

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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,	:	
	:	Case Nos. 4-UC-200537 and
	:	4-UC-200541
Employer	:	
	:	
and	:	
	:	
SEIU HEALTHCARE	:	
PENNSYLVANIA,	:	
	:	
Petitioner	:	

**PETITIONER’S STATEMENT IN OPPOSITION
TO EMPLOYEES’ AMICUS CURIAE BRIEF**

I. Introduction

Pursuant to Section 102.29 of the National Labor Relations Board’s (hereinafter referred to as either the “N.L.R.B.” or the “Board”) Rules and Regulations, the Administrative Procedure Act, 5 U.S.C. §§ 554 and 702, and well-established Board and federal court case law, the Petitioner, S.E.I.U. Healthcare Pennsylvania (hereinafter referred to as the “Union”), opposes the employees’ motion for leave to file amicus curiae brief in the above captioned case.

II. Factual Background

The Union has represented units of LPNs, technical employees, and service and maintenance employees at the hospitals located at 420 South Jackson Street, Pottsville, Pennsylvania since 1975. At the time the hospital was operating as the Pottsville Hospital and Warne Clinic. There was a separate hospital in Pottsville, Pennsylvania located at 700 East Norwegian Street, formally known as Good Samaritan Medical Center. These two hospitals are a mere 0.47 miles apart.

In 2008, those two hospitals merged which resulted in a new parent organization, called Schuylkill Health System. With that merger, the Pottsville Hospital became Schuylkill Medical Center – South Jackson Street. Good Samaritan became Schuylkill Medical Center – East Norwegian Street. Initially, both hospitals functioned separately and the Union only represented employees at South Jackson Street.

In the beginning of 2015, Schuylkill Health System developed a “campus integration plan” aimed at integrating and consolidating clinical services of two facilities. At that time, there was a collective bargaining agreement between the Union and Schuylkill Medical Center – South Jackson Street. The Schuylkill Medical Center – South Jackson Street approached the Union to discuss bargaining over the effects of the plan to integrate the two campuses. The staff at East Norwegian Street were unrepresented. In late August 2015, the parties reached a tentative agreement on the subject of integration.

After the execution of the Integration Agreement, the parties began negotiating for a successor collective bargaining agreement. While those negotiations were ongoing, there was a subsequent merger on, or about, September 16, 2016 when

Schuylkill Health Systems merged into the Lehigh Valley Health Network. By virtue of this merger, the separate existence of Schuylkill Health System ceased and the Lehigh Valley Health Network became the surviving nonprofit corporation. After the merger, Schuylkill Medical Center – East Norwegian Street began doing business as Lehigh Valley Hospital – Schuylkill East Norwegian Street (“East”); Schuylkill Medical Center – South Jackson Street began doing business as Lehigh Valley Hospital – Schuylkill South Jackson Street (“South”). Lehigh Valley Health Network is the owner of East and South.

Staff from South campus, represented by the Union, were transferred to the East campus while retaining their status in the bargaining unit and protected by the existing collective bargaining agreement. In some cases, parts of a department and some of the staff of that department moved from South to East. For example, the operating room, medical-surgical, telemetry units, and the ICU unit that were at South were consolidated at East. In other cases, employees were assigned to rotate between the two locations. As a result of both of these situations, Union employees worked side by side with unrepresented employees. Many union and non-represented employees had a common immediate supervisor and there was one “system” wide seniority protocol for the filling of vacancies that may arise at either hospital.

The Union filed unit clarification petitions on June 12, 2017.

On June 14, 2017, the Employer, “Lehigh Valley Health Network”, distributed a flyer to employees. (Attachment A). The Employer stated its position in this flyer as against accretion. The Employer also stated its position that employees should have an election. On June 21, 2017, the Employer, “Lehigh Valley Hospital – Schuylkill”, sent a

memo to employees. (Att. C). The Employer repeated its position in opposition to accretion. The Employer also restated its position that there should be an election to determine whether or not there is union representation.

On July 19, 2017, the Employer distributed another flyer to employees. (Att. B). This flyer, entitled “What is SEIU Really Up To?”, clearly informed employees that “hearings with the National Labor Relations Board begin this Thursday. These hearings will not determine if there will be a vote, but will determine if you will be forced to join SEIU with no input or vote.” (Att. B, line 4). The flyer concluded “SEIU is trying to take away your voice. If you don’t want that to happen, you should make that clear now, before the National Labor Relations Board decides for you.” (Att. B, line 8). None of Employer’s literature made a distinction between either South or East.

III. Procedural Posture

A hearing was conducted on July 20, 21, and 24, 2017. Both parties filed post-hearing briefs on August 2, 2017. Regional Director Dennis Walsh issued his Decision, Order, and Clarification of Bargaining Unit on October 6, 2017. The petitions were granted and the bargaining unit was clarified to include technical employees, service and maintenance employees, and LPNs at the Employer’s facilities at 420 South Jackson Street and 700 East Norwegian Street in Pottsville, Pennsylvania.

