

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

In the Matter of)	
)	
1621 ROUTE 22 WEST OPERATING COMPANY, LLC D/B/A SOMERSET VALLEY REHABILITATION AND NURSING CENTER)	
)	
Respondent)	Case No. 22-CA-29599
)	22-CA-29628
)	22-CA-29868
and)	
)	
1199 SEIU UNITED HEALTHCARE WORKERS EAST, NEW JERSEY REGION)	
)	
)	
Charging Party)	

**RESPONDENT’S MOTION FOR PERMISSION TO FILE ORDER BY UNITED
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT GRANTING PARTIAL
STAY PENDING APPEAL IN RELATED 10(J) PROCEEDING**

Pursuant to NLRB Rules & Regulations §102.48, and all other applicable provisions, Respondent 1621 Route 22 West Operating Company, LLC d/b/a Somerset Valley Rehabilitation and Nursing Center (“Respondent”) moves for permission to file the Order entered by the United States Court of Appeals for the Third Circuit granting a partial stay of the District Court’s injunction directing the immediate reinstatement on a temporary basis to Shannon Napolitano and Sheena Claudio pending appeal in a related matter brought by the Regional Director of Region 22 (“Regional Director”) against Respondent under Section 10(j) of the National Labor Relations Act (“Act”). As grounds for this Motion, Respondent states:

1. Respondent filed its Reply to the Answering Briefs of the Acting General Counsel and Charging Party in this matter with the National Labor Relations Board (“Board”) on March 14, 2012. Thus, briefing in this matter closed on March 14, 2012.

2. The instant case involves the Respondent’s Exceptions, *inter alia*, to the findings and decision of the Administrative Law Judge (“ALJ”) that Respondent violated Section 8(a)(3) of the Act by disciplining and terminating the employment of Shannon Napolitano and Sheena Claudio and the ALJ’s recommendation that Napolitano and Claudio be reinstated. One of the issues to be decided by the Board is whether reinstatement is an appropriate remedy under the facts and circumstances of this case.

3. On April 7, 2011, the Regional Director of Region 22 filed a Petition for Injunctive Relief under Section 10(j) of the Act against Respondent on the based on allegations asserted in the unfair labor practice charges in this proceeding. *Lightner v. 1621 Route 22 West Operating Company, LLC*, Civil Action No. 11-2007-MLC (D.N.J.).

4. On May 17, 2012, after the close of briefing in this matter, the United States Court of Appeals for the Third Circuit entered its order granting Respondent’s Emergent Motion for Partial Stay Pending Appeal to the extent its seeks to stay so much of the District Court’s Order that directs Respondent to offer immediately and on an interim basis reinstatement to Napolitano and Claudio. *Lightner v. 1621 Route 22 West Operating Company, LLC*, No. 12-2122 (3rd Cir. May 17, 2012) (copy attached hereto as Ex. 1). The standard for obtaining a stay of an injunction pending appeal is: (1) substantial showing of likelihood of success, (2) irreparable injury absent a stay, (3) harm to the other parties, and (4) the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009).

5. In its Memorandum Opinion issued April 16, 2012, the District Court had found that “Napolitano and Claudio set forth a record of ‘sloppy nursing care’, including documentation errors and medication administration errors” and “that Claudio may pose a risk to Somerset Valley’s residents” (See Respondent’s April 19, 2012, Motion for Permission to File, Exhibit 3 at 122), but nevertheless directed Respondent to immediately and on an interim basis offer reinstatement to both Napolitano and Claudio. (See Respondent’s April 19, 2012, Motion for Permission to File, Exhibit 2 at 2). However, the District Court also entered a Temporary Restraining Order staying this portion of its injunction to allow Respondent to seek a stay from the Court of Appeals. (Copy attached hereto as Ex. 2).

6. Counsel for the Acting General Counsel and counsel for Charging Party advise that they will oppose Respondent’s Motion.

For the reasons set forth above, Respondent states that the Order of the United States Court of Appeals for the Third Circuit granting a partial stay of the District Court’s injunction directing the immediate reinstatement on a temporary basis to Shannon Napolitano and Sheena Claudio pending appeal, issued after the close of briefing, is relevant to the matters and issues to be decided in the instant case. The Board should permit Respondent to file the Order of the Court of Appeals and the District Court’s Temporary Restraining Order or enter an Order deeming the documents attached to this Motion filed.

