

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

JENNERSVILLE HOSPITAL, LLC –TOWER HEALTH

And

Case 04-CA-226116

SEIU HEALTHCARE OF PENNSYLVANIA, CTW, CLC

*Joseph Richardson and Jun Bang, Esqs, for the General Counsel.  
Andrew J. Rolfes, Esq., (Cozen O'Connor, Philadelphia, Pennsylvania)*  
for the Respondent.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. This case was tried in Philadelphia, Pennsylvania on January 14, 2019. SEIU Healthcare of Pennsylvania filed the charge giving rise to this proceeding on August 23, 2018. The General Counsel issued the complaint on November 28, 2018.

The General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Charging Party Union on May 2, 2018. Respondent contends that it legally withdrew recognition based on 2 decertification petitions, one signed by unit employees in August 2017 and another signed in April 2018, which together were signed by more than 50 percent of the employees in the bargaining unit.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a limited liability company operates an acute care hospital in West Grove, Pennsylvania. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, SEIU Healthcare of Pennsylvania, is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

5 In about 2013 the Union was certified as the exclusive bargaining representative of a unit  
of Respondent's full-time, regular part-time and eligible per diem technical, service and  
maintenance employees in a number of classifications. Prior to October 1, 2017, Jennersville  
Hospital was owned by West Grove Hospital Company, part of the Community Health System  
(CHS). The Union and CHS negotiated two collective bargaining agreements. The second  
10 agreement was due to expire in August 2019.

15 On October 1, 2017 Tower Health purchased the assets of West Grove Hospital. When  
Tower acquired Jennersville Hospital, it recognized the Union but did not agree to be bound the  
Union's collective bargaining agreement with West Grove/CHS. The Union and Respondent  
met and bargained for a new contract on several occasions, the last being on April 25, 2018.

20 Some unit employees circulated a decertification petition at the Jennersville Hospital in  
August 2017, while it was still owned by Community Health Systems, Exh. R-1. This petition  
contained the signatures of 45 employees who remained employees of Respondent at the time  
Respondent withdrew recognition from the Union.<sup>1</sup> 25 of the signatures appeared on sheets of  
paper that were blank except for the signatures and blank lines for signatures. 20 appeared on  
sheets that clearly stated that the employees no longer wished to be represented by the Union.<sup>2</sup>  
This petition was not submitted to management until April 2018.

25 In April 2018, another petition was circulated. It was signed by some of the employees  
who signed the August 2017 petition and some employees who had not signed the first petition,  
including some employees who had been hired since August 2017. The April 2018 petition was  
signed by 36 employees, who were on Respondent's payroll for the pay period ending April 28,  
2018. Five of these signatures appear on a sheet that is blank except for their signatures and  
blank signature lines.<sup>3</sup> 31 signatures appear on sheets clearly expressing a desire to no longer be  
30 represented by the Union.

35 In April 2018, Diane Rahner, a unit employee, came to the human resource conference  
room at the hospital and gave the August 2017 petition to Mary Jo Ladish, the acting human  
resource manager. Rahner testified that she gave Ladish the April 2018 petition at the same  
time. Ladish testified she received the April 2018 petition in early May.<sup>4</sup> Rahner had opposed  
the Union as early as 2013 and had consulted with an attorney from the National Right to Work  
Legal Foundation (NTRWLF) back then. When Tower Health bought Jennersville, Rahner got  
back in contact with the NTRWLF.

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<sup>1</sup> Sandra Dunter, Loucinda Fuzz (or Fuzi) and Stephanie Belas, who signed "header" sheets were no longer employed by Respondent as of April 28, 2018. Wayne Bloodgrod, who signed a blank sheet was also no longer employed at the time.

<sup>2</sup> I will refer to these signature sheets as "heading or header sheets," as did the General Counsel in its brief.

<sup>3</sup> The General Counsel's brief summarizes the number of signatures on the petitions. This summary is either accurate or inaccurate in an immaterial way. The parties agree that the signature of Amy Dworak on the April 2018 petition cannot be authenticated.

<sup>4</sup> Respondent's brief adopts Ladish's testimony.