On November 3, 2017, the Employer requested review of the Regional Director’s Decision, Order, and Clarification of Bargaining Unit (“Decision”) and a stay of the Decision pending final determination of its Request for Review. On that same day, employees, through the National Right To Work Legal Defense Foundation, moved to intervene and simultaneously also requested review of the Regional Director’s Decision.

On November 24, 2017, the Board denied the Employer's request to stay the Decision in which the Regional Director found the employees at issue constitute an accretion to the existing unit. On January 25, 2018, the Board granted the Employer's Request for Review of the Regional Director's Decision as to whether the finding that the East employees constitute an appropriate accretion to the unit is consistent with the standard articulated in *Safeway Stores, Inc.* 256 NLRB 918, 918 (1981). The Board denied the Employer's Request for Review in all other respects, including with respect to the Regional Director's finding that the unit clarification petitions were timely and that the parties did not agree to exclude the disputed employees from the unit. The Board also denied the Employee-Intervenors' Motion to Intervene in the proceedings.

On February 8, 2018, employees, through the National Right To Work Legal Defense Foundation, moved for leave to file an amicus curiae brief in support of the Employer.

IV. Analysis

The National Right To Work Legal Defense Foundation's Amicus Curiae brief should be stricken and dismissed as it is an inappropriate attempt to submit material facts that are not part of the record.

The Board Rules and Regulations provide what the record on review will and will not consist of. When the Board has granted review of a Regional Director's action, the Board will consider the entire record in the light of the grounds relied on for review. Rule 102.67(h). The Regional Director issued his Decision on October 6, 2017. The Board granted Review on January 25, 2018. It was not until February 8, 2018, that the declarations and the arguments contained within the Amicus Curiae brief were

submitted. Therefore, the Regional Director's action could not have been based upon the declarations or the arguments contained within the Amicus Curiae brief. Nor could the record being considered have contained the facts within the declarations or the arguments contained within the Amicus Curiae brief.

The record consists of the petition, Notice of Hearing with affidavit of service thereof, statements of position, responses to statements of position, offers of proof made at the pre-election hearing, motions, rulings, orders, the stenographic report of the hearing and of any oral argument before the Regional Director, stipulations, exhibits, affidavits of service, and any briefs or other legal memoranda submitted by the parties to the Regional Director or to the Board, and the decision of the Regional Director. Rule 102.68. Therefore, the declarations and the arguments contained within the Amicus Curiae brief are not part of the record, not proper, not relevant, and should be stricken and dismissed as an inappropriate attempt to submit material facts.

If these employees did desire to introduce facts or make arguments on the record, then the Rules require that they either file a motion in writing prior to the hearing with the Regional Director or move orally on the record at the unit clarification hearing with the Administrative Law Judge.

The employees' were aware and had actual notice of the unit clarification petition no later than June 14, 2017, when the Employer sent its memo to all employees. (Att. A). The Employer sent another memo on June 21, 2017. (Att. C). It was at this point that facts or arguments must have been introduced to the record. Yet, the employees did not take any immediate affirmative steps.

Another full month passed before the hearing began on July 20, 2017, and yet the employees failed to protect their interest to introduce facts or arguments in a timely fashion.

On July 19, 2017, the Employer explicitly notified employees of the time, location, and purpose of the hearing that began on July 20, 2017. (Att. B). The Employer plainly invited employees to make their voice heard before (i.e. prior) the N.L.R.B. rendered its decision. (Att. B, line 8). It was at this point that the case had reached its critical stage for any person desiring to introduce facts or arguments. Nonetheless, another two months of silence passed when the Decision, Order, and Clarification of Bargaining Unit was issued on October 6, 2017. It was not until February 8, 2018, that the declarations and the arguments contained within the Amicus Curiae were submitted.

Therefore, the declarations and the arguments contained within the Amicus Curiae brief should be stricken and dismissed because of the failure to take immediate affirmative steps to timely introduce facts or arguments until well after the critical stage.

V. Conclusion

For the above mentioned reasons, the declarations and the arguments contained within the Amicus Curiae brief should be stricken and dismissed.

Respectfully submitted by:

A handwritten signature in black ink that reads "Steven Grubbs". The signature is written in a cursive, flowing style.

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and

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DECLARATION OF STEVEN GRUBBS

I, Steven Grubbs, pursuant to Section 1746 of the U.S. Judicial Code, 28 U.S.C. § 1746, declare that I have personal knowledge of the facts contained herein, and further state as follows:

1. I am employed as a Regional Advocate with SEIU Healthcare Pennsylvania.
2. I have worked for the Union since October 2012.
3. I am familiar with Attachments A, B, and C.
4. Attachments A, B, and C were distributed by the Employer to employees at both the South and East campuses.

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

Executed by:

A handwritten signature in black ink that reads "Steven Grubbs". The signature is written in a cursive style with a large, prominent initial "S".

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ATTACHMENT A

"In Perspective"

SEIU Seeks to Deny Employees' Legal Right to Choose

SEIU is "demanding" to represent ALL LVH - Schuylkill employees, not just those from South. The union wants ALL hospital employees to pay SEIU dues.

Employees should have a choice to voice whether or not they want union representation - it shouldn't be something that SEIU or union members "demand."

