

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CHAMPLIN SHORES ASSISTED LIVING

and

SEIU HEALTHCARE MINNESOTA

Case 18-CA-093766

MOTION FOR SUMMARY JUDGMENT

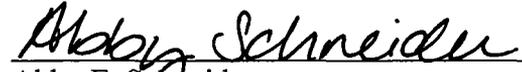
The Acting General Counsel hereby moves that the Board, in order to effectuate the purposes of the Act and to avoid unnecessary delay, exercise its power under Section 102.50 of the Board's Rules and Regulations, Series 8, as amended, and transfer this proceeding to the Board for final determination on the basis of the pleadings heretofore filed.

The Acting General Counsel further moves that, upon transfer of this proceeding to the Board, the Board issue an appropriate Order to Show Cause why a Summary Judgment should not be entered against Respondent and fix a time for the filing of briefs by all parties to this proceeding, the brief of the Acting General Counsel being submitted herewith. As shown by the attached Table of Exhibits, copies of the charge, complaint, and answer in Case 18-CA-093766 are attached to this Motion as exhibits and incorporated herein by reference.

In support of this Motion, the Acting General Counsel alleges that the only issue raised by the complaint and answer is legal in nature and that there is no issue of disputed fact warranting or requiring a hearing in this matter.

Dated at Minneapolis, Minnesota, this 26th day of December, 2012.

Respectfully submitted,

A handwritten signature in black ink that reads "Abby E. Schneider". The signature is written in a cursive style and is positioned above a horizontal line.

Abby E. Schneider
Counsel for the Acting General Counsel
National Labor Relations Board, Region 18
330 South Second Avenue, Suite 790
Minneapolis, Minnesota 55401

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CHAMPLIN SHORES ASSISTED LIVING

and

SEIU HEALTHCARE MINNESOTA

Case 18-CA-093766

**ACTING GENERAL COUNSEL'S BRIEF
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

On November 27, 2012, SEIU Healthcare Minnesota (the Union) filed a charge (Exhibits 10 and 12) against Emeritus Assisted Living d/b/a Champlin Shores Assisted Living, herein described by its correct name, Champlin Shores Assisted Living and hereinafter called Respondent. Based on the charge, Complaint issued alleging that Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in the Unit, in violation of Section 8(a)(1) and (5) of the Act. The Acting General Counsel submits that the pleadings in this matter, together with the exhibits, including Respondent's Answer (Exhibit 16), demonstrate that there are no issues of fact requiring a hearing to be held and that the case should be determined on the basis of the pleadings.

I. UNDISPUTED ALLEGATIONS OF THE COMPLAINT

Exhibits attached to the Motion for Summary Judgment establish the following undisputed facts:

- (1) Respondent is engaged in commerce within the meaning of the Act. Exhibit 14, paragraph 2; Exhibit 16, paragraph II;
- (2) The Union is a labor organization within the meaning of Section 2(5) of the Act. Exhibit 14, paragraph 3; Exhibit 16, paragraph III;
- (3) A petition in Case 18-RC-087228 was filed by the Union on August 14, 2012. Exhibit 1;
- (4) On September 7, 2012, the Regional Director for Region 18 issued a Decision and Direction of Election in case 18-RC-087228 (Exhibit 2) directing an election among all full-time, regular part-time, and casual/on call resident assistants and medication technicians employed by Respondent at its Champlin, Minnesota facility. Exhibit 14, paragraph 4; Exhibit 16, paragraph IV;
- (5) Respondent filed with the Board a Request for Review of the Regional Director's Decision and Direction of Election. Exhibit 3; Exhibit 14, paragraph 5; Exhibit 16, paragraph V;
- (6) At all times since October 12, 2012, and specifically by letters dated October 18 and November 8, 2012, the Union requested that Respondent recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit. Exhibit 7; Exhibit 8; Exhibit 14, paragraph 11; Exhibit 16, paragraph XI.

II. DISPUTED ALLEGATIONS OF THE COMPLAINT

Respondent's Answer denies paragraph 1 of the Complaint (Exhibit 14), alleging that the charge in this proceeding was filed by the Union on November 27, 2012, and a copy was served by regular mail on Respondent on about the same date. It does so by denying sufficient knowledge of the facts to allow it to admit, deny, or explain these allegations. Exhibits 10-13 demonstrate that the charge was filed by the Union on November 27, 2012, and served by regular mail on Respondent on about the same date. The exhibits raise no questions of fact.

Respondent's Answer denies paragraph 6 of the Complaint, alleging that on October 3, 2012, the Board issued an Order denying Respondent's Request for Review of the Decision and Direction of Election as the request raised no substantial issues warranting review. However,

Respondent admits that the Board – with one dissent – denied Respondent’s Request for Review. Exhibit 4 is the Board’s Order denying review of the Decision and Direction of Election, which says “The Employer’s Request for Review of the Regional Director’s Decision and Direction of Election is denied as it raises no substantial issues warranting review,” just as is alleged in the Complaint (Exhibit 14, paragraph 6). The exhibits raise no questions of fact.

Respondent’s Answer denies paragraph 7 of the Complaint, alleging that pursuant to the Decision and Direction of Election, an election was held on October 5, 2012, and the employees voted in favor of the Union. However, Respondent admits that a majority of employees in the Unit subject to the direction in paragraph 7 of the Complaint voted in favor of the Union. The Tally of Ballots (Exhibit 5) demonstrates the accuracy of this allegation as made in paragraph 7 of the Complaint. The exhibits raise no questions of fact.

Respondent’s Answer admits the allegations of paragraph 8 of the Complaint, alleging that on October 12, 2012, pursuant to the authority vested in the Regional Director by the Board, he issued a Certification of Representative certifying the Union as the exclusive collective-bargaining representative of the employees in the following unit (the Unit):

All full-time, regular part-time, and casual/on call resident assistants and medication technicians employed by the Employer at its Champlin, Minnesota facility*; excluding all other employees, office clerical employees, managerial employees, and guards and supervisors as defined in the Act. *The parties stipulated at the hearing that regular part-time and casual/on call employees are limited by the standard established in *Davison-Paxon Co.* 185 NLRB 2 (1970).