When Ladish received the petitions, the blank pages were stapled to the ones with stating that the employees no longer wished to be represented by the Union. The blank pages were not the back of pages with the verbiage.

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Rahner and Ladish did not have a conversation about the petitions. Thus, Ladish knew nothing about the circumstances under which the signatures on the blank pages were collected. She compared the signatures on the petitions with handwriting samples on other company documents. She determined that all but one appeared to be authentic. She then notified her superior, Russell Showers, that the names on the petitions added together constituted a majority of unit employees. Showers contacted company counsel, who advised the Union on May 2, 2018 that it was withdrawing recognition.

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As of the pay period ending on April 28, 2018, there were 88 employees in the bargaining unit, Exh. R-3. 55 employees signed either the August 2017 decertification or the April 2018 decertification petition or both.

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*Evidence regarding the signing of the blank pages*

Respondent presented testimony from 4 of its employees, each of whom signed a different blank page which Donna Rahner presented to Respondent in April 2018. As stated previously, there is no evidence that Respondent was aware of the facts elicited from these witnesses regarding the circumstances under which they signed the petitions when it withdrew recognition from the Union. All Respondent knew was that it had 2 documents with authentic signatures, some on blank sheets of paper, and that the sheets of each petition were stapled together at the time it received the petitions.

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*Donna Rahner*

Rahner signed the 3<sup>rd</sup> or 4<sup>th</sup> sheet in Exhibit R-1 (depending on whether you count the cover sheet on August 14, 2107). She testified that the sheet was attached to one that explained what the employees were signing, such as the page in front of it.

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*Holly Reyburn*

Reyburn's signature is the first one on page 4 (or 5 counting the cover sheet) of Exh. R-1. She signed on August 15, 2017. Reyburn recalled the page being stapled to a top page explaining what employees were signing. She testified to witnessing employees Raysik, McMahon, Nichols and Markland (aka Corkadel-Markland) sign the document.

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On April 3, 2018, Reyburn, Raysik, McMahon and Nichols signed another sheet which contained language indicating a clear desire not to be represented by the Union, R. Exh.-2, p. 1.

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*Jennifer D'Angelo*

On August 29, 2017, Jennifer D'Angelo signed page 6 (or 7) of R. Exh- 1. She testified that the blank page was with a page that explained that employees no longer wanted to be represented by the Union. She further testified that the pages were stapled and on a clipboard.

*Loan Tran*

Loan Tran started working at Jennersville Hospital on October 10, 2017. She signed a blank sheet of paper with 3 signatures above hers on April 4, 2018.<sup>5</sup> She testified that the page she signed was stapled to a page that explained that employees no longer wanted the Union to represent it.

*I decline to credit the testimony of Rahner, Reyburn, DeAngelo and Loan Tran that the blank sheets they signed were stapled to sheet explaining that the undersigned employees no longer wished to be represented by the Union*

Rahner, Reyburn, DeAngelo and Loan Tran were very opposed to continued representation by the Union. They clearly understood that the lack of a heading on the pages they signed was a problem for Respondent. I conclude that their testimony that the blank pages were stapled to others with the decertification language was tailored to overcome this deficiency and not credible. Reyburn's testimony, in fact, suggests that she did not know for a fact that this was the case. She testified, after being led by Respondent's counsel, as follows:<sup>6</sup>

Q. When you signed this document on August 15, 2017, were there any other pages with it, or was there only this page?

A. No. there was a top page that, if I go back, it's the page stating what we were doing by signing this paper.

Q. Was it attached? Was it stapled, clipped, do you remember?

A. From what I recall, it was stapled, and it was together.

Tr. 45-46.

Rahner's testimony at Tr. 37 that she is unable to recall other details about what happened to signature sheets left out in the breakroom, leads me to conclude that it is unlikely that she recalls whether the blank sheet she signed in August 2017 was stapled to sheets stating the employees wished to decertify the Union.

