance between the general, albeit implicit statutory *policy* of stability in bargaining relationships and the express statutory *right* of employees, set forth in Section 7 of the Act, to refrain from collective bargaining. . . . [T]he purpose of the Act is frustrated, not enhanced, when general considerations of labor policy are exalted over specific expressions of statutory rights.” *Cent. Soya Co.*, 281 NLRB 1308, 1312 (1986) (Chairman Dotson, dissenting). In fact, the Region’s hearing officer flatly stated: “the opinion of employees, for better or for worse, is not relevant to an accretion determination.” TR. 162.³ Such contempt for employees’ free choice rights is inimical to the purposes and policies of

² The Regional Director failed to take into account the degree of interchange. Some of the South employees who worked at East only rarely did so. For example, Ms. Delgado covered a total of three shifts at East, the most recent being January 24, 2017. TR. 400.

³ References to the hearing transcript are denoted by “TR.”

the NLRA, and must be overturned.

Represented Employees' expressed representational preferences should have been given the highest priority by the Regional Director, and must now be taken into account by this Board as it fashions a proper accretion standard. Represented Employees do not want to be represented by the Union, and should not have been included in any bargaining unit without an election. The Regional Director failed to correctly apply the *Safeway Stores* standard, and any future accretion standard must fully take into account the employees' wishes.

FACTS

Historically, East and South were two separately owned hospitals. Jt. Ex. 2. East employees have never been represented by a union, and they rejected SEIU as recently as last year. *Id.*; *see also* Declarations of Christine A. Weidensaul & Jane DeStefano. South employees have been represented by SEIU or its predecessor since 1974. *Id.* The parties stipulated that the bargaining unit of South employees represented by SEIU is comprised of 220 employees, and East employs 160 employees. *Id.*

In 2008, South and East merged ownership under the name Schuylkill Health System ("SHS"), but continued to function as independent hospitals. In 2014, SHS began working on a plan to consolidate some overlapping services from South to East. In 2015, SHS began negotiating with SEIU over an Integration Agreement regarding the effect of this consolidation on South employees. One of the Employer's goals during these negotiations "was to ensure that we did not allow an accretion to occur and that the East employees had the opportunity to vote and make that decision for themselves." TR. 74. The Employer also wanted to make sure South employees were able to retain their seniority if they transferred to East. *Id.* at 75. During negotiations, SEIU sought the accretion of East employees into its bargaining unit at South, but

the Employer refused on the basis that an accretion would deny the East employees their right to vote on whether they wanted Union representation. *Id.* at 74. However, the Employer agreed to allow South employees who were transferred to East to retain their membership in the South bargaining unit. *Id.* at 26. The Integration Agreement specifically states the collective bargaining agreement would not otherwise apply to East. *Id.* at 77; Union Ex. 8.

Sometime in the Spring or Summer of 2016, the Union began an organizing campaign directed to the East employees. *See* Declarations of Christine A. Weidensaul & Jane DeStefano. This campaign included approaching East employees at their homes to discuss union membership. *See id.* Union President Brian Symons took a three month leave of absence from his job at South in Spring 2016 to work on organizing East. TR. 96-97. Despite its significant efforts, the Union was unsuccessful in its organizing campaign and did not file a representation petition for East. *Id.*

In September 2016, Lehigh Valley Health Network acquired SHS. On April 24, 2017, Employer and the Union reached a tentative collective bargaining agreement (“CBA”), which maintained the Integration Agreement. This agreement was ratified by the South bargaining unit on April 27, 2017. Jt. Ex. 2.

Notwithstanding the CBA and Integration Agreement, on June 12, 2017, the Union filed two petitions for unit clarification to add the East employees into the South bargaining unit it represents. The Regional Director agreed with the Union and “clarified” the bargaining unit at South to include East employees. In doing so, he completely and totally ignored the East employees’ representational preferences. *See* TR. 162 (“The opinion of employees, for better or for worse, is not relevant to an accretion determination.”).