Exhibit 6; Exhibit 14, paragraph 8; Exhibit 16, paragraph VIII. However, Respondent also “avers that the certification of the Union as the collective bargaining [sic] was improper because the bargaining unit is inappropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.” Exhibit 16, paragraph VIII. Respondent’s Answer again raises this

argument when it denies paragraphs 9 and 10 of the Complaint, alleging that the Unit described in paragraph 8 of the Complaint constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act and that at all times since October 12, 2012, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit. Respondent's denial raises legal and not factual issues.

Respondent's Answer denies paragraph 12 of the Complaint, alleging that by letter dated November 26, 2012, and all times thereafter, Respondent has refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit on the ground that the Certification of Representative is invalid. However, Respondent avers that the Unit subject to the Decision and Direction of Election is invalid and admits that it has not recognized or bargained with the Union and is testing the Regional Director's certification of this bargaining unit. Thus, Respondent admits that it has not recognized or bargained with the Union and explains its reason for doing so. The November 26 letter is attached hereto as Exhibit 9. Respondent's denial again raises legal and not factual issues.

Finally, Respondent's Answer also denies paragraph 13 of the Complaint, alleging that Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in the Unit, in violation of Section 8(a)(1) and (5) of the Act, and paragraph 14 of the Complaint, alleging that the unfair labor practices of Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act. Exhibit 14, paragraphs 13 and 14; Exhibit 16, paragraphs XIII and XIII [sic].

III. ARGUMENT

All of Respondent's denials relate solely to Respondent's challenge to the appropriateness of the Unit deemed appropriate by the Regional Director in his Decision and Direction of Election.

Based on the foregoing, the Acting General Counsel contends that the single issue raised in this case is whether the full-time, regular part-time, and casual/on call resident assistants and medication technicians employed by Respondent at its Champlin, Minnesota facility, are an appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act. Respondent contends that the standard used to determine the appropriateness of the bargaining unit was improper. However, the Board has previously rejected that contention by denying Respondent's Request for Review of the Regional Director's Decision and Direction of Election in Case 18-RC-087228. (Exhibit 3; Exhibit 4).

Since there are no factual matters in dispute that were not properly decided in Case 18-RC-087228, no necessity for a hearing exists herein and the instant case may properly be determined upon the legal issues remaining in controversy in the face of the pleadings and documentary support which have been identified as exhibits in the Motion for Summary Judgment.

IV. CONCLUSION

Based on the Regional Director's Decision and Direction of Election dated September 7, 2012 in Case 18-RC-087228 and the Board's denial of Respondent's request for review of that decision, Respondent's explicit refusal to recognize, meet and bargain with the Union clearly violates Section 8(a)(1) and (5) of the Act, as alleged in the Complaint. Therefore, the Acting General Counsel respectfully requests that the Board find that Respondent has violated the Act

and enter an appropriate remedial order. The order should include that Respondent bargain, on request, in good faith with the Union as the recognized bargaining representative in the appropriate unit for the period required by *Mar-Jar Poultry*, 136 NLRB 785 (1962).

Dated at Minneapolis, Minnesota, this 26th day of December, 2012.

Respectfully submitted,

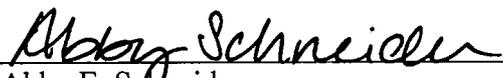

Abby E. Schneider
Counsel for the Acting General Counsel
National Labor Relations Board, Region 18
330 South Second Avenue, Suite 790
Minneapolis, Minnesota 55401

TABLE OF EXHIBITS

1. Petition filed August 14, 2012 in Case 18-RC-087228
2. Regional Director's Decision and Direction of Election in Case 18-RC-087228 finding Respondent's full-time, regular part-time, and casual/on call resident assistants and medication technicians employed by Respondent at its Champlin, Minnesota facility, to constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, dated and served September 7, 2012
3. Employer's Request for Review of Regional Director's Decision and Direction of Election in Case 18-RC-087228, dated September 21, 2012
4. National Labor Relations Board Order denying review in Case 18-RC-087228, dated October 3, 2012
5. Tally of Ballots in Case 18-RC-087228, issued October 5, 2012
6. Regional Director's Certification of Representative in Case 18-RC-087228, dated October 12, 2012
7. Letter from Union to Respondent requesting commencement of collective bargaining as the exclusive collective bargaining representative of the Unit, dated October 18, 2012
8. Letter from Union to Respondent requesting commencement of collective bargaining as the exclusive collective bargaining representative of the Unit, dated November 8, 2012
9. Letter from Respondent to Union refusing to bargain with the Union on the basis that "the standard under which the NLRB found a bargaining unit of resident assistants and medication technicians appropriate was improper," dated November 26, 2012
10. Unfair labor practice charge in Case 18-CA-093766, mis-numbered 18-CA-093776, filed November 27, 2012
11. Affidavit of Service of unfair labor practice charge in Case 18-CA-093766, dated November 27, 2012
12. Unfair labor practice charge in Case 18-CA-093766, with corrected charge number
13. Letter to all parties correcting the case number, dated December 4, 2012
14. Complaint in Case 18-CA-093766, dated December 6, 2012
15. Affidavit of Service of Complaint in Case 18-CA-093766, dated December 6, 2012
16. Respondent's Answer to Complaint in Case 18-CA-093766, dated December 20, 2012

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 18-RC-087228	Date Filed August 14, 2012

INSTRUCTIONS: Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

1. PURPOSE OF THIS PETITION (if box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)
- RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
 - RM-REPRESENTATION (EMPLOYER PETITION) - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
 - RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
 - UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES) - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
 - UC-UNIT CLARIFICATION - A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees: (Check one) In unit not previously certified. In unit previously certified in Case No. _____
 - AC-AMENDMENT OF CERTIFICATION - Petitioner seeks amendment of certification issued in Case No. _____ Attach statement describing the specific amendment sought.