Moreover, the circumstances surrounding the petitions suggests that the blank sheets were not stapled together. Rahner had consulted with the National Right to Work Foundation

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<sup>5</sup> One of the employees, Christina Blackford, no longer worked for Respondent as of April 28, 2018. Karen Blair, who signed a header sheet on April 26, was no longer an employee of Respondent as of April 28. Amy Dworak's "signature" on April 23 cannot be authenticated. 14 employees signed the April 2018 petition twice. Thus, 31 unit employees, who remained employees of Respondent on May 2, signed "header" sheets of the April 2018 petition and 5 signed blank sheets of paper—far less than a majority of the unit.

<sup>6</sup> All four of Respondent's witnesses responded to leading questions.

before the circulation of both petitions. From that consultation, she surely understood that a blank sheet might present a problem for Respondent.<sup>7</sup> She or other anti-union employees had sheets that clearly stated that the signers no longer wanted union representation. It would have been very simple to have every employee sign such a sheet. The fact that this was not done strongly suggests that employees circulating the petitions were not seeking an unambiguous declaration for decertification from the employees who signed a blank page, or were uncertain as to whether they could obtain a sufficient number of signatures on a “heading” sheet.

I also note that there is no evidence that unit employees, other than the 4 witnesses, read the header sheets, assuming they were attached to the blank pages, or whether they had any discussions with other employees as to what their signatures meant.

Also, rather than relying on the blank sheets from the 2017 petition, it would have been relatively simple to go back to the employees who signed them in 2018 to obtain a signature clearly stating their desire end union representation. If the circulators of the petition did not do so this indicates some doubt in their minds as to whether these employees still favored decertification. If they did approach these employees and failed to procure a new signature, it would indicate that these employees did not favor decertification in April 2018 and maybe did not even in August 2017. Respondent or the anti-union employees could also have clarified the desires of employees by petitioning the Board for a decertification election. This is also a reason not to allow Respondent to rely on the August 2017 petition in withdrawing recognition.

#### *Analysis*

The Board in *Levitz Furniture Co. of the Pacific*, 333 NLRB 717, 725 (2001) held that an employer withdraws recognition from an incumbent union at its peril. If the Union contests the withdrawal, the employer must prove that at the time it withdrew recognition the union had, in fact, lost majority support, *Veritas Health Services, Inc., d/b/a Chino Valley Medical Center v. NLRB*, No. 16-1058, slip opinion at 12 (D.C. Cir July 10, 2018). It must also show that it had objective evidence of that fact **when it withdrew recognition**, *Highlands Regional Medical Center*, 347 NLRB 1404, 1407n. 17, 1413 (2006) enfd. 508 F. 3d 28 (D.C. Cir. 2007) and *Pacific Coast Supply, LLC v. NLRB*, 801 F. 3d 321, 331-34 (D.C. Cir. 2015).

The document on which an employer relies in withdrawing recognition must unambiguously state that the signers, constituting a majority of the bargaining unit, do not wish to be represented by the Union, *Highlands Regional Medical Center*, 347 NLRB 1404, 1406 (2006); *Liberty Bakery Kitchen, Inc.*, 366 NLRB No. 19 slip opinion page 1, n. 1 (2018), *Anderson Lumber Co.*, 360 NLRB 538 (2014);<sup>8</sup> *DaNite Sign Co.*, 356 NLRB 975, (2011).<sup>9</sup>

<sup>7</sup> This may explain why the August 2017 petition was not submitted to Respondent until April 2018.

<sup>8</sup> *Anderson Lumber* is sometimes cited as *Pacific Coast Supply* and was enforced by the D.C. Circuit under that name, 801 F. 3d 321 (D.C. Cir. 2015). This was a unanimous decision by a panel of then Chairman Pearce, Member Hirozawa and Member Johnson.

<sup>9</sup> When an employer has objective evidence tending to show the union’s loss of majority status, it assumes the risk that the evidence on which it relies will be determined later not to show an actual loss of majority status, *Highlands Regional Medical Center*, 347 NLRB 1404, 1406-1407, n. 15 (2006).

*Respondent did not establish that the Union had lost majority support at the time it withdrew recognition nor did it establish a reasonable belief that this was the case.*

5           *The evidence that Respondent had on May 2, 2018 was insufficient to establish that the Union had lost majority support.*

10           The evidence available to Respondent when it withdrew recognition was that it had petitions with a number of blank pages. It knew nothing as to the circumstances under which employees signed those blank pages and when and under what circumstances the pages were stapled together. The evidence upon which it relied in withdrawing recognition was insufficient to establish that the Union had lost majority support.