ARGUMENT

A. The Board's Accretion Standard Must Be Strictly Construed to Preserve Employees' Statutory Rights

“The Board has defined an accretion as ‘the addition of a *relatively small* group of employees to an existing unit where these additional employees share a sufficient community of interest with the unit employees and have no separate identity. The additional employees are then properly governed by the unit’s choice of bargaining representatives.” *Safety Carrier, Inc.*, 306 NLRB 960, 969 (1992) (emphasis added) (quoting *Safeway Stores, Inc.*, 256 NLRB 918, 924 (1981)). “The fundamental purpose of the accretion doctrine is to ‘preserve industrial stability by allowing adjustments in bargaining units to conform to new industrial conditions without requiring an adversary election every time new jobs are created.’” *CHS, Inc.*, 355 NLRB 914, 916 (2010) (quoting *Frontier Tel. of Rochester, Inc.*, 344 NLRB 1270, 1271 (2005)). In other words, the accretion doctrine is not designed to cram union representation onto *large* numbers of veteran employees without a vote because the union or employer find it convenient.

The entire notion of accretion, and even the *Safeway Stores* accretion standard, is not found in the Act. Rather, accretion is a Board-created doctrine which often fails to account for the wishes of the employees being accreted into a union’s bargaining unit—the individuals most directly affected by this change and whose rights the Act is designed to protect. *See McCormick Const. Co.*, 126 NLRB 1246, 1259-60 (1960) (emphasis added), quoting *Shoreline Enter. of Am., Inc. v. NLRB*, 262 F.2d 933, 944 (5th Cir. 1959) (“The National Labor Relations Board is not just an umpire to referee a game between an employer and a union. It is also a *guardian of individual employees.*”).

The text of the Act specifically states that exclusive representation will only be bestowed upon labor organizations that have majority support: “Representatives designated or selected for

the purposes of collective bargaining by *the majority of the employees in a unit* appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit.” 29 U.S.C. § 159(a) (emphasis added). Moreover, in determining an appropriate bargaining unit, the Board is “to assure to employees the fullest freedom in exercising the[ir] rights guaranteed by [the Act].” *Id.* at § 159(b). The Regional Director’s broad interpretation of the accretion standard is contrary to both of these provisions because: (1) it allows a union to add members to its bargaining unit and maintain its exclusive representative status without having to prove that it has the majority support of the newly expanded unit; and (2) employee freedom and the rights guaranteed under the Act to be (or not to be) represented by a union are ill-served when a unit is “clarified” to include employees without their input or consent.

The stated policies of the Act, “*encouraging* the practice and procedure of collective bargaining” and “protecting the exercise by workers of full freedom of association, self-organization, and *designation of representatives of their own choosing*, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection,” compel the Board to narrowly construe any claim to an accretion. 29 U.S.C. § 151 (emphasis added). The ability of a union to shoehorn additional groups of individuals into a bargaining unit without an election *compels* rather than “encourages” collective bargaining, and *deprives* employees of their freedom of association and their freedom to designate (or not to designate) a representative to bargain on their behalf. It undermines the Act’s policies to force employees to be represented by a union who is a stranger to the workplace and is not the employees’ selected representative. *See Int’l Ladies’ Garment Workers’ Union v. NLRB*, 366 U.S. 731, 762 (1961) (citing *NLRB v. Pa. Greyhound Lines, Inc.*, 303 U.S. 261, 267 (1938)) (“The law has long been settled that a grant of exclusive recognition to a minority union constitutes unlawful support in

violation of that section, because the union so favored is given ‘a marked advantage over any other in securing the adherence of employees.’”).

