

**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**REGION 31**

USC Verdugo Hills Hospital,  
Employer,

and

SEIU – United Healthcare Workers – West,  
Union

Andrew Brown,  
Petitioner.

Case No. 31-RD-228771

**USC VERDUGO HILLS HOSPITAL'S  
REQUEST FOR REVIEW OF THE  
REGIONAL DIRECTOR'S DECISION  
DISMISSING PETITION AND MOTION  
FOR EXTRAORDINARY RELIEF**

**Table of Contents**

I. Introduction..... 1

II. Argument ..... 1

    A. The RD Departed from Precedent by Failing to Apply *Trinity Lutheran Hospital* ..... 1

        1. The Petition was Timely Filed Under *Trinity Lutheran Hospital* ..... 1

        2. The Regional Director’s Reliance on *Union Carbide* Warrants Review ..... 2

    B. Board Precedent Requires Finding that Petitioner’s Reliance on Information from the Board and Pro Se Status Warrants Processing of the Petition ..... 5

        1. The RD Departed from Board Precedent by Failing to Apply *Vanity Fair* ..... 5

        2. The Regional Director Erred by Failing to Consider the Petitioner’s Pro Se Status and *De Minimis* Timing Error..... 6

    C. The Board should Simplify the Contract Bar Rules..... 8

        1. Contract Bar Rules are Based on Policy Determinations ..... 8

        2. The Current Contract Bar Rules Create Confusion and Do Not Effectuate the Desired Policy Justifications when a CBA’s Term Runs Between 36 and 39 months ..... 9

        3. The Contract Bar Rules Should be Simplified to Correspond with their Underlying Policy Justifications ..... 10

    D. Motion for Extraordinary Relief ..... 11

III. Conclusion ..... 12

Pursuant to Section 102.67 of the Rules and Regulations of National Labor Relations Board (“NLRB” or “Board”), USC Verdugo Hills Hospital (“Employer”) requests that the Board grant review and reverse the Regional Director’s Decision to Dismiss the petition filed in this case. Review should be granted because a substantial question of law and policy is raised by the Regional Director’s departure from officially reported Board precedent (Section 102.67(d)(1)(ii)), the absence of precedent (Section 102.67(d)(1)(i)), and because there are compelling reasons for reconsideration of the Board’s contract bar policy (Section 102.67(d)(4)). Additionally, the Employer moves for the extraordinary relief of expedited consideration of its Request for Review pursuant to Section 102.67(j)(1)(i).

## I. INTRODUCTION

The Employer and SEIU United Healthcare Workers West (“Union”) have an existing collective-bargaining agreement, effective January 1, 2016 to January 31, 2019 (relevant portions attached as Ex. 1). On October 5, 2018, in reliance on the NLRB website, employee Andrew Brown (“Petitioner”) filed a petition seeking a decertification election among unit employees (Ex. 2). On October 25, 2018, after an Order to Show Cause had been issued (Ex. 3)<sup>1</sup>, the Regional Director issued a decision dismissing the petition as untimely filed during the insulated period (Ex. 5). The Employer hereby requests review of that decision.

## II. ARGUMENT

### A. The RD Departed from Precedent by Failing to Apply *Trinity Lutheran Hospital*

#### 1. The Petition was Timely Filed Under *Trinity Lutheran Hospital*

Parties to a collective-bargaining agreement near expiration are provided with a 60-day “insulated period” during which petitions may not be filed in order to afford the parties an

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<sup>1</sup> The Employer’s response to the Order to Show Cause is attached as Exhibit 4.

opportunity to negotiate without the disruption of a rival petition. *Deluxe Metal Furniture*, 121 NLRB 995, 1000 (1958); *Crompton Co.*, 260 NLRB 417, 418 (1981). There is a “window period,” during which petitions may be filed prior to the commencement of the insulated period. The window period is generally 60-90 days prior to the expiration of the contract. *Crompton*, at 418. However, with respect to health care institutions, the open period during which a petition may be filed is more than 90 days but not over 120 days before the terminal date of any agreement, which is followed by an insulated period during which no petition can be timely filed. *Trinity Lutheran Hospital*, 218 NLRB 199 (1975).

Petitioner’s filing here is timely under *Trinity Lutheran Hospital*. Petitions are allowed during the 120 to 90 window before a healthcare contract expires. The petition here was filed on October 5, approximately 118 days before contract expiration, within the acceptable 120 to 90 day window period for healthcare employers.

## **2. The Regional Director’s Reliance on *Union Carbide* Warrants Review**

In dismissing the petition, the Regional Director departed from the precedent set in *Trinity Lutheran Hospital*, and instead relied on *Union Carbide Corp.*, 190 NLRB 191, 192 (1971). In *Union Carbide*, the Board established the rule that for contracts that last longer than three years, the relevant window period is determined based on the third anniversary of the contract and not the contract’s expiration date. Here, the Regional Director found that because the contract was effective for three years and one month, the window period was based on the third anniversary date, and consequently the petition was filed two days late.

Unlike *Union Carbide*, the current case involves a health care employer. Notably, neither the Union nor the Regional Director provided legal precedent applying *Union Carbide* to the health care context. Accordingly, Board precedent dictates that the timing of the window period for a decertification in this case should be established under the rule set forth in *Trinity*.

The Regional Director erred by failing to process a petition filed within the 120 to 90 day window period from the expiration of the existing CBA in a health care setting. In 1974,

Congress amended the Act concerning health care institutions, and established a different notice period for modification or termination of collective bargaining agreements in health care. 29 U.S.C. § 158. While most industries are subject to the 60-day notice period set forth in Section 8(d)(1), employers and unions in the health care industry must adhere to the special 90-day notice period found in Sections 8(d)(A)-(C) and 8(g) of the Act. *Id.* Thus, it was Congress’s intent that the health care industry be treated differently than other industries. The approach is consistent with the unique challenges that healthcare employers, patients and their families, and caregivers must face when preparing for economic action and myriad other issues that might arise in an acute patient care setting as a contract’s term ends.

Following clear Congressional intent to create separate rules for health care institutions, the Board decided *Trinity* the year after the health care rules were adopted. In *Trinity*, the Board was faced with petitions that were filed on the ninety-second day before the expiration of the collective bargaining agreement at issue. Citing the 1974 amendments to the NLRA, the Board held that “**all petitions** filed more than 90 days but not over 120 days **before the terminal date of any contract** involving a *health care institution* will hereafter be found timely.” *Trinity*, at 199 (emphasis added). By stating that this rule applies to “all petitions” related to “any contract...involving a health care institution”, the Board confirmed that it will treat health care settings differently than any other setting. Noting the conflict between the Board’s 60-day notice period rule and the 90-day notice period established by Congress, it reasoned that “the 1974 amendments impose special notice obligations upon health care institutions which warrant modification of these rules.” *Id.* “It is clear that the 1974 amendments were designed to encourage and facilitate bargaining between the parties during the 90 days prior to contract expiration.” *Id.*

*Trinity* is silent regarding *Union Carbide*’s three-year contract rule, even though it was decided four years earlier. Indeed, no party has cited to any decision analyzing *Trinity* and *Union Carbide* under any set of facts in prior briefing in this matter, and the Employer is not

aware of any such case. This is not surprising since *Union Carbide* did not involve parties in the health care setting and did not analyze the contract bar doctrine with regard to health care settings. *Union Carbide*, 190 NLRB at 191 (analyzing contract bar doctrine in context of a production and maintenance unit in a machine shop). The fact that no cases have applied *Union Carbide* in the health care setting in the more than forty years since *Trinity* was decided is clear evidence that the standard set forth in *Trinity* is dispositive here.