15           *The August 2017 petition is not a reliable indicator as to whether the Union retained majority support on May 2, 2018.*

20           The petition signed in August 2017 is not a reliable indicator of employees' union sentiments as of May 2, 2018 when Respondent withdrew recognition. A petition signed 8 months previously does not establish that the Union had lost majority support or even that Respondent had a good faith reasonable doubt that the Union had lost majority support, *Hospital Metropolitan*, 334 NLRB 555, 556 (2001) enfd. 49 Fed Appx. 320 (D.C. Cir. 2002).

25           Respondent argues that *Hospital Metropolitan* is distinguishable on the grounds that employees expressed dissatisfaction with a particular union representative, who was no longer involved with the unit at the time of withdrawal, whereas in this case the August 2017 petition was only directed at the Union. However, in the instant case, in addition to the 8-month time-lapse, circumstances had changed. The ownership of the hospital had changed and a concerted effort to obtain a majority of unit employees' signatures on a petition in the month prior to withdrawal had failed. Thus, in light of these factors; the 8-month time lapse, the change in ownership and the unsuccessful attempt to gain support for decertification in April 2018, I find that Respondent cannot rely on the August 2017 petition in withdrawing recognition.

30           The Board's decision in *Murrysville Shop 'N Save*, 330 NLRB 1119, 1120 (2000) at least suggests that an employer may not rely on a decertification petition assembled for a prior employer. As in that case there is a presumption that employee dissatisfaction with the Union arose from its dealings with the predecessor and may not indicate that employees desire decertification of the Union so that it cannot bargain with the current employer.

35           Even more importantly approximately 18 employees, who signed the August 2017 petition and were still employed by Respondent on May 2, 2018, did not sign the April 2018 petition. Opponents of the Union made prodigious efforts to obtain signatures on the April 2018 petition. They collected signatures between April 3 and April 27 on 7 sheets of paper. Donna Rahner left sheets out, assumedly in the break room for employees to sign, Tr. 33.<sup>10</sup> Thus, any employee desiring to decertify the Union had ample opportunity to sign the April 2018 petition. There is no evidence that any employees were told that since they signed the August petition, it was not necessary for them to sign the April petition. In fact, many of those who signed the August petition, including Rahner, Reyburn and DeAngelo signed both. The failure or inability of the proponents of decertification to get a sufficient number of signatures from employees who signed the August 2017 petition on the April 2018 petition belies Respondent's assertion that the Union had lost majority support as of March 2, 2018.

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<sup>10</sup> Rahner signed two of these sheets.

*Carey Mfg. Co.*, 69 NLRB 224 (1946); *Northern Trust Co.*, 69 NLRB 652, 654 n. 4 (1946); *Covenant Aviation Security, LLC*, 349 NLRB 699, 703 (2007), cases cited by Respondent in favor of reliance on August 2017 petition are easily distinguishable. The Board allowed consideration of allegedly “stale” signatures because the consequences were to have a Board election. In this regard it is important to note that while a 30% showing is needed to obtain a Board election, it is necessary to establish that a majority of unit employees no longer wish to be represented in order to legally withdraw recognition.

Respondent also cites *McDonald Partners v. NLRB*, 331 F. 3d, 1002, 1008 (D.C. Cir. 2003) for the proposition that the Board has never rejected evidence as “stale” solely on the basis of the passage of time. However, in that case the court was reviewing a Board decision under a much more lenient standard of proof. That employer was only required to establish a good faith reasonable doubt as to the Union’s majority status, as opposed to the current standard which requires the employer to show that at the time it withdrew recognition, the Union had in fact lost majority support. Moreover, in this case Respondent’s August 2017 evidence is unreliable for reasons in addition to the passage of time.