2. Name of Employer Emeritus d/b/a Champlin Shores	Employer Representative to contact Renae Witschen	Tel. No. 763-712-0118
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3. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) 119 Hayden Lake Road East, Champlin, MN 55316	Fax No. 763-712-0278
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4a. Type of Establishment (Factory, mine, wholesaler, etc.) Assisted Living Facility	4b. Identify principal product or service Health Care Services	Cell No.	e-Mail
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5. Unit Involved (In UC petition, describe present bargaining unit and attach description of proposed clarification.) Included All Resident Assistants and Medication Technicians (all fulltime and regular parttime)	6a. Number of Employees in Unit: Present 45
Excluded All managers, guards, and supervisors as defined by the Act, as amended, dietary employees, maintenance employees, clerical employees, and all other employees.	Proposed (By UC/AC)
6b. Is this petition supported by 30% or more of the employees in the unit? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <small>*Not applicable in RM, UC, and AC</small>	

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (if no reply received, so state).

7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Name of Recognized or Certified Bargaining Agent (if none, so state.) none	Affiliation
Address	Tel. No. Date of Recognition or Certification
	Cell No. Fax No. e-Mail

9. Expiration Date of Current Contract. If any (Month, Day, Year)

10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day and Year)

11a. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes No

11b. If so, approximately how many employees are participating?

11c. The Employer has been picketed by or on behalf of (Insert Name) _____, a labor organization, of (Insert Address) _____ Since (Month, Day, Year) _____

12. Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. (if none, so state) **none**

Name	Address	Tel. No.	Fax No.
		Cell No.	e-Mail

13. Full name of party filing petition (if labor organization, give full name, including local name and number)
Service Employees International Union (SEIU) Healthcare Minnesota

14a. Address (street and number, city, state, and ZIP code) 345 Randolph Avenue, Suite 100 St Paul, MN 55102	14b. Tel. No. EXT 651-294-8117	14c. Fax No. 651-294-8217
	14d. Cell No. 612-804-2527	14e. e-Mail mike.kramer@seiuhealthcaremn.org

15. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization)
Service Employees International Union

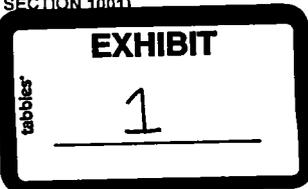
I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print) Mike Kramer	Signature 	Title (if any) Assistant Organizing Director
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Address (street and number, city, state, and ZIP code) 345 Randolph Avenue, Suite 100 St Paul, MN 55102	Tel. No. 651-294-8117	Fax No. 651-294-8217
	Cell No. 612-804-2527	eMail mike.kramer@seiuhealthcaremn.org

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are: (1) to determine if there is a violation of the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information, however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

CHAMPLIN SHORES ASSISTED LIVING¹

Employer

and

SEIU HEALTHCARE MINNESOTA

Petitioner

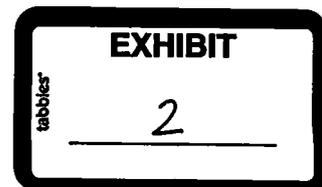
Case 18-RC-087228

DECISION AND DIRECTION OF ELECTION

Petitioner seeks to represent a unit of all full-time and regular part-time Resident Assistants and Medication Technicians employed by the Employer at its Champlin, Minnesota facility. The Employer maintains that the unit sought by Petitioner is not appropriate and that the only appropriate unit must also include the Wait Staff and Kitchen Helpers, as well as the Wellness Coordinator and Life Enrichment Assistant employed by the Employer at the facility. Also in issue is the supervisory status of the Wellness Coordinator. Petitioner contends that the Wellness Coordinator is a supervisor within the meaning of the Act and should be excluded from the unit, while the Employer maintains that the Wellness Coordinator is not a supervisor.

Based on the record and the relevant Board cases, including its recent decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), I find that the petitioned-for unit limited to the Employer's Resident Assistants and

¹ The Employer's name appears as amended at the hearing.



Medication Technicians is appropriate. I further conclude that the Wellness Coordinator is a supervisor within the meaning of the Act.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. This decision first provides an overview of the Employer's operations, including departments, and staff within the departments, as well as highlighting job descriptions and reviewing daily duties of the staff. Second, the decision examines evidence concerning common terms and conditions among the Employer's employees. This is followed by a description of the Employer's meal-time and resident activities, when the bulk of the disputed employees' interactions occur. Finally, the decision analyzes Board precedent and its applicability to the facts of this case, starting with

² The Employer, Champlin Shores Assisted Living, is a Washington corporation with an office and place of business located in Champlin, Minnesota, where it provides personal care services to residents of its assisted living facilities. During the last calendar year, a representative period, the Employer purchased and received at its Champlin, Minnesota facility, goods valued in excess of \$5,000 directly from points located outside the State of Minnesota and sold services valued in excess of \$50,000 directly to customers located outside the State of Minnesota.

community of interest among the disputed classifications, followed by the supervisory status of the Wellness Coordinator.

A. General Operations, Departmental Organization and Jobs Performed by Staff

The Employer operates a facility for persons aged 55 and up in three categories: retirement living, assisted living, and memory care. Retirement living provides an apartment, up to two meals a day, housekeeping services, and optional activities, but no medical care. There are currently 55 residents in retirement living. Assisted living serves residents who have doctors' orders indicating that assisted living is necessary. New residents in the assisted living section undergo an assessment by a nurse and get a personalized care plan covering daily activities and cares, assistance with daily medications, health condition monitoring, three meals a day, and an emergency call pendant for 24-hour-a-day staff response. There are currently 77 residents in assisted living. Memory care currently serves 16 residents and provides services similar to assisted living (although more intensive). However, memory care is a locked unit specifically designed to serve residents with Alzheimer's disease or other dementia.

The Employer's facility is licensed by the State of Minnesota for "home care;" thus it is not a nursing home. If it were a nursing home the Employer would be required to provide 24/7 professional nursing home coverage, and would be required to employ certified nursing assistants. The Employer meets neither requirement.

The Employer employs about 100 employees, including supervisors and managers, headed by its Executive Director. The total number includes two registered nurses, who work Monday through Friday daytime hours, with one of the registered nurses on call outside those hours. Also included in this number are about two individuals in the business office department (primarily engaged in human resources

issues), as well as employees in the concierge department, the housekeeping department, and the maintenance department. There is little or no evidence in the record regarding these departments. Petitioner does not seek to represent employees in these departments, and the Employer does not contend that the employees in these departments should be included in the unit.