During the forty plus years since *Trinity* was decided, the Board has consistently established separate standards to govern the health care setting. *See, e.g. East Oakland Health Alliance, Inc.*, 218 NLRB 1270, 1271 (1975) (setting jurisdictional standard of \$100,000 for nursing homes, visiting nurses' associations, and related facilities, and \$250,000 for hospitals); *NLRB v. Baptist Hosp. Inc.*, 442 U.S. 773, 781 (1979) (allowing that patient care needs present special circumstances that allow for restrictions limiting the display of union insignia in patient care areas); 29 C.F.R. § 103.30 (NLRB rulemaking establishes appropriate bargaining units specifically for acute care hospitals in health care industry); *Park Manor Care Center*, 305 NLRB 872 (1991) (establishing appropriate bargaining unit determination standard for non-acute care health care facilities).

Therefore, the Board's precedent establishes that the facts of this case are governed by the rule set forth in *Trinity*. The Regional Director's reliance on *Union Carbide* to dismiss the petition here was a departure from Board precedent. As such, the Petition, which was filed more than 90 but fewer than 120 days before the expiration of the agreement at issue, is timely filed and should be processed.

Because the Regional Director's decision departs from this precedent, the Board should grant review in this case. Alternatively, because neither the Regional Director, the Union, or the Employer were able to find a case directly settling the issue of whether *Union Carbide* or a similar rule applies in the health care context, the Regional Director's decision warrants review by the Board to resolve this situation which demonstrates an absence of precedent.

**B. Board Precedent Requires Finding that Petitioner's Reliance on Information from the Board and Pro Se Status Warrants Processing of the Petition**

**1. The RD Departed from Board Precedent by Failing to Apply *Vanity Fair***

The Petitioner, not having access to legal counsel, relied on information from the Board website to time the filing of his petition. Specifically, the Board's website states the following with regard to filing decertification petitions:

Such elections are barred, however, for one year following the union's certification by the NLRB. Plus, if your employer and union reach a collective-bargaining agreement, you cannot ask for a decertification election (or an election to bring in another union) during the first three years of that agreement, except during a 30-day "window period." **That period begins 90 days and ends 60 days before the agreement expires (120 and 90 days if your employer is a healthcare institution).** After a collective-bargaining agreement passes the three-year mark or expires, you may ask for an election to decertify your union or to vote in another union at any time.

National Labor Relations Board, Decertification Election (<https://www.nlr.gov/rights-we-protect/whats-law/employees/i-am-represented-union/decertification-election>) (emphasis added).

According to the bolded text from the Board's website, and based on the CBA's January 31, 2019 expiration date, the window opened on October 3 and closed on November 2. Following this guidance, the Petitioner filed the Petition with the NLRB on October 5. The petition was timely filed under the rule as stated on the website.

The Board has ordered processing of technically untimely decertification petitions where a petitioner relied on the Board's guidance to determine the window period. See *Vanity Fair Mills, Inc.*, 256 NLRB 1104, 1106 (1981). In *Vanity Fair*, an employee was preparing to file a decertification petition for a contract with a term of three years and two months. The Region told the employee that he needed to file the petition between 60 and 90 days prior to the expiration of the agreement. Subsequently, the Region dismissed the petition as untimely because it should

have been filed between 60 and 90 days prior to the third anniversary of the agreement. The Board overturned the Region's decision because the Region's advice to the petitioner was flawed. The Board reasoned that "the Petitioner understandably followed this advice in the reasonable expectation that he was acting in accordance with Board requirements." *Id.*

The relevant facts that led the Board to process an untimely petition in *Vanity Fair* are also present in this case – the Petitioner relied on information from the Board to determine when he should file his petition and the Region subsequently dismissed the petition as untimely. Thus, even assuming, *arguendo*, the petition was untimely under *Union Carbide*, the Regional Director erred by failing to process the petition. In rejecting application of *Vanity Fair*, the Regional Director relied on the website's disclaimer that it cannot be cited as legal advice and the Petitioner's failure to contact the region. But *Vanity Fair* does not contain an express requirement that a party must verbally speak to a Board Agent. By not applying *Vanity Fair* and allowing the petition to be processed, the Regional Director's decision departed from established Board precedent and should be reversed.

## **2. The Regional Director Erred by Failing to Consider the Petitioner's Pro Se Status and *De Minimis* Timing Error**

The Regional Director's Decision failed to consider or address the Employer's argument that the Petitioner's error here was *de minimis*. The Petitioner was acting without the assistance of counsel, relied on information from the Board to time the filing of his petition and missed the filing deadline by two days but did not cause any harm to the parties involved by failing to comply with the technical procedural rules. Board precedent allows an exception to be made to the Board's strict timing requirements in these circumstances.

The contract bar rule is not set forth in the text of the Act; it is an expression of Board policy that is discretionary, and subject to exception and modification. *Hershey Chocolate Corp.*, 121 NLRB 901 905 (1958). As such, in contract bar cases, the Board "must weigh and

resolve the conflicting interests of, on the one hand, protecting the stability of collective-bargaining relationships, as represented by an existing contract, and, on the other, according to employees the freedom of choice guaranteed by Section 7 of the Act.” *Suffolk Banana Co.*, 328 NLRB 1086, 1087 (1999). The Board has held decertification petitions are valid in cases where there might be a *de minimis* error involving timing. See *LTD Ceramics, Inc.*, 341 NLRB 86, 88 (2004) (“We are unwilling to conclude that the Respondent’s reliance on a decertification petition received after the certification year is invalidated by the fact that some employees signed the petition on the final day of the certification year.”). In other circumstances, the Board has “typically shown leniency toward a pro se litigant’s efforts to comply with [the Board’s] procedural rules.” *A.P.S. Production*, 326 NLRB 1296 (1998); see also *In re S&P Elec.*, 340 NLRB 326 (2003) (holding pro se respondent’s letter was legally sufficient answer even though it failed to technically comply with Board procedural rules); *Carpentry Contractors*, 314 NLRB 824, 825 (1994) (finding pro se respondent’s response to complaint allegations sufficient despite technical errors).

Here, under the Union’s argument, the Petitioner missed the open window by *two days*. Applying *Union Carbide*, the window to file opened September 3, 2018, and closed October 3, 2018. Petitioner filed on October 5, 2018.

The Petitioner is not a sophisticated labor attorney and, therefore, should not be expected to have the same familiarity with the often complex and sometimes arcane nuances of labor law as experienced counsel. This is particularly true here, where the agreement – the first between the parties – is essentially a three year agreement. While on its face the Agreement purports to be a 37 month agreement, the Agreement was not fully executed until approximately four months after the stated effective date. The Agreement is essentially a three year agreement, running from January 2016 through January 2019.