The Board has recognized that any accretion infringes on employee rights, and it has attempted to mitigate this harm by restrictively applying the accretion doctrine, precisely because “it is reluctant to deprive employees of their basic right to select their own bargaining representative.” *Gitano Group, Inc.*, 308 NLRB 1172, 1174 (1992). The Board considers accretion to be the exception to the rule of employee self-determination, applying it “restrictively, so as not to tread too heavily on the right of employees to choose their own collective bargaining representative.” *N.Y. Rehab. Care Mgmt. v. NLRB.*, 506 F.3d 1070, 1076 (D.C. Cir. 2007) (citing *Local 627, Int’l Union of Operating Eng’rs v. NLRB*, 595 F.2d 844, 851 (D.C. Cir. 1979); *Passavant Ret. & Health Ctr., Inc.*, 313 NLRB. 1216, 1218 (1994)). The Board “will not, under the guise of accretion, compel a group of employees, who may constitute a separate appropriate unit, to be included in an overall unit without allowing those employees the opportunity of expressing their preference in a secret ballot election.” *Melbet Jewelry Co., Inc.*, 180 NLRB 107, 110 (1969). “And because misuse of accretion poses a significant threat to the self-determination rights of employees guaranteed by § 7 of the NLRA, courts have been particularly vigilant in assuring that the Board observes in practice the strict standards it has adopted for accretion orders. If there is *any* substantial doubt, the policy of the NLRA requires that an election be conducted.” *Baltimore Sun Co. v. NLRB*, 257 F.3d 419, 429 (4th Cir. 2001) (internal citations omitted) (emphasis added).

The danger of a broad interpretation of the Board’s accretion doctrine is illustrated by the Regional Director’s Order. Represented Employees and their East colleagues do not want to be represented by SEIU, and indeed, recently rejected SEIU’s attempts to organize. *See Declaration*

of Joseph J. Rittle, Christine A. Weidensaul & Jane DeStefano. Yet the Regional Director discounted the employees' desires as irrelevant, and silenced 160 of them who work in a historically non-unionized hospital. Moreover, it must be remembered that the Union did not petition for unit clarification until *after* the collective bargaining agreement at South was signed. At the time that contract was entered into, the Union had no connection with the East employees. Additionally, the CBA was ratified before the Regional Director's decision to forcibly include the East employees into the South unit, thereby depriving them of the ability to vote on that contract or to exercise what little control they may have had over the terms and conditions of their employment. To make matters even worse, the existence of the South contract may preclude the East employees from successfully holding a vote to decertify the Union should they choose to do so, as another Board doctrine, the contract bar, generally precludes a decertification election for up to three years or until the expiration of the CBA.

In short, an election to determine whether East employees want to be represented by SEIU and included in the South bargaining unit is the only way to ensure that the policies of the Act are upheld (assuming the Union is able to garner the requisite showing of interest among the East employees). The Board should narrow and strictly construe its accretion standard as outlined in *Safeway Stores*, to properly protect employee freedom of choice.

B. The Regional Director Erred in His Decision to Accrete the East Employees into the Bargaining Unit Represented by SEIU

The Board's standard for determining an accretion has two prongs. First, the Board must determine whether the employees have "little or no separate group identity and thus cannot be considered to be an appropriate unit." *Safeway Stores*, 256 NLRB at 918. Second, the Board must determine whether the employees "share an *overwhelming* community of interest" with the bargaining unit into which they are being accreted. *Id.* (emphasis added); *see also Baltimore Sun*

Co., 257 F.3d at 427 (internal citations omitted) (“While a mere finding of a “community of interest” among affected employees may be sufficient to justify the Board’s action in defining a unit to conduct a representation election, a decision to accrete employees to a unit without an election requires a showing of much more.”). To determine whether the employees share an overwhelming community of interest, the Board considers the following factors: “integration of operations, centralized control of management and labor relations, geographic proximity, similarity of terms and conditions of employment, similarity of skills and functions, physical contact among employees, collective bargaining history, degree of separate daily supervision, and degree of employee interchange.” *Frontier Tel.*, 344, NLRB at 1271 ((quoting *E.I. Du Pont de Nemours, Inc.*, 341 NLRB 607, 608 (2004)). The “two most important factors”—indeed, the two factors that have been identified as ‘critical’ to an accretion finding—are employee interchange and common day-to-day supervision.” *Id.* Findings of both little or no separate group identity *and* an overwhelming community of interest are required for the finding of a valid accretion. *Baltimore Sun Co.*, 257 F.3d at 428. Underlying this analysis is the “Board’s fundamental concern . . . to insure that in cases where such an issue is raised the right of interested employees to determine their own bargaining representative will not be thwarted.” *Safeway Stores*, 256 NLRB at 918.