By far the largest department is the health services department, supervised by the Resident Care Director and Wellness Nurse, both of whom are registered nurses. The Resident Care Director is primarily responsible for the memory care area, while the Wellness Nurse concentrates on the assisted living area. The health services department employs the Wellness Coordinator as well as the petitioned-for classifications, consisting of Resident Assistants (40-45 employees) and Medication Technicians (19-20 employees).

The Wellness Coordinator

The Wellness Coordinator's primary duty is to create task sheets based on each resident's plan of care. These task sheets list instructions for Resident Assistants and Medication Technicians to follow in their daily routines of caring for residents. The Wellness Coordinator also schedules hours of work for Resident Assistants and Medication Technicians.

While the Wellness Coordinator has an office where she performs administrative work, she also substitutes on the floor for Resident Assistants and Medication Technicians who call in sick, go on vacation, or otherwise fail to show up for any scheduled shifts. The record is inconsistent with regard to how often the Wellness Coordinator substitutes for absent Resident Assistants or Medication Technicians. One witness said substitution occurred 6-15 days a month, while a former Wellness

Coordinator testified that he substituted on the floor “occasional[ly] to quite frequent . . . but there were times where I probably didn’t fill in for a month and a half.”

The job description provided to and signed by the Wellness Coordinator, delegates a number of “supervisory functions” to the position. Among them are:

- Accountable for the performance of the employees under his/her supervision
- Demonstrate independent judgment
- Effectively recommend assignment of Resident Aides with respect to place, time and overall significant duties and the responsible direction of certain aspects of the work of Resident Aides in providing day to day care to residents
- Interview and make recommendations with respect to hiring decisions
- Communicate and enforce, in the interest of the Employer, policies and procedures including those dealing with rules of employee conduct
- Participate in employee performance evaluations and effectively recommend changes to terms and conditions of employment based on such evaluations
- Responsible for tracking attendance and independently imposing disciplinary action where appropriate

Both the Employer’s Executive Director and a former Wellness Coordinator who is currently employed as a Medication Technician confirmed the accuracy of the job description. For example, the former Wellness Coordinator identified by name two employees to whom he recommended discipline (although the events leading to the discipline are not specifically described) and described his participation in job interviews and hiring decisions. He also claimed responsibility for creating the format of the Employer’s health services department schedule, and, albeit briefly, described how he assigned employees to various blocks of rooms, directed their work, and monitored their performance.

Resident Assistants and Medication Technicians

Resident Assistants' primary functions are providing assistance to residents with all of their activities of daily living, such as dressing, grooming, bathing, toileting, and if necessary preparing meals in resident apartments. Resident Assistants are also responsible for transporting residents who need assistance to and from the dining rooms. Medication Technicians' primary function is to distribute and administer residents' medications. To the extent they have time after administering medications (and they have time every day), they also perform the same cares as Resident Assistants. In particular they assist at meal times in the dining room as described below.

Neither Resident Assistants nor Medication Technicians require any outside licensing or certification. They are also not required to have any specific background, training or experience prior to their employment by the Employer. However, Medication Technicians must take a course and a test administered by the Employer's Wellness Nurse or Resident Care Director, and then "shadow" an experienced Medication Technician for a minimal period of time prior to assuming their duties. Medication technicians are paid 50 cents/hour more than Resident Assistants. Resident Assistants also "shadow" other Resident Assistants as part of their departmental training.

Employees the Employer Would Add to the Unit

Most of the employees that the Employer would add to the unit are employed in the dietary department, which is supervised by the Dining Service Director. The department includes Cooks (three employees), Kitchen Helpers (3-4 employees), and Wait Staff (15-19 employees). The Cooks prepare three meals a day. Kitchen Helpers work primarily in the mornings on breakfast, while the Wait Staff primarily work the

evening meal. According to the Dining Service Director, Kitchen Helpers are mainly “older” and Wait Staff are mainly a “younger group of kids.” He also testified that he is working toward combining the two job descriptions into one and calling it “Dietary Aide.”

In addition to the dietary department employees, the Employer argues that the Life Enrichment Assistant should be included in the unit. The Life Enrichment Assistant works in a department consisting of herself and the director. The Life Enrichment Assistant’s function is to implement the activities program for residents in assisted living and memory care, which activities are planned and developed by the Life Enrichment Director. The assistant also drives the community bus to off-site activities, issues a calendar of activities, develops guides for other employees to use to keep residents busy, and leads activities. Resident Assistants and Medication Technicians escort residents to and from group activities.

B. Common Terms and Conditions of Employment

The Employer spent considerable time and record evidence developing the contention that the employees it seeks to add to the unit share common terms of employment and benefits with the employees Petitioner seeks to represent. However, the record is very clear that almost without exception the common terms and benefits are shared not only by employees the Employer seeks to add to the unit, but by all employees.

New employee orientation begins with a two-day program the Employer conducts once a month for employees in all departments hired within the last month. This two-day program includes a tour, instructions on telephone courtesy and fire safety, and ethics training, among other things. New employees then go to their own department and shadow an experienced employee for a couple weeks. All employees, including

supervisors, also participate in on-going training the Employer calls “silver chair,” which is on-line and self-paced. The example described on the record was in fire safety. All employees share a common handbook. The Employer provides benefits including health insurance, which are available to employees in all departments equally. The benefits vary among employees based only on how many hours a week an employee works. There is one break room shared by all employees. All employees attend a monthly staff meeting, although the bulk of the staff is excused for the part of the meeting devoted to matters involving the health services department. In addition, the health services department has its own weekly meeting attended by Resident Assistants and Medication Technicians to discuss resident care issues.

According to the record, four employees work in two classifications – one included in the unit sought by Petitioner and one included in the classifications the Employer would add to the unit. All four have signed job descriptions and are therefore qualified to work both as Wait Staff and Resident Assistants. It is clear that none of the four performs both jobs at the same time, although they might perform both jobs within the same pay period. However, they have to punch in a different job code in the time clock for each classification. The record fails to reveal how frequently these four employees work in both classifications. In fact, the only specific record evidence on this subject is by the Executive Director, who merely testified that two of the four work “primarily” as Resident Assistants. The Executive Director did not explain the meaning of “primarily” or otherwise expand on this testimony. The dietary department and the health services department issue separate work schedules.