The balance in this case should favor the employees’ free exercise of their section 7 rights; the election results cannot be predicted or guaranteed, but employees should at the very

least be guaranteed the opportunity to answer the pressing question concerning representation without being penalized for not having mastered all of the very narrow exceptions to Board policy. Because the Regional Director's decision did not consider the Employer's *de minimis* argument and departed from the precedent cited therein, the Decision should be reversed and the petition processed.

**C. The Board should Simplify the Contract Bar Rules**

**1. Contract Bar Rules are Based on Policy Determinations**

In the event the Board decides that the Regional Director's decision is consistent with Board precedent and the rule from *Union Carbide* applies and supersedes the rule from *Trinity*, the Employer respectfully requests that the Board grant review to reconsider that precedent. As is evident from the facts of this case, the Board's contract bar rules for agreements that last longer than three years can easily create confusion and cause employees to lose their Section 7 rights despite their best efforts to comply with the rules. A modification to these rules could allow for simplification while still satisfying the underlying policy justifications.

Parties to an agreement approaching its expiration date are provided with a 60-day "insulated period" during which petitions may not be filed in order to afford the parties an opportunity to negotiate without the disruption of a rival petition. *Deluxe Metal Furniture*, 121 NLRB 995, 1000 (1958); *Crompton Co.*, 260 NLRB 417, 418 (1981). For health care institutions, the open period during which a petition may be filed is more than 90 days but not over 120 days before the terminal date of any agreement, which is followed by an insulated period during which no petition can be timely filed. *Trinity Lutheran Hospital*, 218 NLRB 199 (1975). As stated by the Board, the contract bar and associated insulated period:

provide a balance between dual objectives. First, they further industrial peace and stability by assuring that the labor relations environment will not be disrupted during the term of a collective-bargaining agreement and by providing the parties with a period just before the expiration of the contract during which they can negotiate a new agreement free from such disruption. Equally

important, however, the rules provide a set opportunity for employees who are disenchanted with the performance of their collective-bargaining representative to seek its removal or replacement with another representative.

*Crompton Co.*, 260 NLRB at 418.

The traditional contract bar represents a conscious balancing of employee rights under the Act and the promotion of industrial peace and stability. However, the Board determined that for contracts lasting longer than three years, the weight of employees' rights and industrial stability shifted. Specifically, the Board has stated that a contract extends for an "unreasonable" duration if it last longer than three years. *Union Carbide*, 190 NLRB at 193. In those unreasonable situations, a party to a CBA could establish lengthy contract term that would effectively bar any challenge from an employee or rival union. For that reason, Board policy (at least outside of the health care setting) is to apply a different rule - the barring contract is treated as expiring on its third anniversary. Parties can file a petition after the third anniversary or in the window 90 to 60 days before the third anniversary.

**2. The Current Contract Bar Rules Create Confusion and Do Not Effectuate the Desired Policy Justifications when a CBA's Term Runs Between 36 and 39 months**

For contracts that last between 36 and 39 months, the nuances of the *Union Carbide* contract bar rule defeat one of the stated underlying policy objectives for the contract bar rules. For contracts that last longer than three years, the Board limited the contract bar rule as a way to allow employees exercise their section 7 rights by calling for an election between 90 and 60 days before the third anniversary of a contract and after the third year of the contract. Under normal circumstances, this rule provides an *additional* window for employees to file petitions. But for contracts that last between 36 and 39 months, rather than providing an *additional* window period to file a petition, the modification to the contract bar rules actually *change* the date of the filing window. As a result, a rule-following employee who waits until the traditional window period of

90 to 60 days before contract expiration will have *missed* the opportunity to file a petition. Such is the case here.

The Petitioner filed a petition according to the traditional contract bar rules, but because the parties agreed to a contract lasting for 37 months, the Board's modified filing time now serves to prevent the employee from filing a petition – even though the rule was originally implemented to protect employees' rights to file petitions.

### **3. The Contract Bar Rules Should be Simplified to Correspond with their Underlying Policy Justifications**

A modification to the contract bar policy would allow the Board to reach its policy desires while also simplifying the rules. The Board can modify the rule to simply apply its traditional contract rule to every contract, allowing a party to file a petition in the window period 90 to 60 days before the expiration of a contract (or 120 to 90 days in the health care setting). For contracts lasting longer than three years, an *additional* filing window would begin on the third anniversary date, and run for the remainder of the contract. Such a rule has a number of benefits. First, the rule is simply stated and explained: “petitions can be filed during a window beginning 90 days before a contract expires and ending 60 days before a contract expires. If the contract runs longer than three years, a petition can also be filed any time after the third anniversary of the contract.” Second, the rule satisfies the Board policy concerns underlying the implementation of the contract rule. Parties will have an easy to understand rule; contracts lasting less than three years will be subject to the current contract bar rules; parties who agree to contracts of unreasonable duration (longer than three years) will lose the protection of the contract bar beginning on the third anniversary of the contract. Such a rule allows the information to be easily understood by laypersons, promotes industrial stability for three years, and promotes employee free choice after three years.

Parties to an agreement with a term of 36 to 39 months would have a shifting insulated period. For example, in a 38 month contract, the traditional window period would roughly fall within the entire 36<sup>th</sup> month of the contract. Beginning in month 37 (immediately after the third year), the contract bar would cease and the contract would not serve as a bar. This outcome is preferable to the current rule for two reasons. First, the parties who voluntarily entered into a contract of “unreasonable” duration are rightly the ones who should suffer adverse consequences for their unreasonableness – here the elimination of their standard insulated period. Second, this situation only arises in contracts lasting longer than three years. Signing parties are guaranteed that at least the first 33 months of the contract will be insulated from decertification or rival petitions. Because the shifting window period would not affect employees, signing parties to a CBA are not incentivized to enter into unreasonable contracts lasting longer than 3 years.

The Board’s contract bar rules serve to protect and further important policy goals of the National Labor Relations Act. The facts of this case demonstrate a shortcoming of the contract bar rules that can be easily corrected. For the reasons described above, the Employer respectfully requests that the Board grant its request for review.

**D. Motion for Extraordinary Relief**

Based on the circumstances of this case, the Employer respectfully moves that the Board grant the extraordinary relief of expedited consideration of the Employer’s Request for Review pursuant to Section 102.67(j)(1)(i) of the Board’s Rules and Regulations.

The facts of this case warrant expedited review because any delay in review would cause Petitioner to forfeit an argument properly raised to (but unresolved by) the Regional Director. Even if the Board’s rule in *Union Carbide* applies in the health care setting, the Petitioner’s two day delay in filing the petition was *de minimis* without real consequence on the parties. The Regional Director did not address that argument. A delay in review would result in harm to the parties, as they will be negotiating a new contract while unsure whether the decertification petition will proceed.

Additionally, the Employer requests expedited review based on the ongoing negotiations and pending end of the contract and associated contract bar. The parties' negotiations will benefit from the certainty of knowing the status of the decertification petition.

Accordingly, the Employer requests expedited review of its request for review.

### **III. CONCLUSION**

The Employer respectfully requests that the Board grant review of the Regional Director's Decision to Dismiss the decertification petition and order the Region to continue processing the petition. Review is warranted based on the Regional Director's departure from precedent, ruling in the absence of precedent, and the existence of compelling reasons for the Board to reconsider its contract bar policy as demonstrated by the facts of this case. The Employer respectfully requests that the Board grant the extraordinary relief of expedited review of its request.