1. The Regional Director’s Decision is Fatally Flawed

The Regional Director failed to apply the *Safeway Stores* accretion analysis, and failed to take into account the underlying “fundamental concern” of employee freedom of association. Indeed, he failed to cite or apply the two-pronged *Safeway Stores* test at all. Instead of making a finding that the employees have little or no separate group identity, he applied a presumption that East was a separate facility and rebutted that presumption with a community of interest analysis.

The Regional Director made no finding that the community of interest was “so overwhelming that the employees’ choice could be forgone.” *Baltimore Sun Co.*, 257 F.3d at 431. Thus, his Decision must be rejected.

Moreover, the Regional Director made a fundamental error throughout his analysis. The Regional Director failed to properly consider the current employee census at East, and thereby severely discounted East’s separate and distinct identity. He continually used the South employees’ slim majority status overall as a starting point and failed to properly account for the fact that the South employee transfers represented a clear *minority* of the employees at East.⁴

The Regional Director cited *Special Machine & Engineering*, 282 NLRB 1410 (1987) to justify his accretion decision, but that decision is quite distinguishable. There, the unrepresented individuals were transferred to a plant represented by the union and “merged into a single productive entity.” *Id.* Here, there is no such single entity because the two hospitals are separate facilities, and the non-union individuals were not transferred from a defunct facility to a unionized workplace. Instead, unionized employees from South—a minority of the employees at East—were allowed to maintain their membership in the South bargaining unit while transferring to East.

The Board’s rationale in *Special Machine* was also based, in part, on employer gamesmanship. The Board noted: “we will not permit an employer to capitalize on its decision to consolidate a smaller group with its larger, represented group to justify terminating its long-term bargaining relationship with the majority representative.” *Id.* at 1411. Here, it is the Union that unfairly capitalized on its decision to agree to the integration plan rather than continuing to

⁴ Indeed, the Regional Director assumed that the South employees who transferred to East were nevertheless properly included in the South bargaining unit represented by SEIU. While not at issue in this matter, it could be argued that the South employees who transferred to East were improperly considered part of the South bargaining unit and should be considered part of the non-unionized East employees.

pursue an accretion during bargaining or by petitioning for unit clarification at that time. Pursuant to the integration plan, a minority of South employees infiltrated East and were allowed (by negotiated agreement) to remain members of the South bargaining unit, with the stipulation that the CBA would not extend to East in any other manner. Here, the Union is employing gamesmanship—using the Integration Agreement to allow South employees to remain part of their original bargaining unit—as a backdoor to gain additional bargaining unit members at East, a gain it could neither achieve through organizing nor bargaining. This type of double dealing is not favored by the Act. *Aero Eng’g Co.*, 177 NLRB 176, 176 (1969) (actions that “constitute an inducement to ‘gamesmanship . . . would not effectuate the policies of the Act”).

Thus, the Regional Director’s decision is fatally flawed and must be reversed.

2. Applying the *Safeway Stores* Standard Compels a Finding that East is a Separate Appropriate Unit

Applying the *Safeway Stores* standard to this case compels a finding that East and South are separate hospitals with separate bargaining units. As an initial matter, *Safeway Stores* defines accretions as applying to “relatively small” groups of employees. *See Safety Carrier*, 306 NLRB at 969; *Safeway Stores*, 256 NLRB at 924; *see also Martin Marietta Co.*, 270 NLRB 821 (1984) (holding that accretion was not appropriate for consolidation of bargaining units containing 93 members and 159 members because neither unit was “sufficiently predominate to remove the question of overall representation.”). Here, the original bargaining unit of South employees had 220 members. The current clarification to include East employees accretes 160 additional employees into the bargaining unit. This is a 72.73% increase in bargaining unit membership, not a small increase by any mathematical measure. Accretions of this size and scope—which radically transform the bargaining unit—should be disfavored. Moreover, a group of employees of that size who have traditionally worked independently, without a union, and who continue to

work in a different location than the original South bargaining unit, should be found to have a group identity separate and distinct from those individuals working at South.