Starting wages and annual raises appear discretionary (i.e., there is no set scale or progression for time in service). The range for Resident Assistants is \$10-12.80 per

hour; for Medication Technicians, \$11-15.72; and for Wait Staff and Kitchen Helper, \$9-10.25. The Life Enrichment Assistant earns \$11.50 and the Wellness Coordinator earns \$14 per hour.

All employees at issue wear a uniform, except for the Wellness Coordinator, who wears “business casual.” The uniform includes a prescribed color for shoes and pants and shirts available through an Employer catalog. Some are provided by the Employer and additional is available for purchase. The style and color of the shirts is not further described, other than that the dietary department employees’ shirts differ from those worn by the Resident Assistants and Medication Technicians.

C. Interactions and Common Functions between Employees in the Health Service Department and the Employees the Employer Contends Must Be Included in the Unit

Besides common terms and conditions of employment, the Employer focuses on interactions among and common functions performed by employees in the unit sought by Petitioner and employees the Employer contends must be added to the unit. The Employer’s evidence in this regard is summarized herein. However, before doing so, the Executive Director was very clear that the three classifications the Employer would add to the unit are not allowed in the rooms of residents. Moreover, there is no record evidence that the classifications the Employer would add to the unit ever perform the functions of Resident Assistants or Medication Technicians unrelated to food service matters or planned activities. Thus, the employees the Employer would add do not bathe residents, medicate residents, monitor the health of the residents, or assist residents with daily functions or personal care matters unrelated to eating or activities.

The Employer’s facility contains two dining rooms, designated the “main” dining room and the one in the memory care unit. There is one kitchen, attached to the main

dining room. The memory care dining room has a coffee maker, juice dispenser, and a refrigerator/freezer. The Resident Assistants and Medication Technicians are responsible for the equipment in the memory care dining room, including keeping a temperature log for the refrigerator/freezer, as required by the state health department.

Breakfast is usually continental, served from a buffet line in the main dining room. One Resident Assistant typically stands behind the buffet line. Kitchen Helpers (and perhaps Wait Staff) put the food on the line and pass out drinks. Wait Staff (to the extent any work in the morning) and Resident Assistants bus and clean up afterwards. In addition, a Resident Assistant takes a cart from the main dining room to the memory care area dining room in order to feed the residents in the memory care area. There is no evidence that any kitchen staff help with service there.

Lunch is also served in the main dining room, although residents have the option of not taking lunch from the Employer. There is very little record evidence on how lunch is served and how many residents eat lunch in the main dining room. The only record evidence suggests that there are no Kitchen Helpers or Wait Staff on duty for lunch. Instead all service and clean-up are done by Resident Assistants and/or Medication Technicians. What is meant by service is not clear.

At the evening meal, Kitchen Helpers plate dinners for the memory care residents and carry them on a cart to the memory care unit dining room, where Resident Assistants take over service and clean-up. In the main dining room, Wait Staff serve the food banquet style and do the bulk of the clean-up.

Night shift Resident Assistants' and Medication Technicians' duties include setting up the dining rooms for breakfast.

According to the Employer's Dining Service Director, he observes dining room activities of Resident Assistants and Medication Technicians, gives them instructions, and has made comments to the Resident Care Director (both good and bad) about their performance in the dining room. Nevertheless, the Executive Director testified that the Resident Assistants' and Medication Technicians' dining room tasks are still "supervised" by the Resident Care Director. If a resident is unable to ambulate to the dining room, a Resident Assistant or Medication Technician would be responsible for taking a boxed meal to the resident's room.

Thus, according to the Employer, Resident Assistants and Medication Technicians interact with the Kitchen Helpers and Wait Staff when working in the dining room, and perform some of the same functions as the Kitchen Helpers and Wait Staff.

The record with regard to interaction between the Resident Assistants and Medication Technicians and the Life Enrichment Assistant is very similar. While not quantified and no specific examples are provided, the record suggests that at times resident assistants and medication technicians assist residents participating in activities and in fact, sometimes even are responsible for the activities instead of the life enrichment assistant.

Community of Interest Issue

In determining whether a unit is "appropriately grouped" under Section 9(b) of the Act, the Board has broad discretion, "reflecting Congress' recognition 'of the need for flexibility in shaping the bargaining unit to the particular case.'" *Specialty Healthcare*, 357 NLRB No. 83, slip opinion at 9 (2012) (quoting *NLRB v. Action Automotive*, 469 U.S. 490, 494 (1985)). The Board's focus is whether the employees share a

“community of interest.” To make its determination, the Board weighs various factors, including:

Whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

Specialty Healthcare, slip opinion at 9 (quoting *United Operations Inc.*, 338 NLRB 123, 123 (2002)).

It is well-settled that there may be more than one way in which employees of a given employer may be appropriately grouped for purposes of collective bargaining. *Overnight Transportation Co.*, 322 NLRB 723, 723 (1996). It is also well-settled that “the Board need find only that the proposed unit is *an* appropriate unit, rather than the most appropriate unit, and that there might be multiple sets of appropriate units in any workplace.” *Specialty Healthcare*, slip opinion at 7. The Board first considers the petitioned-for unit and whether it is appropriate. If it is appropriate, the inquiry is essentially over. *Id.* at 8.

However, even if the employees in the petitioned-for unit share a community of interest, the Board will nonetheless consider whether that unit is inappropriate because the smallest appropriate unit includes additional employees. *Specialty Healthcare*, slip opinion at 10. In this regard, “the proponent of the larger unit must demonstrate that employees in the more encompassing unit ‘share an overwhelming community of interest’ such that there ‘is no legitimate basis upon which to exclude certain employees from it.’” *Id.* at 11 (quoting *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417, 429 (D.C. Cir. 2008)).

