

July 23, 2018

Associate Executive Secretary Farah Qureshi
Office of the Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570

Re: *Queen of the Valley Medical Center*, Cases 20-CA-191739, et al.
Reliant Submission of Respondent Queen of the Valley Medical Center

Dear Associate Executive Secretary Qureshi:

Respondent makes this *Reliant* submission to advise the Board of the Ninth Circuit's 7/16/2018 opinion in *Coffman v. Queen of the Valley Medical Center*, No. 17-17413.

The Ninth Circuit has established a new waiver standard that impacts the Board's longstanding technical refusal-to-bargain process. It is no longer enough for an employer seeking to challenge the union's certification to timely file a request for review ("RFR") to the Board and subsequently refuse to bargain if it is denied. Per *Coffman*, the employer must refuse to bargain and make its intention to test certification known "*immediately* after . . . certification" or else risk waiving its right to challenge certification. *Coffman*, at 16–17 (overextending *Technicolor Government Services v. NLRB*, 739 F.2d 323 (8th Cir. 1984) (certification challenge waived when first raised as collateral defense to unrelated ULP charge 3.5 years later)).

Further, the Court found Respondent waived its right to contest certification by meeting with the union prior to filing the RFR. *Id.* at 5. However, this meeting occurred *before* certification, when Respondent's timely objections to the election were pending. Thus, *Coffman* suggests an employer may also risk waiver if it does not "*immediately*" refuse to bargain pre-certification, notwithstanding its unresolved objections.

Respondent respects the judiciary's role in this matter and will comply with the district court's 10(j) injunction.¹ However, Respondent submits that *Coffman* is inconsistent with Board law and undermines the Act's purpose of minimizing industrial strife and fostering cooperative labor-management operations. See *Fred's Inc.*, 343 NLRB 138 (2004). Taking *Coffman* to its

¹ Given GC Memo 18-05, Respondent believes 10(j) relief was not appropriate here because of the Region's unreasonable delay in seeking such relief, and respectfully requests the Board revoke 10(j) authority.

Associate Executive Secretary Qureshi

July 23, 2018

Page 2

logical conclusion, an employer must now decide to test certification through the federal courts before the Board has ruled on a RFR (or, indeed, before the union has demanded bargaining) for fear of waiver. Accordingly, Respondent believes it is critical for the Board to expedite consideration of Respondent's Exceptions to the ALJ's Decision so that the Board may resolve the conflict between *Coffman* and established Board law.

Respectfully submitted,



Ellen M. Bronchetti

Counsel for Respondent Queen of the Valley Medical Center

Enclosure

cc: Marta Novoa, Esq.
Jonathan Siegel, Esq.
Latika Malkani, Esq.