With respect to the first prong of the analysis, these two hospitals (and thereby the employees within) have not lost their separate identities. East and South retain separate operating licenses. Jt. Ex. 2. East and South have their own payroll and job descriptions. TR. 376. East employees and South employees have different terms and conditions of employment. *See* TR. 317-19. East employees have not transferred to South. Jt. Ex. 2 at Ex. B. Rather, some South employees have transferred (in many instances, permanently) to East. Jt. Ex. 2. The employees who work exclusively at South and East work at separate, independent hospitals. Each hospital has its own break rooms, cafeterias, locker rooms, and the like, and staff events occur at each facility independently of each other. TR. 386-89. These facts compel a finding that East employees retained a separate group identity and can be properly considered a distinct unit.

With respect to the second prong, record evidence demonstrates that the community of interest between East employees and South employees is not “overwhelming.” For example, with respect to day-to day supervision, the Dietary employees at South and East have their own supervisory staff. TR. at 365; Jt. Ex. 2 at Ex. B. Moreover, East employees’ housekeeping and dietary groups work under the direction of “Lead” workers, while the South groups do not. TR. at 369-370; Jt. Ex. 2 at Ex. B. Additionally, many South and East employees work under the direction of their respective supervisors at each hospital. Jt. Ex. 2 at Ex. B.; TR. 355-356. While it is true that many of the South employees who have been permanently transferred to East share the same supervisors with East employees, those South employees constitute the minority of employees at East. *See* Jt. Ex. 1. (If anything, the Board could determine that East constitutes its

own unit, including the employee transfers from South, and find the arrangement between the Union and the Employer—to keep those South employees who transferred to East as unionized employees—invalid).

Moreover, the majority of East employees have different terms and conditions of employment than the South employees. The Regional Director disagreed: “[t]o the extent those East employees not currently represented by the Petitioner have different terms and conditions, this only proves that the meaningful dividing line when it comes to terms and conditions is represented versus unrepresented, and not East versus South.” RD at 19. However, since a *majority* of East employees have different terms and conditions of employment than the employees who work at South, this factor should have weighed against accretion.

Finally, the collective bargaining history repudiates any finding of accretion. South’s employees have traditionally been represented by the Union, while East’s employees have never been represented by a union. Most significantly, the “bargaining history” here is unequivocal: East employees do not want a union. East employees rejected the Union’s 2016 organizing campaign, which included door-to-door solicitation and the Union President taking a three month leave of absence from his employment to organize East. *See* Declarations of Christine A. Weidensaul & Jane DeStefano; TR. 96-97. The Regional Director improperly uses SEIU’s collective bargaining history with South and its predecessor hospitals as evidence that *East* has a history of unionization because a minority of employees currently at East are Union-represented South employees. RD at 19. However, this analysis puts the proverbial cart before the horse. The Regional Director relied on South’s bargaining history as East’s “bargaining history” because of the transfer of a minority of employees. The Regional Director instead should have considered the bargaining history of East and its employees—a traditionally non-unionized

hospital with a majority of employees who recently rejected the Union's attempts to organize. In fact, the current SEIU-South CBA explicitly excludes East employees from the bargaining unit. *See* Union Ex. 8 (“While the collective bargaining agreement continues to apply to bargaining unit employees working at either facility, it does not apply to East except by virtue of this Agreement.”). This factor militates against accretion of the East employees.