I conclude that the employees in the petitioned-for unit, consisting of Resident Assistants and Medication Technicians, are a clearly identifiable group of employees and share a community of interest. I further conclude that the Employer has failed to demonstrate that the kitchen staff or the Life Enrichment Assistant share such an overwhelming community of interest with these employees that there is no legitimate basis for their exclusion.

First, Resident Assistants and Medication Technicians share an identifiable community of interest distinct from the dietary employees and the Life Enrichment Assistant. They are in a separate department within the Employer's administrative structure, and they have distinct supervisors from other employees. Moreover, they have distinct functions related to resident care, such as dressing and bathing, monitoring health conditions, and helping the residents get around. There is separate departmental training (albeit informal) at the beginning of employment; the department has its own weekly staff meeting devoted to issues related to resident care; and the Resident Assistants and Medication Technicians have distinctive uniforms and separate schedules. Finally, there is barely any overlap in the wage ranges of the dietary staff as compared to Resident Assistants and Medication Technicians.

Second, Kitchen Helpers, Wait Staff, and the Life Enrichment Assistant do not have an "overwhelming community of interest" with the health services department employees. While they have common benefits, some common orientation and training, a common handbook, a common break room, and ultimate common supervision at the Executive Director level, there are a number of other employees who also share those same terms, including the Cooks, Concierge, Housekeepers, and Maintenance

Employees. Yet the Employer does not advocate including them in the unit. Therefore, these common terms obviously do not create an “overwhelming” community of interest.

More importantly, the health services department employees have distinct functions primarily related to resident care, while the kitchen employees are primarily engaged in food service, and the Life Enrichment Assistant is primarily engaged in activities and entertainment. Particularly compelling in this regard is the Executive Director’s testimony that the three classifications the Employer seeks to add are to not go into patient rooms, as well as the absence of evidence that the three classifications engage in any of the functions of the health services department employees unrelated to eating and activities.

While the Employer places considerable emphasis on the undisputed facts that health service employees also help serve food and clean up after meals, and lead or participate in some activities, it is clear that for the most part this is incidental to their resident care tasks. Moreover, it is a minority of their work day. In addition, the record reveals little about the nature of any interaction between the two groups when they do overlap in duties. For example, there is no evidence of interaction between the dietary employees and health services department employees in the memory care unit. In addition, there is no explanation of the need for work-related interaction at breakfast (when one Resident Assistant stands behind the buffet line), at lunch when apparently only Resident Assistants staff the main dining room, or at dinner when Resident Assistants do not assist in serving food. To the extent there is interaction, the record is clear that a majority of health service department employees’ time is spent on the wards and in resident rooms, whereas kitchen employees and the life enrichment assistant are prohibited from entering a resident’s room.

I recognize that a few employees might work some days in the kitchen and some days as Resident Assistants, although the record in this regard is very general. Nevertheless, even assuming four employees do so (which is not at all clear), this is a small percentage of the total of approximately 85 employees in all the relevant classifications, and there is no evidence regarding how these employees split their time between each classification. There is no evidence of whether they are paid the same or different for each job, although it is clear the Employer requires them to punch in under a different job code for each assignment. This evidence is not sufficient to create an “overwhelming” community of interest.

The Employer relies on *Odwalla, Inc.*, 357 NLRB No. 132 (2011), but that case is clearly distinguishable. In that case, the unit sought by the union included route sales drivers who delivered the employer’s juice products to stores, as well as warehouse employees who worked only in the warehouse, mechanics who worked in the field, and other classifications, yet did not include “merchandisers” who, like the route sales drivers, worked primarily in stores maintaining and arranging the products. In finding an overwhelming community of interest between merchandisers and the rest of the unit, the Board found the route sales drivers were far more like the merchandisers than they were like any other classification the union sought to include in the unit. The Board emphasized that the unit sought by the union did not match any administrative grouping of the employer, such as a department or line of supervision, and that the merchandisers and route sales representatives shared immediate supervision. In this case, on the other hand, the proposed unit constitutes a separate administrative grouping with separate supervision, and the essential functions of the dietary

department employees are not similar to health-care-related functions of the proposed unit employees.

Wellness Coordinator's Supervisory Status

A Supervisor is defined in Section 2(11) of the Act as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not a merely routine or clerical nature, but requires the use of independent judgment.

This section of the Act identifies a three part test. Individuals are supervisors if (1) they hold the authority to engage in any one of the 12 listed supervisory functions, (2) their "exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment," and (3) their authority is held "in the interest of the employer." *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 713 (2001) (citing *NLRB v. Health Care & Retirement Corp of America*, 511 U.S. 571, 573-574 (1994)); *Oakwood Healthcare, Inc.*, 348 NLRB 686, 688 (2006). Significantly, it is not required that the individual has exercised any of the powers enumerated in the statute, rather, it is the existence of the power that determines whether the individual is a supervisor. *Arlington Masonry Supply, Inc.*, 339 NLRB 817, 818 (2003). The burden of proof rests on the party asserting supervisory status, and the asserting party must establish by a preponderance of the evidence that such status exists. *Oakwood Healthcare*, 348 NLRB at 694.

Both the job description for the Wellness Coordinator and the testimony of the Employer's Executive Director clearly support a conclusion that the Wellness Coordinator is a supervisor within the meaning of Section 2(11) of the Act. Specifically,

according to both the job description and the Executive Director, the Wellness Coordinator performs or at least effectively recommends the following personnel actions using independent judgment, each of which is an indications of supervisory status: assignment with respect to place, time, and overall significant duties; responsible direction; hiring; discipline; and making other changes to terms and conditions of employment based on job evaluations.

While there is little testimony in the record describing examples of the Wellness Coordinator performing these functions, which is normally required in order to find supervisory status, the job description could hardly be a clearer delegation of authority, which is just as, if not more, important than actual exercise. *Robert Greenspan, DDS*, 318 NLRB 70, 76 (1995), *enfd.* 101 F.3d 107 (2nd Cir. 1996), *cert. denied*, 519 U.S. 817 (1996). "If an employee has been delegated real authority to exercise any one of the statutory powers requiring use of independent judgment, as opposed to being merely routine or clerical, regardless of the frequency of the exercise of such a power, that employee, whatever his job title, is to be treated as a supervisor under the Act." *Gatliff Business Prods.*, 276 NLRB 543, 555 (1985).

