

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

JENNERSVILLE HOSPITAL, LLC	:	
	:	Case 04-CA-226116
	:	
and	:	
	:	
SEIU HEALTHCARE PENNSYLVANIA, CTW, CLC	:	

**RESPONDENT’S EXCEPTIONS
TO ADMINISTRATIVE LAW JUDGE’S DECISION**

Pursuant to Section 102.46(a) of the Board’s Rules and Regulations, Respondent, Jennersville Hospital, LLC (“Jennersville”) hereby files the following Exceptions to the decision by Administrative Law Judge Arthur J. Amchan dated March 4, 2019 (“Decision”) in the above-captioned case.

Exception 1: To the judge’s decision declining “to credit the testimony of [Donna] Rahner, [Holly] Reyburn, [Jennifer] D’Angelo 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.” (Decision p.4, lines 14-16).

Exception 2: To the judge’s speculation that Ms. Rahner, Ms. Reyburn, Ms. D’Angelo and Ms. Tran “clearly understood that the lack of a heading on the pages they signed was a problem for Respondent.” (Decision p. 4, lines 19-20).

Exception 3: To the judge’s speculation that the testimony of Ms. Rahner, Ms. Reyburn, Ms. D’Angelo and Ms. Tran “that the blank pages were stapled to others with the decertification language was tailored to overcome this deficiency and not credible.” (Decision p. 4, lines 20-22).

Exception 4: To the judge’s finding that Ms. “Reyburn’s testimony, in fact, suggests that she did not know for a fact that this was the case.” (Decision p.4, lines 22-23).

Exception 5: To the judge’s finding that it is “unlikely” that Ms. Rahner “recalls whether the blank sheet she signed in August 2017 was stapled to sheets stating the employees wished to decertify the Union.” (Decision p. 4, lines 34-36).

Exception 6: To the judge’s finding that “the circumstances surrounding the petitions suggests that the blank sheets were not stapled together.” (Decision p. 4, lines 39-40).

Exception 7: To the judge’s speculation that because Ms. Rahner had “consulted with the National Right to Work Foundation ... she surely understood that a blank sheet might present a problem for Respondent.” (Decision p.4, line 40 and p.5, lines 1-2).

Exception 8: To the judge’s speculation that the fact that not every employee signed a petition page with a header explaining the purpose of the petition “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.” (Decision p. 5, lines 4-7).

Exception 9: To the judge’s finding 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.” (Decision p. 5, lines 9-11).

Exception 10: To the judge’s speculation that “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 to end union representation.” (Decision p. 5, lines 13-15).

Exception 11: To the judge’s speculation that because employees circulating the petitions in 2018 did not have every employee who signed a page without an explanatory header in 2017 sign a new page with an explanatory header, “this indicates some doubt in their minds as to whether these employees still favored decertification.” (Decision p. 5, lines 15-17).

Exception 12: To the judge’s finding that the fact that “Respondent or the anti-union employees could also have clarified the desires of employees by petitioning the Board for a decertification election ... is also a reason not to allow Respondent to rely on the August 2017 petition in withdrawing recognition.” (Decision p. 5, lines 19-21).

Exception 13: To the judge’s incorrect statement of the law that 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.” (Decision p. 5, lines 34-35).

Exception 14: To the judge’s finding that “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.” (Decision p. 6, lines 1-2).

Exception 15: To the judge’s finding that the “evidence that Respondent had on May 2, 2018 was insufficient to establish that the Union had lost majority support.” (Decision p. 6, lines 4-5).

Exception 16: To the judge’s finding that the “August 2017 petition is not a reliable indicator as to whether the Union retained majority support on May 2, 2018.” (Decision p. 6, lines 13-14).

Exception 17: To the judge’s conclusion that a “petition signed 8 months previously does not establish that the Union had lost majority support or event that Respondent had a good faith reasonable doubt that the Union had lost majority support.” (Decision p. 6, lines 17-19).

Exception 18: To the judge’s application of *Hospital Metropolitan*, 334 NLRB 555, 556 (2001). (Decision p. 6, lines 19-30).

Exception 19: To the judge’s finding that a change in ownership of the Hospital constituted a change in circumstances that precluded Respondent from relying on the petition signed by employees in August 2017. (Decision p. 6, lines 25-30).