Because a Board-conducted election is the preferred way of resolving questions regarding employees’ support for unions, the Board applies a much stricter standard for withdrawal of recognition without an election than it does to obtain a Board-administered election, *Levitz Furniture*, 333 NLRB 717, 723 (2001). A stricter standard is particularly appropriate in this case in which in addition to the staleness of Respondent’s evidence, the employer is not the same and there is a strong indication that proponents of decertification were unable to get many of the employees who signed the August 2017 petition to sign the April 2018 petition.

#### Conclusions of Law

Respondent violated Section 8(a)(5) and (1) of the Act in withdrawing recognition from the Union and refusing to continue bargaining with it for a collective bargaining agreement.

#### Remedy

I recommend that Respondent, Jennersville Hospital, LLC-Tower Health, be ordered to recognize and on request bargain with the Union as the exclusive collective-bargaining representative of a bargaining unit of technical, service and maintenance employees in its facility in West Grove, Pennsylvania for a period of not less than 6 months. If an understanding is reached, Respondent must sign an agreement concerning the terms and conditions of employment. I recommend a bargaining order because it is necessary to fully remedy the violations in this case for the following reasons:

(1) A bargaining order will vindicate the Section 7 rights of a majority of unit employees who have been denied the benefits of collective bargaining since May 2, 2018. It is only by restoring the status quo and requiring the Respondent to bargain with the Union for a reasonable period of time that the employees will be able to fairly assess the effectiveness of the Union in an atmosphere free of the Respondent’s unlawful conduct.

(2) An affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. It removes the Respondent’s incentives to delay bargaining in the hope of further discouraging support for the Union. It also ensures that the Union will not be pressured by the possibility of a decertification petition or by the prospect

of imminent withdrawal of recognition to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and the issuance of a cease and desist order.

5 (3) A cease and desist order alone would be inadequate to remedy Respondent's withdrawal of recognition and refusal to bargain. It would permit another challenge to the Union's majority status before the taint of Respondent's previous unlawful withdrawal of recognition has dissipated. Allowing another challenge to the Union's majority status without a reasonable period for bargaining would be unjust also because the Union needs to re-establish its relationship with unit employees, who have already been without the benefits of union representation since May 2, 2018. Permitting another decertification petition may likely allow Respondent to profit from its unlawful conduct.

15 These aforesaid circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of unit employees who continue to oppose union representation. An affirmative bargaining order, with its attendant bar to raising a question concerning the Union's majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued union representation because the duration of the order is no longer than is reasonably necessary to remedy the ill effects of the violation.

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#### ORDER

Respondent, Jennersville Regional Hospital, LLC-Tower Health, West Grove, Pennsylvania, is hereby ordered to

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1. Cease and desist from:

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(a) Withdrawing recognition from and failing and refusing to bargain with SEIU Healthcare Pennsylvania as the exclusive collective bargaining representative of its technical, service and maintenance unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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2. Take the following affirmative action necessary to effectuate the policies of the Act.

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(a) Recognize and, on request, bargain with SEIU Healthcare Pennsylvania as the exclusive collective bargaining representative of its technical, service and maintenance unit employees at its hospital in West Grove, Pennsylvania concerning terms and conditions of employment for a period of not less than 6 months, and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its West Grove, Pennsylvania hospital copies of the attached notice marked "Appendix."<sup>11</sup> Copies of the notice, on forms

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<sup>11</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 2, 2018.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: Washington, D.C. March 4, 2019



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Arthur J. Amchan  
Administrative Law Judge

**APPENDIX**

**NOTICE TO EMPLOYEES**

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT withdraw recognition from and fail and refuse to recognize and bargain with SEIU Healthcare Pennsylvania as the exclusive collective bargaining representative of our technical, service and maintenance employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain for a period of not less than 6 months with SEIU Healthcare Pennsylvania as the exclusive bargaining representative of our technical, service and maintenance employees, and if an understanding is reached, embody the understanding in a signed agreement.

JENNERSVILLE HOSPITAL, LLC –TOWER  
HEALTH

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

The Wanamaker Building, 100 East Penn Square, Suite 403  
Philadelphia, PA 19106-4404  
(215) 597-7601, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/04-CA-226116](http://www.nlr.gov/case/04-CA-226116) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (215) 597-5354.