Dated: November 15, 2018

Respectfully submitted,

By: /s/ Jeffrey S. Bosley  
Jeffrey S. Bosley

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**CERTIFICATE OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is David Wright Tremaine LLP, 505 Montgomery Street, Suite 800, San Francisco, CA 94111. On November 15, 2018, I served the within document(s):

**USC VERDUGO HILLS HOSPITAL’S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR’S DECISION DISMISSING PETITION AND MOTION FOR EXTRAORDINARY RELIEF**

- MAIL - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address mardoux Battaglia@dwt.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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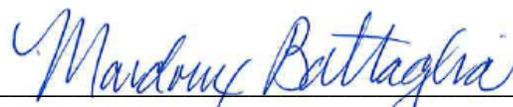
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 15, 2018 at San Francisco, California.

  
\_\_\_\_\_  
Mardoux Battaglia

# **Exhibit 1**



**United Healthcare  
Workers – West**  
Service Employees International Union  
CTW, CLC

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Oakland, CA 94612

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[www.seiu-uhw.org](http://www.seiu-uhw.org)  
Quality Healthcare for All

Collective Bargaining Agreement with

**USC Verdugo Hills Hospital**

**January 1, 2016 – January 31, 2019**

## **PREAMBLE**

USC Verdugo Hills Hospital (the "Hospital") and Service Employees International Union United Healthcare Workers West (the "Union") hereby agree to become parties to the following collective bargaining agreement (hereinafter referred to as "Contract" or "Agreement").

## **ARTICLE 1 RECOGNITION**

Pursuant to an election conducted on December 11 and 12, 2014, the Hospital recognizes the Union as the exclusive bargaining representative of the employees employed by the Hospital at its facility located at 1808, 1812, and 1818 Verdugo Blvd, Glendale, California in the following bargaining unit:

Included: All Full-time, regular part-time, and per diem non-professional service employees, including Clerk-Same Day Surgery, Unit Secretary, CT/MRI Patient Coord, Storekeeper/Records Clerk, Buyer, Patient Services Rep, OR Scheduler/ORT, Lab Collection Coordinator, CPD Processing Tech, Surg Scheduler/ORT, CPD Technician, OB Tech, Cert Phlebotomist I, Cert Phleb II, Sr. Cert Phleb II, Lead Spec Diag Tech, Surg Tech, GI Tech, Surgical Materials Coordinator, Unit Sec/MNT Tech, Activity Leader 8HR, Front Office Coordinator/Medical Imaging Radiology Receptionist, LVN, Patient Ambassador, Rad Receptionist, Activity Aid, CNA, Emergency Nurse Assistant, Nurse Assistant, Orderly, Pathology Lab Asst, PT Aide I, ED Tech, and PMR Secretary.

Excluded: All other employees, technical employees, RNs, physicians, professional employees, skilled maintenance employees, business office clerical employees, guards, Registry and Travelers and supervisors as defined in the National Labor Relations Act, as amended.

## **ARTICLE 2 UNION REPRESENTATION**

### **A. UNION STEWARD**

1. The Union shall provide the Hospital with a written list of Union Stewards after their designation, and shall notify the Hospital of changes as they occur. The Union shall designate one steward as Chief Steward. Prior to the Hospital's receipt of such Union designation, the Hospital is not obligated to recognize a Union steward under this Article.
2. The functions of the Union Steward include the authority 1) to settle or assist in settling problems arising in connection with the application or interpretation of

**ARTICLE 32**

**TERM**

Once ratified, except as otherwise provided in this Agreement, this Agreement shall become effective and shall continue in full force and effect until January 31, 2019. This Agreement shall be automatically renewed and extended from year to year without addition, change or amendment, unless either party serves notice in writing to the other party no less than ninety (90) days before the end of the term of its desire to terminate, change, amend or add to this Agreement.

**For the Employer:**

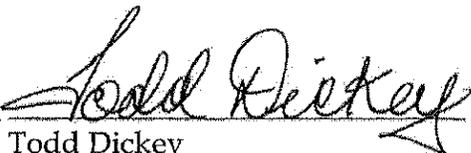
**USC VERDUGO HILLS HOSPITAL**

  
\_\_\_\_\_  
Keith Hobbs, CEO  
USC Verdugo Hills Hospital

Date: 3/28/2014

  
\_\_\_\_\_  
Matt McElrath  
Chief Negotiator  
Chief Human Resources Officer,  
Keck Medicine of USC

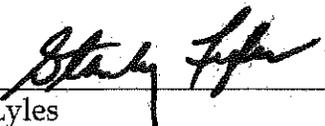
  
\_\_\_\_\_  
Eva Herberger, HR Administrator  
USC Verdugo Hills Hospital

  
\_\_\_\_\_  
Todd Dickey  
Senior Vice President, Administration  
University of Southern California  
Date: 4-5-14

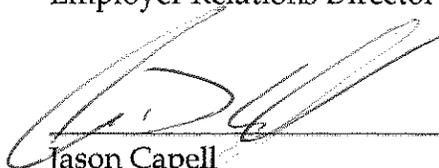
**For the Union:**

**SEIU UNITED HEALTHCARE  
WORKERS-WEST**

  
\_\_\_\_\_  
Dave Regan  
President  
Date: \_\_\_\_\_

  
\_\_\_\_\_  
Stan Lyles  
Vice President

  
\_\_\_\_\_  
Myriam Escamilla  
Hospital Division Bargaining &  
Employer Relations Director

  
\_\_\_\_\_  
Jason Capell  
Chief Negotiator

ADDITIONAL SIGNATURES

For the Union:

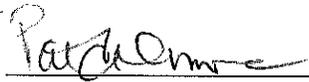
SEIU UNITED HEALTHCARE WORKERS-WEST



Christine Clavesilla  
Surgery Tech  
Bargaining Committee Member

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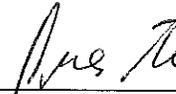
Genelle Emerson  
LVN  
Bargaining Committee Member



Patricia Gilmore  
Activity Aide  
Bargaining Committee Member

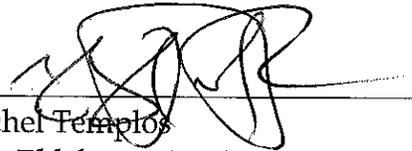


Yolanda Hurtado  
CNA  
Bargaining Committee Member



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Teresita Santos  
CNA  
Bargaining Committee Member



---

Michel Templos  
Cert Phlebotomist II  
Bargaining Committee Member

# **Exhibit 2**

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**RD PETITION**

DO NOT WRITE IN THIS SPACE	
Case No. <b>31-RD-228771</b>	Date Filed <b>10/5/2018</b>

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov](http://www.nlr.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.**

<b>2a. Name of Employer</b> USC Verdugo Hills Hospital	<b>2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code)</b> 1812 Verdugo Blvd CA Glendale 91208-1409
---	---

<b>3a. Employer Representative – Name and Title</b> Kristi Cohen Human Resources Director	<b>3b. Address (If same as 2b – state same)</b> 1812 Verdugo Blvd CA Glendale 91208-1409
--	--

<b>3c. Tel. No.</b> (818) 952-3561	<b>3d. Cell No.</b>	<b>3e. Fax No.</b>	<b>3f. E-Mail Address</b> kristi.cohen@vhh.usc.edu
---------------------------------------	---------------------	--------------------	---