On balance, taking into account all of the accretion factors and the Board's restrictive application of the policy to protect the rights of employees, the Regional Director's finding of an accretion and clarification of the bargaining units to include the employees at East extends the accretion doctrine far beyond its narrow, restrictive parameters, and totally disregards the East employees' rights of free choice. The evidence presented demonstrates there is a “separate group identity” and an insufficient “community of interest” to find an accretion. Moreover, “[i]f there is *any* substantial doubt, the policy of the NLRA requires that an election be conducted.” *Baltimore Sun Co.*, 257 F.3d at 429. Accordingly, the Board should reverse the Regional Director's decision. The Board should also articulate clear standards that limit accretions to small numbers of employees in only narrowly defined situations to safeguard the Section 7 and 9 rights of employees.

CONCLUSION

The Board should reverse the Regional Director's Decision, Order, and Clarification of Bargaining Unit.

Respectfully submitted,

Date: February 8, 2017

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Declarations in Support of Amicus Curiae Brief

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SEIU HEALTHCARE PENNSYLVANIA,

Petitioner.

DECLARATION OF JOSEPH J. RITTLE

Joseph J. Rittle, pursuant to Section 1746 of the U.S. Judicial Code, 28 U.S.C. § 1746, declares that he has personal knowledge of all of the facts contained herein, and further states as follows:

1. I am employed as a staff radiographer in the radiology department at Lehigh Valley Medical Center-Schuylkill East ("East").

2. I have worked at the East hospital since July 3, 2006. When I started working at East, it was called Good Samaritan Regional Medical Center.

3. Before that I worked at the facility that is now called Lehigh Valley Medical Center-Schuylkill South ("South"). For almost two years before I moved to East, I worked at South in management, as PACS administrator. I was not a member of SEIU Healthcare

Pennsylvania ("SEIU") at that time.

4. Immediately prior to my employment as PACS administrator at South, I worked for 22 years as a staff radiographer in the X-Ray Department at South. During that entire time I was a member of SEIU and a supporter of that union. For my entire 24 years of employment at South, it was then Pottsville Hospital & Warne Clinic.

5. SEIU led the employees at South out on three strikes, in 1984, 1988 and 1992. The last strike lasted about six months and left me and many other employees financially and emotionally wounded. At that point I did not want to go through another strike and started becoming disenchanted with the SEIU.

6. Eventually, a position came available in the radiology department at East, and I left South at some cost to move to a non-union position at East.

7. Having come from a union background, I was surprised that I have been treated very fairly by management at East, without union representation.

8. Since moving to East, I feel no need for SEIU representation, because I feel that the employees at East have very good working conditions, and had no need for any union's representation.

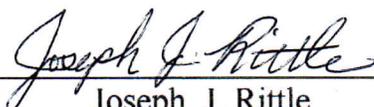
9. I have never asked SEIU or any other union to represent me in my job at East.

10. I believe that if the East hospital is ever to be unionized, it should be through a secret ballot election and not a legalistic "accretion" process.

11. I declare under penalty of perjury that the foregoing is true and correct to

the best of my knowledge and belief.

Executed on November 1, 2017.



Joseph J. Rittle

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

SCHUYLKILL MEDICAL CENTER
SOUTH JACKSON STREET, d/b/a
LEHIGH VALLEY HOSPITAL - SCHUYLKILL
SOUTH JACKSON STREET

Case Nos. 04-UC-200537
04-UC-200541

and

SCHUYLKILL MEDICAL CENTER
EAST NORWEGIAN STREET, d/b/a
LEHIGH VALLEY HOSPITAL - SCHUYLKILL
EAST NORWEGIAN STREET.

Employer,

and

SEIU HEALTHCARE PENNSYLVANIA,

Petitioner.