Why is the union trying to get the Board to "agree with" them? If the union wants to bring all employees into the unit, they should ask for an election so that all of our employees have the opportunity to choose.

Becky Hess is an SEIU organizer - she's not a LVH or Schuylkill Hospital employee.

Union members at Lehigh Valley Hospital - Schuylkill demand equality for all Hospital workers!

As members of SEIU ACPA and LVH-Schuylkill, we believe that every LVH employee who works hard alongside us every day deserves the same provisions and benefits that we have won over the years. We are filing the paperwork to demand these benefits to everyone. If the Board agrees with our argument that union and non-union workers are doing the same jobs and share the same daily environment, all workers will be entitled to the same provisions and benefits offered by the collective bargaining agreement. We have fought hard for years to win what we have in our contract. Now that we're working side by side with our coworkers at LVH, we know that none of us will serve less than that.

What does this mean for YOU?
Make a call and find out

You and your co-workers can find out more by calling Becky Hess @ 814-227-3118.

The message to our Employees remains the same: Know the facts. Our history of open communication and dialogue has served both employee and hospital very well. Don't let union's tactics interfere with our mission to care for our community and each other. You have a voice. We want to continue to collaborate with you as we move into an exciting future. You are encouraged to ask questions about the messages you are receiving. Talk with your supervisor or contact the Human Resources Department with questions or concerns that you might have.

ATTACHMENT B

July 19, 2017

“In Perspective”

What is SEIU Really Up To?

There seems to be some misinformation out there with respect SEIU. We need to set the record straight and put their activities “In Perspective.”

SEIU filed petitions with the National Labor Relations Board, asking the Board to force, or "accrete," our East colleagues into the existing union. If the union gets its way, our East colleagues will not have any vote or choice in this matter. You will simply be told that you will be in the union.

SEIU does not have your best interest in mind. SEIU does not care about giving you a choice. SEIU wants to force you into membership regardless of your interests.

Hearings with the National Labor Relations Board begin this Thursday. These hearings will not determine if there will be a vote, but will determine if you will be forced to join SEIU with no input or vote.

We know that SEIU has tried to convince you to join over the years, using various tactics like cell phone calls, text messages, and uninvited visits to your homes. Because SEIU's efforts failed, they are now ignoring what YOU want and instead are pursuing their own agenda.

If the NLRB orders an accretion, we do not know what it will mean regarding seniority of our East colleagues. If accretion is granted, we are unsure if all colleagues will be forced to the bottom of the seniority list, which has been the case in other situations where a non-union colleague takes a union position. You should ask this question to the representatives who are leading this effort.

There are differences between the union colleagues' terms of employment and those of our non-union colleagues. Questions to ask include -- Will your shifts rotate? Will you lose your long-term disability insurance? Will you pay more out of pocket for prescriptions?

SEIU is trying to take away your voice. If you don't want that to happen, you should make that clear now, before the National Labor Relations Board decides for you.

If you have any questions about this process, please contact Tom McPhillips, Human Resources or you can call the National Labor Relations Board's offices in Philadelphia at 215-597-7601.

The message to our Employees remains the same: Know the facts. Our history of open communication and dialogue has served both employee and hospital very well. Don't let union's tactics interfere with our mission to care for our community and each other. You have a voice. We want to continue to collaborate with you as we move into an exciting future. You are encouraged to ask questions about the messages you are receiving. Talk with your supervisor or contact the Human Resources Department with questions or concerns that you might have.

ATTACHMENT C



TO: Lehigh Valley Hospital – Schuylkill Colleagues
FROM: William Reppy, President
DATE: June 21, 2017
RE: SEIU Files Paperwork to Deny Hospital Employees' Rights

We received notice from the National Labor Relations Board (NLRB) that SEIU Healthcare Pennsylvania has filed a petition to automatically bring into the union *all* Service, Maintenance, LPNs and Technical employees at LVH – Schuylkill. This is the union's effort to require that our non-union colleagues join the union, whether they want to or not.

We strongly believe that you should be able to decide for yourself whether or not you want union representation and whether you should be required to give 1.8% of your pay to SEIU.

In the near future, the NLRB will ask us for our position on the union's filing, and we will make our opposition clear.

We respect that some of our colleagues are represented by labor unions. However, we prefer to maintain a direct line of communication with our colleagues--you have seen this for many years, and we hope that you agree with us that it works well. We will also ensure that everyone fully understands their legal rights and have access to complete, truthful and balanced information regarding union representation. All LVH – Schuylkill employees are entitled to complete and truthful information about what union representation means, what it costs and what it can – and can't – deliver.

As always, our priority is to provide exceptional care for our patients and to provide an exceptional working environment for our colleagues, which we will continue to do with your support.

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CERTIFICATE OF SERVICE

The Undersigned certifies that on February 23, 2018, the foregoing Petitioner's Statement in Opposition to Employees' Amicus Curiae Brief in Case Nos. 4-UC-200537 and 4-UC-200541 was e-filed with the Executive Secretary of the National Labor Relations Board and copies were served on the following via e-mail:

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Dated: February 23, 2018