<b>4a. Type of Establishment (Factory, mine, wholesaler, etc.)</b> Healthcare Facilities	<b>4b. Principal product or service</b> Healthcare	<b>5a. City and State where unit is located:</b> Glendale, CA
---	---	--

<b>5b. Description of Unit Involved</b> <b>Included:</b> See Attached Page 2 for additional details  <b>Excluded:</b> See Attached Page 2 for additional details	<b>6a. No. of Employees in Unit:</b> 228	<b>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 <input checked="" type="checkbox"/> No <input type="checkbox"/></b>
---	---	--

**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.

<b>8a. Name of Recognized or Certified Bargaining Agent</b> Service Employees International Union- United Healthcare Workers West Maria Unzueta L	<b>8b. Address</b> 5480 Ferguson Dr CA Commerce 90022-5119
--	--

<b>8c. Tel No.</b> (323) 734-8399	<b>8d Cell No.</b> (323) 346-9775	<b>8e. Fax No.</b> (323) 721-3538	<b>8f. E-Mail Address</b> munzueta@seiu-uhw.org
--------------------------------------	--------------------------------------	--------------------------------------	--

<b>8g. Affiliation, if any</b> SEIU	<b>8h. Date of Recognition or Certification</b>	<b>8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)</b>
--	---	--

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)

<b>10a. Name</b>	<b>10b. Address</b>	<b>10c. Tel. No.</b>	<b>10d. Cell No.</b>
		<b>10e. Fax No.</b>	<b>10f. E-Mail Address</b>

<b>11. Election Details:</b> If the NLRB conducts an election in this matter, state your position with respect to any such election. <b>11b. Election Date(s):</b> 10/21-2018-10/28/2018	<b>11c. Election Time(s):</b> 0600-23-59	<b>11a. Election Type:</b> <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input checked="" type="checkbox"/> Mixed Manual/Mail	<b>11d. Election Location(s):</b> 1812 Verdugo Blvd Glendale, CA 91208-Council Rooms
--	---	--	---

<b>12a. Full Name of Petitioner</b> Andrew L Brown	<b>12b. Address (street and number, city, state, and ZIP code)</b> 9698 Haddon Ave
--	---

**12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state)** CA Pacoima 91331-6811  
None

<b>12d. Tel No.</b> (818) 919-0327	<b>12e. Cell No.</b> (818) 919-0327	<b>12f. Fax No.</b>	<b>12g. E-Mail Address</b> jab042806@gmail.com
---------------------------------------	--	---------------------	---

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

<b>13a. Name and Title</b>	<b>13b. Address (street and number, city, state, and ZIP code)</b>
----------------------------	--

<b>13c. Tel No.</b>	<b>13d. Cell No.</b>	<b>13e. Fax No.</b>	<b>13f. E-Mail Address</b>
---------------------	----------------------	---------------------	----------------------------

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

<b>Name (Print)</b> Andrew L Brown	<b>Signature</b> Andrew L Brown	<b>Title</b>	<b>Date</b> 10/5/2018 09:55:48
---------------------------------------	------------------------------------	--------------	-----------------------------------

**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.

Attachment

<b>DO NOT WRITE IN THIS SPACE</b>	
Case	Date Filed
31-RD-228771	10/5/2018

#### Employees Included

All full-time, regular part-time, and per diem non-professional service employees, including Clerk-Same Day Surgery, Unit Secretary, CT/MRI Patient Coord, Storekeeper/Records Clerk, Buyer, Patient Service Rep, OR Scheduler/ORT, Lab Collection Coordinator, CPD Processing Tech, Surg Scheduler/ ORT, CPD Technician, OB Tech, Cert Phlebotomist I, Cert Phleb II, Sr. Cert Phleb II, Lead Spec Diag Tech, Surg Tech, GI Tech, Surgical Materials Coordinator, Unt Sec/MNT Tech, Activity Leader 8HR, Front Office Coordinator/Medical Imaging Radiology Receptionist, LVN, Patient Ambassador, Rad Receptionist, Activity Aide, CAN, Emergency Nurse Assistant, Nurse Assistant, Orderly, Pathology Lab Asst, PT Aide I, ED Tech, and PMR Secretary employed by the Employer at its acute care facilities located at 1808, 1812, and 1818 Verdugo Boulevard, Glendale CA 91208.

#### Employees Excluded

All Managers, Supervisors and Confidential Employees

# **Exhibit 3**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31**

**USC VERDUGO HILLS HOSPITAL**

**Employer**

**And**

**Case 31-RD-228771**

**ANDREW L BROWN**

**Petitioner**

**And**

**SERVICE EMPLOYEES INTERNATIONAL  
UNION- UNITED HEALTHCARE WORKERS  
WEST**

**Union**

**NOTICE TO SHOW CAUSE  
AND  
ORDER POSTPONING HEARING**

On Friday, October 5, 2018, Andrew L. Brown (“Petitioner”) filed a representation petition in the above-referenced matter seeking a decertification election among the employees in the following unit:

Included: All Full-time, regular part-time, and per diem non-professional service employees, including Clerk-Same Day Surgery, Unit Secretary, CT/MRI Patient Coord, Storekeeper/Records Clerk, Buyer, Patient Services Rep, OR Scheduler/ORT, Lab Collection Coordinator, CPD Processing Tech, Surg Scheduler/ORT, CPD Technician, OB Tech, Cert Phlebotomist I, Cert Phleb II, Sr. Cert Phleb II, Lead Spec Diag Tech, Surg Tech, GI Tech, Surgical Materials Coordinator, Unit Sec/MNT Tech, Activity Leader 8HR, Front Office Coordinator/Medical Imaging Radiology Receptionist, LVN, Patient Ambassador, Rad Receptionist, Activity Aid, CNA, Emergency Nurse Assistant, Nurse Assistant, Orderly, Pathology Lab Asst, PT Aide I, ED Tech, and PMR Secretary employed by the Employer at its acute care facilities located at 1808, 1812, and 1818 Verdugo Boulevard, Glendale, CA 91208.

Excluded: All other employees, technical employees, RNs, physicians, professional employees, skilled maintenance employees, business office clerical employees, guards, Registry and Travelers and supervisors as defined in the National Labor Relations Act, as amended.

There is a current collective-bargaining agreement (“Agreement”) in effect between USC Verdugo Hills Hospital (“Employer”) and the Service Employees International Union-United Healthcare Workers West (“Union”), which indicates on its face that it is effective from January 1, 2016 and January 31, 2019. The Agreement covers the described unit.

The Union contends that the instant petition is untimely because the Agreement with the Employer is effective for more than three years and thus, the insulated period should be calculated from the three year anniversary of the effective date of January 1, 2016, not the Agreement's date of expiration. See, *Union Carbide Corp.*, 190 NLRB 191 (1971), citing *General Cable*, 139 NLRB 1123, [1125](#) (1962)(holding that contracts of definite duration for terms up to 3 years will bar an election for their entire period but that contracts having longer fixed terms will be treated for bar purposes as 3-year agreements and will preclude an election for only their initial 3 years-). The Union seeks dismissal of the petition because it was filed during the applicable insulated period.