DECLARATION OF CHRISTINE A. WEIDENSAUL

Christine A. Weidensaul, pursuant to Section 1746 of the U.S. Judicial Code, 28 U.S.C. § 1746, declares that she has personal knowledge of all of the facts contained herein, and further states as follows:

1. I am employed as a certified respiratory therapist at Lehigh Valley Medical Center-Schuylkill East ("East").
2. I have worked at the East hospital for approximately thirty-four years.
3. Along with many others at our hospital, I have always felt that the employees at East had very good working conditions, and had no need for any union's representation.
4. I have never asked SEIU Healthcare Pennsylvania ("SEIU") or any other union to represent me in my job at East, and I do not want union representation.

5. Sometime during the Spring/Summer of 2016, SEIU began an organizing campaign to try to unionize the workers of the East hospital.

6. SEIU organizers came to my home three times and sent me text messages as well. I do not know how they got my private information. I never expressed any interest in union representation.

7. One of the times when SEIU organizers came to my door, I asked them to leave and they ignored me and persisted for thirty minutes. They stood in my doorway despite my attempts to get them off of my property.

8. I do not want union representation now, or ever. During the organizing campaign I never signed anything seeking SEIU's representation, and I believe that if my East hospital is ever to be unionized, it should be through a secret ballot election and not a legalistic "accretion" process. I believe SEIU's organizing attempt at the East hospital in the Spring/Summer of 2016 was unsuccessful, which is why, to my knowledge, SEIU never filed for an election with the NLRB.

9. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on October 30, 2017.


Christine A. Weidensaul

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

SCHUYLKILL MEDICAL CENTER
SOUTH JACKSON STREET, d/b/a
LEHIGH VALLEY HOSPITAL - SCHUYLKILL
SOUTH JACKSON STREET

Case Nos. 04-UC-200537
04-UC-200541

and

SCHUYLKILL MEDICAL CENTER
EAST NORWEGIAN STREET, d/b/a
LEHIGH VALLEY HOSPITAL - SCHUYLKILL
EAST NORWEGIAN STREET,

Employer.

and

SEIU HEALTHCARE PENNSYLVANIA,

Petitioner.

DECLARATION OF JANE DESTEFANO

Jane DeStefano, pursuant to Section 1746 of the U.S. Judicial Code, 28 U.S.C. § 1746, declares that she has personal knowledge of all of the facts contained herein, and further states as follows:

1. I am employed as a cardiac monitor technician at Lehigh Valley Medical Center-Schuylkill East ("East").
2. I have worked at this hospital ("East") for approximately thirty-five years.
3. Along with many others at our hospital, I have always felt that the employees at East had very good working conditions and a good relationship with our employer, and had no need for any union's representation.
4. I have never asked SEIU Healthcare Pennsylvania ("SEIU") or any other union to

represent me in my job at East, and I do not want union representation.

5. Sometime during the Spring/Summer of 2016, SEIU began an organizing campaign to try to unionize the workers of the East hospital.

6. One evening after dinner in the Spring/Summer of 2016, people rang my doorbell and I did not answer. They continued to ring loudly, and because I believed they were from SEIU I did not answer. They eventually went away.

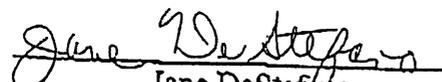
7. A second time shortly thereafter, I was not home but SEIU union organizers came to my house and engaged my husband, who felt badgered and told them to leave.

8. A few days later, SEIU union organizers again showed up at my home. I opened the door and the lead union organizer had two nurse's aides with her. They spoke with me for thirty minutes and would not take "no" for an answer, as I reiterated that I was not interested in union representation or paying dues to a union to support its activities and agenda. The SEIU organizers eventually left.

9. I do not want union representation now, or ever. During the organizing campaign I never signed anything seeking SEIU's representation, and I believe that if my East hospital is ever to be unionized, it should be through a secret ballot election and not a legalistic "accretion" process. I believe SEIU's organizing attempt at the East hospital in the Spring/Summer of 2016 was unsuccessful, which is why, to my knowledge, SEIU never filed for an election with the NLRB concerning the East employees.

10. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on October 30, 2017.


Jane DeStefano