



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 34
450 Main St Ste 410
Hartford, CT 06103-3078

Agency Website: www.nlr.gov
Telephone: (860)240-3522
Fax: (860)240-3564

January 9, 2019

[REDACTED]
Gursky/Wiens – Attorneys at Law
1130 Ten Rod Road, C-207
North Kingstown, RI 02852

Re: University Emergency Medical Foundation
Case 01-CA-219266

Dear [REDACTED]:

We have carefully investigated and considered your charge that the Employer has violated the National Labor Relations Act.

Decision to Dismiss: The charge alleged that the Employer terminated [REDACTED] because he engaged in protected concerted activity. The investigation revealed, however, that [REDACTED] was a managerial employee and therefore, not protected by the Act, *NLRB v. Yeshiva University*, 444 U.S. 672 (1980).

More specifically, the investigation established that the Charging Party was employed as a Class A member-physician whose responsibilities are governed by the Employer's Bylaws. Class A member-physicians, pursuant to the Bylaws, participate in the formulation and effectuation of management policies as well as decision-making on some operational matters. In this regard approval authority over several key managerial aspects of the Employer reside with the Class A member-physicians. For example, various budget decisions, Class A member compensation and merger decisions are all governed by the Class A member-physicians.

Apart from the Bylaws establishing their role in corporate governance, the managerial status of Class A member-physicians is also apparent based on the Employer obtaining their approval for changes in workplace policies, such as clinical hour requirements. Further, I note that the Employer's termination of [REDACTED] was implemented after a discipline committee that included ten Class A members determined that termination was the appropriate course of action. Both of these actions demonstrate that the Employer relies on the input and approval of Class A members for significant personnel decisions and are thus managerial employees. See for example *FHP, Inc.*, 274 NLRB 1141, 1142-43 (1985) (citing *Montefiore Hospital & Medical Center*, 261 NLRB 569, 570 (1982) where the Board held that medical employees may be managerial "if their activities on behalf of their employer fall outside the scope of decision-making routinely performed by similarly situated health care professionals and that is primarily incident to their treatment of patients."

Accordingly, I am dismissing the charge in this matter.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at www.nlr.gov and:

- 1) Click on E-File Documents;
- 2) Enter the NLRB Case Number; and,
- 3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlr.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **January 23, 2019**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than January 22, 2019. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before January 23, 2019**. The request may be filed electronically through the *E-File Documents* link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after January 23, 2019, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at

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a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

Paul J. Murphy
Acting Regional Director

Michael C. Cass

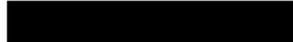
By:

Michael C. Cass
Officer in Charge

Enclosure

cc:


University Emergency Medicine Foundation
110 Elm St 2nd Floor
Providence, RI 02903-4626


Olenn and Penza, LLP
530 Greenwich Avenue
Warwick, RI 02886




UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

University Emergency Medicine Foundation

Case Name(s).

01-CA-219266

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)