In the healthcare industry, when there is a collective bargaining agreement in effect, a representation petition may be filed during an open period between the 90<sup>th</sup> and 120<sup>th</sup> day prior to the expiration of the agreement, which is followed by an insulated period during which no petition can be timely filed. *Trinity Lutheran Hospital*, 218 NLRB 199 (1975). However, as noted above, when a collective bargaining agreement is in effect for more than three years, as here, the Board determines the open period and insulated period from the three year anniversary of the effective date of the agreement, not the expiration of the agreement.

Based on the foregoing, it appears the instant petition is barred by the "contract bar" doctrine under applicable Board law.

**NOTICE IS HEREBY GIVEN** that the Employer, Petitioner, and Union show cause, in writing, filed with the Regional Director of Region 31 of the National Labor Relations Board, 11500 West Olympic Blvd, Suite 600, Los Angeles, California, by the close of business (5 p.m. Pacific Time) on **Monday, October 22, 2018**, why the petition herein should not be dismissed, absent withdrawal, as barred, in accordance with the Board's contract bar doctrine. See *Mueller Energy Services, Inc.*, 323 NLRB 785 (1997) (through responses to a notices to show cause, Regional Director properly determined that a contract bar existed and no hearing was required). Any submission by any party must also be served on the other parties.

Finally, **IT IS HEREBY ORDERED** that the hearing in the above-captioned matter previously scheduled for **Wednesday October 17, 2018 and the deadline for the parties to submit a Statement of Position pursuant to Rules and Regulations §102.63(b)(3) prior to the hearing** are postponed indefinitely.

Dated: October 15, 2018



---

BRIAN GEE  
ACTING REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 31  
11500 W Olympic Blvd Ste 600  
Los Angeles, CA 90064-1753

# **Exhibit 4**

**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**REGION 31**

USC Verdugo Hills Hospital,  
Employer,

and

SEIU – United Healthcare Workers – West,  
Union

Andrew Brown,  
Petitioner.

Case No. 31-RD-228771

**EMPLOYER USC VERDUGO HILLS  
HOSPITAL’S RESPONSE TO  
REGIONAL DIRECTOR’S ORDER TO  
SHOW CAUSE**

**I. INTRODUCTION**

USC Verdugo Hills Hospital (“Employer”) submits this response to the Order to Show Cause issued by the Acting Regional Director on October 15, 2018. For the reasons set forth below, the Petition filed by Andrew Brown (“Petitioner”) should be processed, and the employees’ desire for a secret ballot election honored.

First, the Petition was timely filed under *Trinity Lutheran Hospital*, 218 NLRB 199 (1975), which allows for petitions to be filed between 90 and 120 days from the terminal date of any contract in health care settings. SEIU-United Healthcare Workers - West (the “Union”) asserts that the Board’s decision in *Union Carbide Corp.*, 190 NLRB 191 (1971), bars processing of the employee’s petition in this case because the contract’s term is three years and one month, and the petition was not filed within 90 to 120 days from the third anniversary of the contract’s stated start date. The Union cites to no authority applying *Union Carbide* in the health care context after *Trinity* was issued and the health care rules were adopted, and the Employer is not aware of any such authority. Because the health care setting is different, and *Trinity* was decided after *Union Carbide*, it should be applied here and the petition processed.

To the extent *Union Carbide* applies to health care contracts, it should not be applied here, or alternatively, a new standard should be adopted which provides unambiguous guidance

to employees concerning their rights and is not a recipe for confusion or gamesmanship. In this case, under the Union's position, the window closed on October 3; under the Petitioner's view (which is supported by the NLRB's own website), the window opened on October 3. The petition was filed October 5 – *two days* after the Union alleges the window closed. Based on the unique facts of this case, the *Union Carbide* rule should not bar processing of this petition. The Petition should be processed, and a secret ballot election conducted.

## II. ARGUMENT

### A. The Appropriate Window Period in Health Care Settings is 120 to 90 days from Expiration of the applicable CBA

#### 1. Congress Intended for the Health Care Industry to be Treated Differently with the 1974 Amendments to the NLRA

In 1974, Congress amended the Act concerning health care institutions, and established out a different notice period for modification or termination of collective bargaining agreements in health care. 29 U.S.C. § 158. While most industries are subject to the 60-day notice period set forth in Section 8(d)(1), employers and unions in the health care industry must adhere to the special 90-day notice period found in Sections 8(d)(A)-(C) and 8(g) of the Act. *Id.* Thus, it was Congress's intent that the health care industry be treated differently than other industries. The approach is consistent with the unique challenges that healthcare employers, patients and their families, and caregivers must face when preparing for economic action and myriad other issues that might arise in an acute patient care setting as a contract's term ends.

#### 2. *Trinity* Establishes the Applicable Open Period for the Contract Bar Doctrine in Health Care Settings

Following clear Congressional intent to create separate rules for health care institutions, the Board decided *Trinity* the year after the health care rules were adopted. In *Trinity*, the Board was faced with petitions that were filed on the ninety-second day before the expiration of the collective bargaining agreement at issue. Citing the 1974 amendments to the NLRA, the Board

held that “**all petitions** filed more than 90 days but not over 120 days **before the terminal date of any contract** involving a *health care institution* will hereafter be found timely.” *Trinity*, at 199 (emphasis added). By stating that this rule applies to “all petitions” related to “any contract...involving a health care institution”, the Board confirmed that it will treat the healthcare settings differently than any other setting. Noting the conflict between the Board’s 60-day notice period rule and the 90-day notice period established by Congress, it reasoned that “the 1974 amendments impose special notice obligations upon health care institutions which warrant modification of these rules.” *Id.* “It is clear that the 1974 amendments were designed to encourage and facilitate bargaining between the parties during the 90 days prior to contract expiration.” *Id.*

*Trinity* is silent regarding *Union Carbide*’s three-year reasonable contract rule, which was decided four years earlier. Indeed, the Employer could not find any decision analyzing *Trinity* and *Union Carbide* under any set of facts. This is not surprising since *Union Carbide* did not involve parties in the health care setting and did not analyze the contract bar doctrine with regard to health care settings. *Union Carbide*, 190 NLRB at 191 (analyzing contract bar doctrine in context of a production and maintenance unit in a machine shop). The fact that no cases have applied *Union Carbide* in the health care setting in the more than forty years since *Trinity* was decided is clear evidence that the standard set forth in *Trinity* is dispositive here.

On the other hand, during the forty plus years since *Trinity* was decided, the Board has consistently established separate standards to govern the health care setting. *See, e.g. East Oakland Health Alliance, Inc.*, 218 NLRB 1270, 1271 (1975) (setting jurisdictional standard of \$100,000 for nursing homes, visiting nurses’ associations, and related facilities, and \$250,000 for hospitals); *NLRB v. Baptist Hosp. Inc.*, 442 U.S. 773, 781 (1979) (allowing that patient care needs present special circumstances that allow for restrictions limiting the display of union insignia in patient care areas); 29 C.F.R. § 103.30 (NLRB rulemaking establishes appropriate bargaining units specifically for acute care hospitals in health care industry); *Park Manor Care*

*Center*, 305 NLRB 872 (1991) (establishing appropriate bargaining unit determination standard for non-acute care health care facilities).

