



United States Government

NATIONAL LABOR RELATIONS BOARD
Region 22
20 Washington Place - 5th Floor
Newark, NJ 07102

April 23, 2012

Lester A. Heltzer
Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

Re: 1621 Route 22 West Operating Co., LLC d/b/a
Somerset Valley Rehabilitation and
Nursing Center
Cases 22-CA-29599, 29628 & 29868

Dear Mr. Heltzer:

Please accept this letter as Acting General Counsel's opposition to Respondent's Motion for Permission to File District Court's Memorandum Opinion and Order and Transcript and Exhibits of Supplemental Hearing in related Section 10(j) proceeding. Pursuant to NLRB Rules & Regulations § 102.48, the Board is not obligated to reopen the record or receive further evidence after the filing of timely and proper exceptions or answering briefs. In this connection, the parties litigated this instant matter over 19 hearing dates and established a 3,400 page record, including 274 exhibits. Both parties had ample opportunity to fully litigate all of the allegations involved herein.

On November 21, 2011, the Administrative Law Judge issued a decision finding that Respondent violated Section 8(a)(1) and (3) of the Act by interrogating and soliciting grievances, by accelerating a resignation date, by issuing discipline and discharging Union adherents and by reducing the work hours for per diem employees. Thereafter, Respondent filed 108 exceptions to the Administrative Law Judge's Decision. Acting General Counsel filed an answering brief in response to Respondent's exceptions on February 29, 2012. Respondent filed a reply brief.

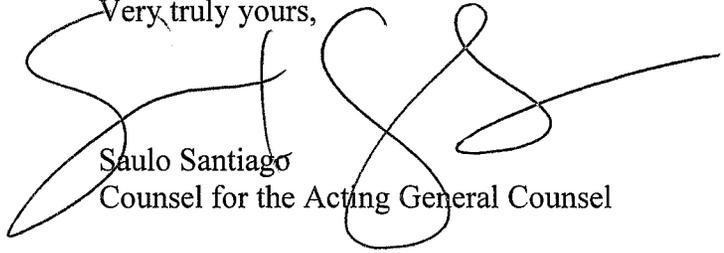
Despite the pendency of this matter before the Board for two months, Respondent now seeks permission to file the Memorandum Opinion and Order of the District Court in an ancillary Section 10(j) proceeding. In the Section 10(j) proceeding, the District Court Judge limited the supplemental evidentiary hearing to the "just and proper" prong, and granted the Region's motion to use the underlying administrative record with exhibits for the "reasonable cause" prong. The evidence adduced at the supplemental evidentiary hearing on the "just and proper" prong was largely expert witness testimony regarding the "public interest" in granting injunctive

relief. Hence, this “just and proper” evidence is clearly not relevant, has no bearing on the Board’s *de novo* review of the Administrative Law Judge’s decision, and would not qualify as “newly discovered evidence.” Like this instant matter, courts have consistently held that Section 10(j) ancillary proceedings have no bearing on underlying unfair labor practice cases. *Sheet Metal Workers Int’l Ass’n (E.P. Donnelly)*, 357 NLRB No. 131 at fn.8; *Santa Barbara News-Press*, 357 NLRB No. 51, slip op at 4, fn.12 (2011); *Coronet Foods v NLRB*, 981 F.2d 1284 (D.C. Cir. 1993); *NLRB v. Acker Ind., Inc.*, 460 F.2d 649, 652 (10th Cir. 1972); *Dubois Chemicals, Inc.*, 144 NLRB 56, 59 & n. 8 (1963).

Respondent’s failure to further provide this just and proper information during the underlying unfair labor practice proceeding underscores its irrelevance. Nor does Respondent indicate how this evidence would require a different result. Thus, Respondent provides no basis for receipt of any additional evidence after the briefing period concluded.

Based on the foregoing reasons, Respondent’s motion should not be granted.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Saulo Santiago', written over the typed name and title.

Saulo Santiago
Counsel for the Acting General Counsel

Cc: Steven Likens (via Email)
Ellen Dichner (via Email)