

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

**800 RIVER ROAD OPERATING COMPANY, LLC
d/b/a CAREONE AT NEW MILFORD**

and

Case 22-CA-204545

**1199 SEIU, UNITED HEALTHCARE
WORKERS EAST**

**THE GENERAL COUNSEL’S OPPOSITION TO THE
CHARGING PARTY’S MOTION FOR PARTIAL WITHDRAWAL OF THE CHARGE**

The General Counsel (General Counsel) opposes 1199 SEIU, United Healthcare Workers East’s (“Charging Party”) Motion to Withdraw the allegation that 800 River Road Operating Company, LLC d/b/a CareOne at New Milford (“Respondent”) violated the Act by failing and refusing to give the Union notice and an opportunity to bargain before imposing discretionary discipline on certain employees, as required by *Total Security Management*, 364 NLRB No. 106 (2016).

On November 20, 2018, Administrative Law Judge Benjamin Green issued a Decision and Recommended Order in this case, finding that Respondent had committed several violations of the Act as alleged in the Complaint. Thereafter, Respondent filed Exceptions on January 17, 2019, the General Counsel and the Charging Party filed answering briefs on March 14, 2019, and Respondent filed a Reply brief on March 28, 2019. By motion to the office of the Board’s Executive Secretary dated July 1, 2019, the Charging Party moved for a partial withdrawal of its charge.

The Charging Party asserts that it made this request for a partial withdrawal after further investigating the *Total Security* allegation of this case and concluding that each of the disciplinary actions involved herein were for cause and therefore, that this allegation has no merit. However, no information was provided to show on what bases the Charging Party determined that each of the four alleged discriminatees were disciplined for cause and were therefore not entitled to any remedy recommended by ALJ Green. To the extent Charging Party's request for a partial withdrawal is motivated by a desire to avoid the Board potentially overruling *Total Security*, the General Counsel strenuously opposes Charging Party's motion.

Further, despite the contention that this portion of the case no longer has practical significance to the Charging Party, the General Counsel does not pursue these matters solely for the benefit of the individual Charging Party, but in the overall public interest. The Board has previously recognized this imperative. See, e.g., *Meat Cutters (AFL-CIO) Local 150 F*, 151 NLRB 386, 387 (1965) ("When the unfair labor practice charge is filed, the General Counsel proceeds, not in the vindication of private rights, but as the representative of an Agency entrusted with the enforcement of public law and the assertion of the public interest therein. We conclude the Trial Examiner was correct in denying the request to withdraw the charges." (citing *New York Central Transport Company*, 141 NLRB 1144, 114 (1963))). A resolution of the *Total Security* issue raised in this case has repercussions far beyond any disputes between the Charging Party and Respondent. Further, the Board has a heightened obligation to complete its adjudication by issuing a decision in this case. In addition to the considerable time and expense which has already been devoted over many years by the General Counsel, the parties and now the Board, the *Total Security* allegation raises issues that are important in the workplace as employers increasingly seek guidance as to decision-making that may impact the terms and conditions of employees' employment. Further,

the case is ripe for decision and requires no further expenditure of resources from the Charging Party.

In light of the foregoing, the Charging Party's asserted reasons for seeking a partial withdrawal is substantially outweighed by other concerns. Based on any and all of the circumstances described above, the General Counsel respectfully requests that the Charging Party's Motion for a Partial Withdrawal be denied.

Dated at Newark, New Jersey, on July 18, 2019.

/s/ Sharon Chau

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CERTIFICATION

This is to certify that the foregoing General Counsel's Opposition to the Charging Party's Motion for Partial Withdrawal of the Charge has been E-Filed with the NLRB and duly served by e-mail on Respondent's counsels and Charging Party's counsels on July 18, 2019 as follows:

BY ELECTRONIC MAIL

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