Therefore, the Region should follow Board’s approach in *Trinity*, and not *Union Carbide*, to determine the open period in health care settings under the contract bar doctrine. As such, the Petition, which was filed more than 90 but fewer than 120 days before the expiration of the agreement at issue, is timely filed and should be processed.

**B. Employees Should Not Be Denied Their Section 7 Rights on the Facts Presented in this Case**

Even if the *Union Carbide* applies to the health care industry, the Region should continue processing the Petition because the Petitioner missed the open window by a mere two days, and in reliance on the specific language on the Board’s website.

**1. Application of the *Union Carbide* Rule Would Deprive Employees of their Section 7 Rights Based on a *De Minimis* Technicality**

The contract bar rule is not set forth in the text of the Act; it is an expression of Board policy that is discretionary, and subject to exception and modification. *Hershey Chocolate Corp.*, 121 NLRB 901 905 (1958). As such, in contract bar cases, the Board “must weigh and resolve the conflicting interests of, on the one hand, protecting the stability of collective-bargaining relationships, as represented by an existing contract, and, on the other, according to employees the freedom of choice guaranteed by Section 7 of the Act.” *Suffolk Banana Co.*, 328 NLRB 1086, 1087 (1999). The Board has held decertification petitions are valid in cases where there might be a *de minimis* error involving timing. See *LTD Ceramics, Inc.*, 341 NLRB 86, 88 (2004) (“We are unwilling to conclude that the Respondent's reliance on a decertification petition received after the certification year is invalidated by the fact that some employees signed the petition on the final day of the certification year.”). In other circumstances, the Board has “typically shown leniency toward a pro se litigant’s efforts to comply with [the Board’s] procedural rules.” *A.P.S. Production*, 326 NLRB 1296 (1998); see also *In re S&P Elec.*, 340

NLRB 326 (2003) (holding pro se respondent's letter was legally sufficient answer even though it failed to technically comply with Board procedural rules); *Carpentry Contractors*, 314 NLRB 824, 825 (1994) (finding pro se respondent's response to complaint allegations sufficient despite technical errors).

Here, under the Union's argument, the Petitioner missed the open window by *two days*. Applying the *Union Carbide* rule, the window to file opened September 3, 2018, and closed October 3, 2018. Petitioner filed on October 5, 2018.

The Petitioner is not a sophisticated labor attorney and, therefore, should not be expected to have the same familiarity with the often complex and sometimes arcane nuances of labor law as experienced counsel.<sup>1</sup> The balance in this case should favor the employees' free exercise of their section 7 rights; the election results cannot be predicted or guaranteed, but employees should at the very least be guaranteed the opportunity to answer the pressing question concerning representation without being penalized for not having mastered all of the very narrow exceptions to Board policy.

## **2. The Petition Should Be Processed Because the Petitioner Relied on the Board's Own Guidance Regarding the Applicable Window Period**

The Board has ordered processing of technically untimely decertification petitions based where a petitioner relied on the Board's guidance to determine the window period. *Vanity Fair Mills, Inc.*, 256 NLRB 1104, 1106 (1981). In *Vanity Fair*, an employee was preparing to file a decertification petition for a contract with a term of three years and two months. *Id.* The Region told the employee that he needed to file the petition between 60 and 90 days prior to the expiration of the agreement. *Id.* Subsequently, the Region dismissed the petition as untimely because it should have been filed between 60 and 90 days prior to the third anniversary of the agreement. *Id.* The Board overturned the Region's decision because the Region's advice to the

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<sup>1</sup> This is particularly true here, where the agreement – the first between the parties – is essentially a three year agreement. While on its face the Agreement purports to be a 37 month agreement, the Agreement was not fully executed until approximately four months after the stated effective date. The Agreement is essentially a three year agreement, running from January 2016 through January 2019. See Exhibit A.

petitioner was flawed. *Id.* The Board reasoned that “the Petitioner understandably followed this advice in the reasonable expectation that he was acting in accordance with Board requirements.”

*Id.*

Here, the Board’s website states the following with regard to filing decertification petitions:

Such elections are barred, however, for one year following the union's certification by the NLRB. Plus, if your employer and union reach a collective-bargaining agreement, you cannot ask for a decertification election (or an election to bring in another union) during the first three years of that agreement, except during a 30-day "window period." **That period begins 90 days and ends 60 days before the agreement expires (120 and 90 days if your employer is a healthcare institution).** After a collective-bargaining agreement passes the three-year mark or expires, you may ask for an election to decertify your union or to vote in another union at any time.

National Labor Relations Board, Decertification Election (<https://www.nlr.gov/rights-protect/whats-law/employees/i-am-represented-union/decertification-election>) (emphasis added).

According to the bolded text from the Board’s website, and based on the CBA’s January 31, 2019 expiration date, the window opened on October 3 and closed on November 2. Following this guidance, the Petitioner filed the Petition with the NLRB on October 5. Because Petitioner reasonably relied on the Board’s own guidance in determining the filing window, the Petition should be processed.

**C. The Applicable Window Periods Should Occur Between 90 and 120 Days Prior to Expiration and at Any Time After the Third Anniversary of an Agreement**

As is evident from this case, the Board’s current rules concerning application of the contract bar rule are confusing and ambiguous. To the extent the *Union Carbide* rule applies in this context at all, it should be modified so it can be clearly stated and understood by any employee.

The purpose of the initial window, and corresponding “insulated” period, is to provide an employer and an employee representative time to bargain a successor agreement without any question concerning representative status. Here, and in any CBA lasting more than three years, this narrow “notice” period is unnecessary if the window period opens again after the third anniversary of the agreement and remains open until a successor agreement is negotiated. A clearer rule would both accomplish the Board objectives in its prior decisions, and eliminate confusion. For example, such a rule might state: A decertification petition should be filed within 120 and 90 days of expiration of a collective bargaining agreement or at any time after the third anniversary of an agreement.

### III. CONCLUSION

For the reasons set forth above, the Employer respectfully requests the Region to continue processing the petition in this matter.

Dated: October 22, 2018

Respectfully submitted,

By: /s/ Jeffrey S. Bosley  
Jeffrey S. Bosley

DAVIS WRIGHT TREMAINE LLP  
505 Montgomery Street, Suite 800  
San Francisco, California 94111  
(415) 276-6500  
[jeffreybosley@dwt.com](mailto:jeffreybosley@dwt.com)

Attorneys for Employer  
USC VERDUGO HILLS HOSPITAL

**CERTIFICATE OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is David Wright Tremaine LLP, 505 Montgomery Street, Suite 800, San Francisco, CA 94111. On October 22, 2018, I served the within document(s):

**EMPLOYER USC VERDUGO HILLS HOSPITAL'S  
RESPONSE TO REGIONAL DIRECTOR'S ORDER TO SHOW CAUSE**

- MAIL - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address amanda.henderson@dwt.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Andrew L. Brown  
9698 Haddon Avenue  
Pacoima, CA 91331-6811  
Email: [jab042806@gmail.com](mailto:jab042806@gmail.com)

**Petitioner**

Glenn M. Taubman  
National Right to Work Legal Defense Foundation, Inc.  
8001 Braddock Road, Suite 600  
Springfield, VA 22160  
Email: [gmt@nrtw.org](mailto:gmt@nrtw.org)

**Legal Representative of  
Petitioner**

Bruce A. Harland, Esq.  
Weinberg, Roger & Rosenfield  
1001 Marina Village Parkway, Suite 200  
Alameda, CA 94501  
Email: [courtnotices@unioncounsel.net](mailto:courtnotices@unioncounsel.net);  
[bharland@unioncounsel.net](mailto:bharland@unioncounsel.net)

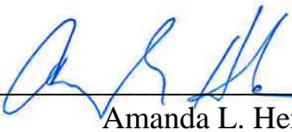
**Attorneys for Union,  
SEIU, United Healthcare  
Workers - West**

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[adelgado@unioncounsel.net](mailto:adelgado@unioncounsel.net)

**Attorneys for Union,  
SEIU, United Healthcare  
Workers – West**

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 22, 2018 at San Francisco, California.