Respectfully submitted,



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Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned certifies that on the 29th day of May, 2012, the foregoing pleading was filed via electronic filing with:

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

and served via e-mail upon:

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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

May 14, 2012

ECO-043E

No. 12-2122

J. MICHAEL LIGHTNER,
Regional Director of Region 22 of the National Labor Relations Board
for and on behalf of the National Labor Relations Board

v.

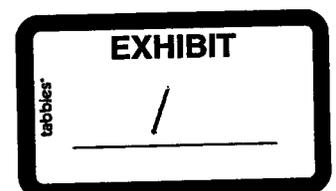
1621 ROUTE 22 WEST OPERATING COMPANY, LLC,
D/B/A Somerset Valley Rehabilitation and Nursing Center,

Appellant

(D.N.J. Nos. 3-11-cv-02007, 3-11-cv-03960 and 3-11-cv-04072)

Present: **AMBRO and VANASKIE, Circuit Judges**

1. Appellant's Emergent Motion for Partial Stay Pending Appeal.
2. 1199 SEIU United Healthcare Workers East, New Jersey Region's Motion for Leave to File a Brief as Amicus Curiae in Support of Appellee.
3. Appellee's Motion to Strike Appellant's Emergent Motion for Partial Stay Pending Appeal.
4. Brief of 1199 SEIU United Healthcare Workers East as Amicus Curiae In Support of Appellee's Opposition to Appellant's Emergent Motion for Partial Stay Pending Appeal.
5. Appellee's Opposition to Appellant's Emergent Motion for Partial Stay Pending Appeal.
6. Appellant's Opposition to Appellee's Motion to Strike Appellant's Emergent Motion for Partial Stay Pending Appeal and Cross-Motion for Enlargement of the Page Limits.



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C.A. No. 12-2122

Respectfully,
Clerk/dwb

ORDER

Appellee's Motion to Strike Appellant's Emergent Motion for Partial Stay Pending Appeal is hereby DENIED.

1199 SEIU United Healthcare Workers East, New Jersey Region's Motion for Leave to File a Brief as Amicus Curiae in Support of Appellee is hereby GRANTED.

Appellant's Emergent Motion for Partial Stay Pending Appeal, to the extent it seeks to stay so much of the District Court's Order that directs Appellant to offer immediately and on an interim basis Shannon Napolitano and Sheena Claudio reinstatement, is hereby GRANTED.

By the Court,

/s/ Thomas L. Ambro
Circuit Judge

Dated: May 17, 2012

DWB/cc:

Elinor L. Merberg, Esq.
Laura T. Vazquez, Esq.
Rosemary Alito, Esq.
George P. Barbatsuly, Esq.
Ellen Dichner, Esq.



Marcia M. Waldron

Marcia M. Waldron, Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

J. MICHAEL LIGHTNER, REGIONAL
DIRECTOR OF REGION 22 OF THE
NATIONAL LABOR RELATIONS BOARD
FOR AND ON BEHALF OF THE NATIONAL
LABOR RELATIONS BOARD,

Petitioner,

v.

1621 ROUTE 22 WEST OPERATING
COMPANY, LLC, d/b/a SOMERSET
VALLEY REHABILITATION AND NURSING
CENTER,

Respondent.

CIVIL ACTION NO. 11-2007 (MLC)

O R D E R

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AT 8:30 ^{AM}
WILLIAM T. WALSH CLERK

This matter being opened to the Court on Respondent's Emergent Motion for a Partial Stay Pending Appeal (dkt. entry no. 134, Emergent Motion); and the Court having issued an Order to Show Cause With Temporary Restraints on April 19, 2012 (dkt. entry no. 136); and the parties as well as Amicus Curiae, 1199 SEIU United Health Care Workers East, having submitted briefs (dkt. entries nos. 134-1, 140, 141 and 142); and the Court having heard oral argument on this date; and for the reasons stated by the Court on the record; and good cause appearing:



IT IS on this 1st day of May, 2012, **ORDERED** that the Emergent Motion (dkt. entry no. 134) is **GRANTED IN PART AND DENIED IN PART AS FOLLOWS:**

1. **GRANTED TO THE EXTENT** that the Temporary Restraining Order (dkt. entry no. 136) is extended until May 21, 2012, or until further order of this Court, allowing Respondent to move in the United States Court of Appeals for the Third Circuit for the requested stay relief pending appeal; and
2. **DENIED** in all other respects.

s/ Mary L. Cooper
MARY L. COOPER
United States District Judge