



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 03
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

Agency Website: www.nlrb.gov
Telephone: (716)551-4931
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August 4, 2020

Ginger D. Schroder, ESQ.
Schroder, Joseph & Associates, LLP
392 Pearl Street
Suite 301
Buffalo, NY 14202

Re: Hornell Gardens, LLC
Case 03-CA-258740

Hornell Gardens, LLC
Case 03-CA-258966

Dear Ms. Schroder:

We have carefully investigated and considered your charges that Hornell Gardens, LLC has violated the National Labor Relations Act.

Decision to Dismiss: As a result of the investigation I have concluded that further proceedings are not warranted and I am dismissing your charge for the following reasons:

Your charge in Case 03-CA-258740 alleges that Hornell Gardens, LLC (the Employer) violated Section 8(a)(1) by discharging employees [REDACTED] [REDACTED] for refusing to work in protest of the Employer's alleged failure to provide employees with suitable personal protective equipment (PPE). The charge further alleges that the Employer violated Section 8(a)(1) and (3) by discharging [REDACTED] because [REDACTED] stated that [REDACTED] planned to organize a union at the Employer's facility. The investigation disclosed that none of the three employees' refusals to work were concerted. Specifically, there was insufficient evidence that [REDACTED] separate refusals to work were discussed with other employees, or that these refusals to work were undertaken for mutual aid and protection as contemplated by Section 7 of the Act. Although [REDACTED] discussed [REDACTED] safety concerns with other employees, there is insufficient evidence to indicate that [REDACTED] protest was a logical outgrowth of these conversations or that [REDACTED] was authorized by other employees to act on their behalf in protesting the alleged lack of PPE at the Employer's facility. Similarly, there is insufficient evidence that the Employer's decision to discharge [REDACTED] was because [REDACTED] threatened to organize a union at the Employer's facility. For these reasons, I am dismissing charge 03-CA-258740.

Your charge in Case 03-CA-258966 alleges that the Employer violated Section 8(a)(1) through comments made by [REDACTED] appearing in an online news article. Your charge contends that [REDACTED] threatened the above-mentioned employees with the loss of their nursing

licenses because they engaged in protected concerted activity. Because none of these employees were engaged in protected concerted activity, the statements made by [REDACTED] in this article did not violate the Act. Accordingly, I am dismissing this charge.

Charging Party's Right to Appeal: The Charging Party may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: You must file your appeal electronically or provide a written statement explaining why electronic submission is not possible or feasible (Written instructions for the NLRB's E-Filing system and the Terms and Conditions of the NLRB's E-Filing policy are available at www.nlr.gov. See [User Guide](#). A video demonstration which provides [step-by-step instructions](#) and frequently asked questions are also available at www.nlr.gov. If you require additional assistance with E-Filing, please contact E-File@NLRB.gov.)

You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. If you cannot file electronically, please send the appeal and your written explanation of why you cannot file electronically 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 **August 18, 2020**. 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 August 17, 2020. **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 August 18, 2020**. 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 August 18, 2020, **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 requests to limit our use of appeal statements or evidence. Upon a request under the Freedom of Information Act (FOIA) by a party during the processing of an appeal, the Agency's FOIA Branch discloses appeal statements, redacted for personal privacy, confidential source protection, or other applicable FOIA exemptions. In the event the appeal is sustained, any statement or material submitted may be introduced as evidence at a hearing before an administrative law judge. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Very truly yours,

/s/ Paul J. Murphy

PAUL J. MURPHY
Regional Director

Enclosure

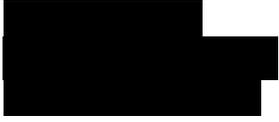
cc: Kelly Davids, Administrator
Hornell Gardens, LLC
434 Monroe Ave
Hornell, NY 14843

Jerri Ritter
Hornell Gardens, LLC
434 Monroe Ave
Hornell, NY 14843

Elizabeth Cordello
Law Offices of Pullano & Farrow PLLC
69 Cascade Drive
Suite 307
Rochester, NY 14614

[REDACTED]

[REDACTED]



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

Case Name(s).

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

(Signature)

E-FILING TO APPEALS

- Extension of Time:** This document is used when the Charging Party is asking for more time to efile an Appeal.
 - If an Extension of Time is e-filed, and there are additional documents to be e-filed simultaneously with it, please e-file those documents under the selection **Correspondence**.
 - After an Extension of Time has already been e-filed, any **additional** materials to add to the Extension of Time should be e-filed under **Correspondence**.
- File an Appeal:** If the Charging Party does not agree with the Region's decision on the case, an Appeal can be e-filed.
 - Only **one (1) Appeal** can be e-filed to **each** determination in the Region's decision letter that is received.
 - After an Appeal has been e-filed, any **additional** materials to add to the Appeal should be e-filed under **Correspondence**.
- Notice of Appearance:** Either party can e-file a Notice of Appearance if there is a new counsel representing one side or a different counsel.
 - This document is only e-filed with the Office of Appeals after a decision has been made by the Region.
 - This document can be e-filed **before** an Appeal is e-filed.
- Correspondence:** Parties will **select** Correspondence when adding documents or supplementing the Appeal or Extension of Time.
 - Correspondence is used to e-file documents **after** an **Extension of Time, Appeal or Notice of Appearance** has been e-filed.
- Position Statement:** The Charging Party or Charged Party may e-file a Position Statement.
 - The Charging Party will e-file this document as a supplement of the Appeal.
 - The Charged Party will specifically file one to support the Region's decision.
 - This document should be e-filed **after** an **Extension of Time, Appeal or Notice of Appearance** has been e-filed.
- Withdrawal Request:** If the Charging Party decides to no longer pursue their appeal, he/she can e-file a Withdrawal Request to the Office of Appeals.
 - This document should be e-Filed **after** an **Extension of Time, Appeal or Notice of Appearance** has been e-filed.



- The selections of **Evidence** or **Other** should no longer be used.