  
\_\_\_\_\_  
Amanda L. Henderson

# **Exhibit 5**



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 31  
11500 W Olympic Blvd., Suite 600  
Los Angeles, CA 90064-1753

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (310)235-7351  
Fax: (310)235-7420

October 25, 2018

GLENN M TAUBMAN, ATTORNEY AT LAW  
C/O NATIONAL RIGHT TO WORK  
LEGAL DEFENSE FOUNDATION, INC.  
8001 BRADDOCK RD., SUITE 600  
SPRINGFIELD, VA 22151-2110

Re: USC Verdugo Hills Hospital  
Case 31-RD-228771

DEAR MR. TAUBMAN:

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. In the course of investigating this matter, on October 15, 2018, the Acting Regional Director issued an Order to Show Cause. After having considered information disclosed during the investigation as well as considering the responses filed to the Order to Show Cause by all parties, I conclude that the petition filed on October 5, 2018, is untimely because it was filed after the expiration of the relevant “window period” and during the relevant insulated period.

The investigation disclosed that USC Verdugo Hills Hospital (Employer) is a health care institution within the meaning of Section 2(14) of the Act. The Employer and Service Employees International Union - United Healthcare Workers-West (Union), are parties to a collective-bargaining agreement (Agreement), which indicates on its face that it is effective from January 1, 2016 and January 31, 2019. The Agreement covers the employees encompassed by the petition in this matter.

The parties to an agreement which is approaching its expiration date are provided with a 60-day “insulated period” during which petitions may not be filed in order to afford the parties to an expiring contract an opportunity to negotiate without the disruption of a rival petition. *Deluxe Metal Furniture*, 121 NLRB 995, 1000 (1958); *Crompton Co.*, 260 NLRB 417, 418 (1981). There is a “window period,” during which petitions may be filed prior to the commencement of the insulated period. The window period is generally 60-90 days prior to the expiration of the contract. *Crompton*, at 418. However, with respect to health care institutions, the open period during which a petition may be filed is more than 90 days but not over 120 days before the terminal date of any agreement, which is followed by an insulated period during which no petition can be timely filed. *Trinity Lutheran Hospital*, 218 NLRB 199 (1975).

It also is important to note, however, that a contract having a fixed term of more than 3 years “is treated for contract bar purposes as expiring on its third anniversary date.” *Coca-Cola Enterprises*, 352 NLRB 1044, 1045 (2008), citing *General Cable Corp.*, 139 NLRB 1159 (1962). Since contracts with a duration in excess of 3 years are treated as if they expired on the third anniversary date for the purpose of the Board’s contract bar rules, a petition is dismissed where it is not filed during the “window period” of more than 60 but no more than 90 days prior to the third anniversary date, rather than from the expiration date designated in the contract. *Union Carbide Corp.*, 190 NLRB 191, 192 (1971). In this case, since the Agreement is effective for more than 3 years, the contract is treated as expiring on its third anniversary date for contract bar purposes and it is the third anniversary from the effective date that determines the window period. Since the Employer is in the health care industry, the window period when petitions could be filed would be 90-120 days prior to the third year anniversary date. The third year anniversary date is January 1, 2019. Thus, the window period in which to timely file a petition in this matter ran from September 4, through October 3, 2018. As the petition was filed on October 5, 2018, it is, therefore, untimely.

The Petitioner and Employer argue that because the “window period” in the health care setting is different, and *Trinity Lutheran* was decided after *Union Carbide*, the 90-120 day period from the expiration date established in *Trinity Lutheran* should be applied here and the petition processed. I am not persuaded by this argument. In essence, the Petitioner and Employer argue that the contract bar limitation to three years described in *General Cable* should not be applied to the health care industry. However, neither Petitioner nor the Employer have provided case support that establishes the non-applicability of a three-year limitation on contract bars to the healthcare industry. Furthermore, although *General Cable* was decided prior to *Trinity Lutheran*, it is noteworthy that when the Board extended the reasonable period of a contract bar to three years in *General Cable*, the Board stated that all other contract-bar rules, whether related or unrelated to the subject of contract term, remain unaltered and the 3-year rule is intended to be read in harmony with them. Applying the policies of *Trinity Lutheran* and *General Cable* in an harmonious manner, I conclude that when a collective-bargaining agreement involving an employer in the healthcare industry is in effect for more than three years, as is the case here, the open period and insulated period should be determined from the three year anniversary of the effective date of the agreement, not the expiration of the agreement.

The Petitioner and Employer also argue that the petition should be considered timely under the holding of *Vanity Fair Mills, Inc.*, 256 NLRB 1104, 1106 (1981). In *Vanity Fair*, the Board allowed an untimely petition to be processed because the petitioner received erroneous advice by the Regional Office on three occasions, including twice in writing. I find the situation here to be distinguishable from the situation in *Vanity Fair Mills*. The Petitioner in this matter, who asserts he did not have legal counsel at the time, states that he relied on the Board’s guidance from its public website to determine the window period to file the petition. The Board website states with respect to decertification petitions that “if your employer and union reach a collective-bargaining agreement, you cannot ask for a decertification election (or an election to bring in another union) during the first three years of that agreement, except during a 30-day ‘window period.’ That period begins 90 days and ends 60 days before the agreement expires (120 and 90 days if your employer is a healthcare institution).” Thus, the language on the

Board's website is given in the context of the first three years of an agreement. Although the Board's website does not cover all possible contingencies, this case is distinguishable from *Vanity Fair*, a situation where Board agents affirmatively provided inaccurate information. Furthermore, the Agency website does not purport to be a complete summation. In fact, the public website contains the following disclosure language and encourages the public to contact the nearest Regional Office for further assistance:

*This application may not be cited as legal authority. Particular statements may be subject to unstated exceptions, qualifications, and/or limitations, and may even be rendered unreliable without prior notice by changes in the law. In addition, although we have sought to provide broad general guidance, we do not claim completeness. In other words, you may be subject to prohibitions under the National Labor Relations Act that are not set forth here. The National Labor Relations Board expressly disclaims any purpose or intent to furnish legal advice. You may contact your nearest regional Board office and/or an attorney to discuss your specific situation or to learn more about your rights and obligations under the NLRA.*

Here, the Petitioner does not claim to have contacted a Regional office for assistance in determining the open period before filing his petition.

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 **November 8, 2018**, 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 November 8, 2018.**

**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](http://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,



MORI RUBIN  
REGIONAL DIRECTOR

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

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