Also, in this case I conclude that the job description and testimony of the Executive Director constitute admissions by the party arguing against supervisory status. Thus, while largely conclusionary in nature, nevertheless in the circumstances of this case, the evidence supports a conclusion that the Wellness Coordinator is a 2(11) supervisor.

The following employees of Champlin Shores Assisted Living constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time, regular part-time, and casual/on call resident assistants and medication technicians employed by the Employer at its Champlin, Minnesota facility;³ excluding all other employees, office clerical employees, managerial employees, and guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by SEIU Healthcare Minnesota. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

³ The parties stipulated at the hearing that regular part-time and casual/on call employees are limited by the standard established in *Davison-Paxon Co.*, 185 NLRB 2 (1970).

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969).

Accordingly, it is directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before close of business **September 14, 2012**. No extension of time to file this list will be granted by the Regional Director except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with

this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlr.gov,⁴ by mail, or by facsimile transmission at (612) 348-1785. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

⁴ To file the eligibility list electronically, access the website at www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **September 21, 2012**. *The request may be filed electronically through the Agency's website, www.nlr.gov,⁵ but may not be filed by facsimile.*

Signed at Minneapolis, Minnesota, this 7th day of September, 2012.

/s/ Marlin O. Osthus

Marlin O. Osthus, Acting Regional Director
National Labor Relations Board
Region 18
330 South Second Avenue, Suite 790
Minneapolis, MN 55401-2221

⁵ To file the request for review electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request rests exclusively with the sender. A failure to timely file the request will not be excused on the basis that the transmission could be not accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION EIGHTEEN

-----x
: CHAMPLIN SHORES :
: ASSISTED LIVING :
: Employer, : CASE NO. 18-RC-087228
: - and - :
: SEIU HEALTHCARE MINNESOTA :
: Union. :
-----x

**EMPLOYER'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S
DECISION AND DIRECTION OF ELECTION**

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Dated: September 21, 2012

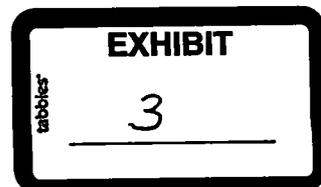


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I. INTRODUCTION

Pursuant to Section 102.67(c) of the National Labor Relations Board's ("Board" or "NLRB") Rules and Regulations, Champlin Shores Assisted Living ("Employer" or "Champlin Shores") hereby requests the Board's review of the Regional Director's Decision and Direction of Election ("Decision") in the above captioned matter on the grounds that:

- 1) A substantial question of law and policy is raised because of the absence of, or a departure from, officially reported Board precedent; and
- 2) There are compelling reasons for reconsideration of an important Board rule or policy.

The Regional Director's decision that a unit of resident assistants ("RAs") and medication technicians ("med techs") is an appropriate unit without the inclusion of the life enrichment ("LE") assistant and waitstaff/kitchen helpers ("dietary aides") is a departure from officially reported Board precedent and, therefore, raises a substantial question of law and policy. For the reasons argued in the Employer's post-hearing brief and those below, the LE assistant and the dietary aides share overwhelming community of interest with the RAs and the med techs. While med techs and RAs are organized within the "Health Services" department, the employer has long structured its operations so that med techs and RAs perform work outside of that department and side-by-side with the employees in the excluded classifications, with whom they all share many other traditional community of interest criteria.

However, even if the Employer cannot meet its burden under the "overwhelming community of interest" standard, there are compelling reasons for reconsideration of an important Board policy. *Park Manor Care Center, Inc.*, 305 NLRB 872, 875 (1991) established a modified analysis in senior living unit determinations that combined traditional community of interest factors with factors deemed relevant for health care facilities during the Board's

rulemaking proceedings for units in acute care hospitals. The Board's misguided decision in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011) overturned *Park Manor* and its twenty years of progeny. Until *Specialty Healthcare*, 357 NLRB No. 83 (2011), the Board had never even found a unit of CNAs alone within a nursing home to be an appropriate unit for collective bargaining under the *Park Manor* standard.¹ See *Specialty Healthcare*, slip op. at 17, fn. 13 (Member Hayes, dissenting) ("I am aware of no case, and the majority did not cite to one, in which the Board itself has determined in a representation case that a disputed petitioned-for unit of CNAs was appropriate under *Park Manor*.") There are compelling reasons to reconsider *Specialty Healthcare* and return to the *Park Manor* standard. For these reasons, the Employer requests review to reconsider the appropriateness of the *Specialty Healthcare* standard and urges a return to the *Park Manor* standard for determining the appropriateness of a petitioned-for unit at a senior care community.

II. STATEMENT OF THE CASE

A. The Petition

On August 14, 2012, SEIU Healthcare Minnesota ("SEIU," "Petitioner," or the "Union") petitioned to represent a unit of "All Resident Assistants and Medication Technicians (full-time and regular part-time)" employed at Champlin Shores Assisted Living. (B. Exh. 1(a).)² Excluded from the petitioned-for unit were "all managers, guards, and supervisors as defined by

¹Here, the petitioned-for employees, while performing many tasks similar to those of CNAs in a nursing home, are not separately licensed or certified and perform many other common functions with the employees within their assisted living community than CNAs do within a traditional nursing home.

²References to the Transcript are noted as "(Tr.--)", to Employer Exhibits as "(E. Exh.--)", to Board Exhibits as "(B. Exh.--)", to pages of the Decision and Direction of Election as "(DDE --)".

the Act, as amended, dietary employees, maintenance employees, clerical employees, and all other employees.” (B. Exh. 1(a).)

B. The Hearing and Stipulations

A hearing regarding the appropriateness of the unit and issues concerning supervisory status was held before Hearing Officer Abby Schneider on August 29, 2012. The parties have stipulated that any appropriate unit will also include “casual/on call employees; however, they further agree that the employees eligible to vote, whether regular part-time or casual/on-call, must meet the *Davison-Paxon* formula.” (B. Exh. 2).