Exception 20: To the judge’s finding that “a concerted effort to obtain a majority of unit employees’ signatures on a petition in the month prior to withdrawal had failed.” (Decision p. 6, lines 26-27).

Exception 21: To the judge’s conclusion that in light of “the 8-month time lapse, the change in ownership and the unsuccessful attempt to gain support for decertification in April 2018, ... Respondent cannot rely on the August 2017 petition in withdrawing recognition.” (Decision p. 6, lines 28-30).

Exception 22: To the judge’s application of *Murrysville Shop ‘N Save*, 330 NLRB 1119, 1120 (2000), which the judge found “at least suggests that an employer may not rely on a decertification petition assembled for a prior employer.” (Decision p. 6, lines 32-33).

Exception 23: To the judge’s adoption of “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.” (Decision p. 6, lines 34-36).

Exception 24: To the judge’s finding that “Opponents of the Union made prodigious efforts to obtain signatures on the April 2018 petition.” (Decision p. 6, lines 39-40).

Exception 25: To the judge’s finding that “any employee desiring to decertify the Union had ample opportunity to sign the April 2018 petition.” (Decision p. 6, lines 42-43).

Exception 26: To the judge’s finding that “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.” (Decision p. 6, lines 43-44).

Exception 27: To the judge’s finding that 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 [sic] 2, 2018.” (Decision p. 6, lines 45-48).

Exception 28: To the judge’s finding that a different standard should apply for determining when employee signatures become “stale” depending upon whether those signatures are used for obtaining an election or for withdrawing recognition of a union. (Decision p. 7, lines 1-7).

Exception 29: To the judge’s application of *McDonald Partners v. NLRB*, 331 F.3d 1002, 1008 (D.C. Cir. 2003) and the change in the standard for withdrawing recognition from good faith reasonable doubt to actual loss of majority support to justify application of a different standard for determining when employee signatures become stale. (Decision p. 7, lines 9-14).

Exception 30: To the judge’s speculation that “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.” (Decision p. 7, lines 21-23).

Exception 31: To the judge’s conclusion that “Respondent violated Section 8(a)(5) and (1) of the Act in withdrawing recognition from the Union and refusing to continue bargaining with for a collective bargaining agreement.” (Decision p. 7, lines 27-28).

Exception 32: To the judge’s recommended remedy of restoration of the Union’s exclusive representative status and a six-month bargaining order. (Decision p. 7, lines 32-35).

Exception 33: To the judge’s finding that a bargaining order would “vindicate the rights of a majority of unit employees who have been denied the benefits of collective bargaining since May 2, 2018.” (Decision p. 7, lines 40-41).

Exception 34: To the judge’s finding that, “It is only by restoring the status quo and requiring 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.” (Decision p. 7, lines 41-44).

Exception 35: To the judge’s finding that a bargaining order “serves the policies of the Act by fostering meaningful collective bargaining and industrial peace.” (Decision p. 7, lines 46-47).

Exception 36: To the judge’s finding that a bargaining order “removes Respondent’s incentives to delay bargaining in the hope of further discouraging support for the Union.” (Decision p. 7, lines 47-48).

Exception 37: To the judge’s finding that a “cease and desist order alone would be inadequate to remedy Respondent’s withdrawal of recognition and refusal to bargain.” (Decision p. 8, lines 5-6).

Exception 38: To the judge’s finding that, “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.” (Decision p. 8, lines 8-11).

Exception 39: To the judge’s finding that the circumstances cited in his Decision “outweigh the temporary impact the affirmative bargaining order would have on the rights of unit employees who continue to oppose union representation,” and that a bargaining order “does not unduly prejudice the Section 7 rights of employee who may oppose continued union representation.” (Decision p. 8, lines 14-18).

Exception 40: To the judge’s recommended Order. (Decision p. 8, Lines 23-42 and p. 9, lines 1-15).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Andrew J. Rolfes, Esquire, hereby certify that on this 8th day of May, 2019, I caused a true and correct copy of the foregoing Respondent's Exceptions to Administrative Law Judge's Decision to be served by e-mail and first class mail on the following:

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