



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 13
Dirksen Federal Building
219 South Dearborn Street, Suite 808
Chicago, IL 60604-2027

Agency Website: www.nlr.gov
Telephone: (312)353-7570
Fax: (312)886-1341

June 20, 2019

(Via email service unless otherwise indicated)

Megan Smith, Esq., Corporate Counsel
Alden Management Services, Inc.
4200 W Peterson Ave
Ste 115
Chicago, IL 60646
megan.smith@thealdennetwork.com

Karla Bell
SEIU Healthcare Illinois Indiana Missouri Kansas
2229 S Halsted St
Chicago, IL 60608-4521
karla.bell@seiuhcil.org

Re: Heather Health Care Center, Inc.
Case 13-CA-243100

Dear Ms. Smith and Ms. Bell:

The Region has reviewed the Charge filed against Heather Health Care Center, Inc., alleging that it violated the National Labor Relations Act. As explained below, I have determined that further proceedings on the Charge should be deferred in accordance with the Board's policy under *Dubo Mfg. Corp.*, 142 NLRB 431 (1963).

Deferral Policy: The Board's *Dubo* deferral policy provides that this Agency withhold making a final determination on certain unfair labor practice charges when a grievance has been filed by the Charging Party under the grievance/arbitration provisions of a relevant collective-bargaining agreement, and there is a reasonable chance that use of the grievance/arbitration machinery will resolve or set at rest the dispute underlying the charge. This policy is based in part on encouraging stability in labor relations by deferring to the parties' chosen means of dispute resolution, as well as avoiding duplicative litigation in multiple forums. Therefore, if the grievance continues to be processed through the grievance/arbitration machinery, the Regional Office will defer the charge.

Decision to Defer: Based on the Region's investigation of this matter, I am deferring further proceedings on the charge or portion of the charge that alleges;

Since about February 27, 2019, the Employer has interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by making implied threats of futility because of their union activities.

Since about March 1, 2019, and ongoing, the Employer discriminated against employee [REDACTED] by changing her schedule and/or reducing her hours and misclassifying her as a part-time employee in order to discourage union activities or membership.

I am making this determination based on my belief that there is sufficient commonality between the facts and issues underlying the allegations of the charge and the facts and issues underlying the allegations of the grievance that there is a reasonable chance that the parties' resolution of the grievance through the grievance/arbitration machinery will resolve or set at rest the dispute underlying the charge.

No Right of Appeal: Because the *Dubo* policy is based on the Charging Party's having filed and voluntarily processed a grievance under the parties' contractual dispute resolution process, there is no right to appeal the Region's deferral decision to the Office of the General Counsel.

Further Processing of the Charge: As explained below, while the charge is deferred, the Region will monitor the processing of the grievance and, under certain circumstances, may resume processing the charge.

Charging Party's Conduct During Dubo Deferral: Because *Dubo* deferral is dependent on the Charging Party's processing of a grievance through the grievance/arbitration procedure, the Region will revoke deferral and resume processing of the charge if the grievance is withdrawn by the Charging Party or a third party in control of the grievance/arbitration process, without an intervening settlement or other resolution of the issues on which deferral was based. However, in the event that a Charging Party elects to withdraw a grievance in lieu of *Dubo* deferral, and the Charged Party objects on the ground that deferral would be appropriate under the Board's separate, nonvoluntary deferral policy promulgated pursuant to *Collyer Insulated Wire*, 192 NLRB 837 (1971), and *United Technologies Corp.*, 268 NLRB 557 (1984), the Region will determine whether deferral under *Collyer* is appropriate and, if so, issue a separate notification to the parties addressing their obligations and rights under that deferral policy.

Charged Party's Conduct During Dubo Deferral: If the Charged Party prevents or impedes hearing and resolution of the grievance, raises a timeliness defense, or otherwise refuses to address the merits of the grievance in the grievance/arbitration process, I will revoke deferral and resume processing of the charge.

Inquiries and Requests for Further Processing: Approximately every 90 days, the Regional Office will ask the parties about the status of this dispute to determine if the dispute has been resolved and whether continued deferral is appropriate. However, I will accept and consider at any time requests and supporting evidence submitted by any party to this matter for dismissal of the charge, for continued deferral of the charge or for issuance of a complaint.

Notice to Arbitrator Form: If the grievance is submitted to an arbitrator, please sign and submit to the arbitrator the enclosed "Notice to Arbitrator" form to ensure that the Region receives a copy of an arbitration award when the award is sent to the parties.

Review of Arbitrator's Award: If the grievance is arbitrated, the Charging Party may request that this office review the arbitrator's award. The request must be in writing and addressed to me. The request should discuss whether the arbitration process was fair and regular, whether the unfair labor practice allegations in the charge were considered by the arbitrator, and whether the award is clearly repugnant to the Act. Further guidance on the nature of this review is provided in *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955), and *Olin Corp.*, 268 NLRB 573 (1984).

Very truly yours,

/s/ Peter Sung Ohr

Peter Sung Ohr
Regional Director

Enclosure

cc: Jonathan Dixon, Administrator
Heather Health Care Center, Inc.
15600 Honore Ave
Harvey, IL 60426-4102
hm_administrator@thealdennetwork.com

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
NOTICE TO ARBITRATOR

TO: _____
(Arbitrator)

(Address)

NLRB Case Number
13-CA-243100

NLRB Case Name: Heather Health Care Center, Inc.

A determination has been made by the Regional Director of Region 13 of the National Labor Relations Board to administratively defer to arbitration the further processing of the NLRB charge in the above matter. Further, both parties to the NLRB case have agreed to proceed to arbitration before you in order to resolve the dispute underlying the NLRB charge.

So that the Regional Director can be promptly informed of the status of the arbitration, the undersigned hereby requests that a copy of the arbitration award be sent to Regional Director, Region 13, Dirksen Federal Building, Chicago, IL 60604-2027 at the same time that it is sent to the parties in the arbitration.

(Name)

(Title)