



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

December 7, 2018

████████████████████
SEIU HEALTHCARE PENNSYLVANIA
CTW, CLC
1500 N 2ND ST STE 12
HARRISBURG, PA 17102

Re: Manor Care of Yeadon
Case 04-CA-214552

Dear ██████████

We have carefully considered your appeal from the Acting Regional Director's decision to partially dismiss the captioned charge. Based upon our review of the evidence disclosed by the Regional Office's investigation as well as applicable case law, we have decided to deny the appeal, substantially for the reasons explained in the Acting Regional Director's letter dated April 24, 2018.

Your charge alleges that the Employer unlawfully terminated an employee because of her union activity and because she gave testimony before the Board. The Regional Office's investigation disclosed that there was insufficient evidence that the Employer violated the National Labor Relations Act, as alleged, as the employee refused to provide information during an investigation that arose from serious accusations ██████ made after being issued a ██████ ██████. On appeal, you contend that complaint should issue under the Board's decision in *Cook Paint and Varnish Company*, 246 NLRB 646 (1979), *enforcement denied and remanded*, 648 F.2d 712 (D.C. Cir. 1981).

In *Cook*, the Board held that after an employer completes an investigation, determines that disciplining an employee is justified, and does so, "grievance machinery [is] activated." *Id.* at 646. If the employer subsequently tries to compel the employee to answer questions about his or her misconduct, "it moves into the arena of seeking to vindicate its disciplinary decision and of discovering the union's arbitration position, and moves away from the legitimate concern of maintaining an orderly business operation," in violation of Section 8(a)(1) of the Act. *Id.* However, under circumstances where serious employee misconduct is under investigation, "no right accrue[s] to . . . employees under the Act, which protect[s] their refusal to talk or to remain uncooperative." *Service Technology Corporation*, 196 NLRB 845, 847 (1972).

In this case, the employee, who was a vocal Union supported and provided testimony to the Board, wrote a letter to the Employer in response to a ██████████ had received for

not performing a task at work. In the letter, the employee made several serious accusations against the Employer and [REDACTED] coworkers that were unrelated to the matter for which [REDACTED] was disciplined. The employee refused to provide information to the Employer during its investigation of her accusations. The Employer then [REDACTED] the employee for failing to cooperate with its investigation. Under these circumstances, the evidence does not support a finding that the Employer terminated the employee because of [REDACTED] union activities. Rather, the evidence shows that the Employer would have [REDACTED] the employee even in the absence of [REDACTED] union activities and activities before the Board.

Accordingly, further proceedings on the captioned charge are unwarranted.

This decision, however, does not impact the allegations in the charge that remain open and pending with the Region.

Sincerely,

Peter Barr Robb
General Counsel



By: _____

Mark E. Arbesfeld, Director
Office of Appeals

cc: DENNIS P. WALSH
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