Following the Hearing, on September 6, the Employer submitted a post-hearing brief arguing that the LE assistant and dietary aides shared community of interest with the petitioned for unit and must be included in any appropriate unit.

C. The Regional Director’s Decision

On September 7, Marlin O. Osthus, Acting Regional Director for Region 18, issued a Decision. In his decision, the Regional Director found that the unit sought by the Union constituted a unit appropriate for the purpose of collective bargaining. Relying on *Specialty Healthcare’s* overwhelming community of interest standard, the Regional Director found that the Employer “failed to demonstrate that the kitchen staff or the Life Enrichment Assistant share such an overwhelming community of interest with these employees that there is no legitimate basis for their exclusion.” (DDE 13).

III. THE EMPLOYER’S REQUEST FOR REVIEW SHOULD BE GRANTED

A. The Regional Director’s Decision Departed from Board Precedent

The unit petitioned for by the Union is an inappropriate fractured unit, as the traditional community of interest factors applicable to all RAs and med techs, who are included in the petition, “overlap almost completely” with certain classifications that are excluded from

the petitioned-for unit. *Specialty Healthcare*, 357 NLRB at *11. “A petitioner cannot fracture a unit, seeking representation in ‘an arbitrary segment’ of what would be an appropriate unit.” *Specialty Healthcare*, 357 NLRB No. 83, *13 (2011), quoting *Pratt & Whitney*, 327 NLRB 1213, 1217 (1999). In making the determination of whether the proposed unit is an appropriate unit, the Board focuses on whether employees share a “community of interest.” *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 491 (1985). The Board weighs the following factors when determining whether employees in the proposed unit share a community of interest:

- whether the employees are organized into a separate department;
- have distinct skills and training;
- have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications;
- are functionally integrated with the Employer’s others employees;
- have frequent contact with other employees;
- interchange with other employees;
- have distinct terms and conditions of employment; and are separately supervised.

Specialty Healthcare, 357 NLRB at *9, citing *United Operations, Inc.*, 338 NLRB 123, 123 (2002).

Here, the record evidence shows that all employees receive the same handbook, are eligible for the same benefits, have a common orientation. (Tr. 43, 46-49; E. Exhs. 11-13). They are each eligible for pay increases on their anniversary date and have similar rates of pay.³ (Tr. 71; E. Exh. 25). They receive identical recurring training in wellness programs, on serving

³ RAs make between \$10-\$12.80 per hour; med techs make between \$11-\$15.72 per hour; the wellness coordinator makes \$14.00 per hour; the life enrichment assistant makes \$11.50 per hour; and the waitstaff/kitchen helpers make between \$9-10.25 per hour. (EREXH 25).

meals, and on performing activities and participate in monthly staff meetings. (Tr. 59-60, 76-77, 144-45).⁴

RAs, med techs, dietary aides, and the LE assistant perform many common job functions. For instance, Ras and med techs are required to work in the dining rooms serving food to residents, sometimes alongside dietary staff. (Tr. 30, 108-09, 133, 143, 152, 194-95). Med techs spend about 1.5 to 2.5 hours of their shift in the dining room serving and cleaning up after meals. (Tr. 109., 139, 194-195). RAs, med techs, and dietary aides receive all training and supervision while in the dining rooms from the Dining Services Director (“DSD”). (Tr. 144-45, 152). RAs and med techs are required to monitor food temperatures in one kitchen as the cooks are required to in the other. (Tr. 147; E. Exh. 35-36).

Similarly, RAs and med techs are required to perform and lead activities, sometimes alongside the LE assistant. (Tr. 155-59, 165-167, 176; E. Exh. 38-39). In addition to assigned, template activities, they are also required to engage residents in memory care and are instructed- in the same manner as the LE assistant- on the method of engaging residents. (Tr. 162; E. Exh. 40, 42). They receive the same training as the LE assistant and all three classifications are required to record that activities are being performed. (Tr. 168-69, 171, 173; E. Exh. 41)

It is undisputed that med techs spend 75-90% of their day performing job duties and functions, namely medication administration, that RAs cannot perform. (Tr. 108, 195). When med techs are not performing medication administration during this 75-90% of their shift, they are scheduled to assist with meal service and clean the dining rooms under the direction of

⁴ The Regional Director states that the “record suggests that at time the RAs and med techs assist residents participating in activities.” (DDE 11). The record does not “suggest” that; it is an undisputed fact based on testimony of the LE Director.

the DSD and alongside dietary staff (both in AL and Memory Care) and to participate and lead required activities under the direction of the LED alongside the LE assistant and RAs (primarily in Memory Care). (Tr. 108-09, 138-39, 165-67, 176). Med techs are not scheduled to assist RAs with toileting and showering; however, they can and do assist with such activities when RAs cannot. It is only that aspect of the RA's job duties that RAs and med techs share independent from the dietary staff and the LE assistant. By the union witness's own account, this amounts to far less than 10% of a med tech's job duties on AL.⁵ In Memory Care, the med tech must perform and assist with activities in addition to dining functions and, therefore, the percentage of time where med techs and RAs perform the same duties that waitstaff and the LE assistant do not perform would be even lower.

RAs and med techs, while organized within the same department and wear the same uniform, perform very few common job functions that other excluded employees do not perform. Therefore, the majority and the most time-consuming of the few job functions that med techs and RAs share- meal service and activities, they share with the dietary staff and the LE assistant. In his decision, the Regional Director does not address that med techs and RAs perform very few of the same functions that dietary aides and the LE assistant also do not perform and, to that point, RAs cannot work as med techs. (Tr. 107).

As an assisted living community, Champlin Shores does not require its RA or med tech positions be filled by certified nursing assistants, as was the case in the nursing home in *Specialty Healthcare*. (Tr. 21, 25). Neither med techs nor RAs are required to be certified or have special training or education prior to beginning at the Community. In *Specialty Healthcare*,

⁵ A current med tech testified that 75% of the med tech's job duties in AL consisted of passing medication. This is 6 hours of an 8 hour shift. He also testified that a med tech spent about 1.5 hours assisting with meals in the dining room. This leaves a ½ hour of his shift- or 6.25%-dedicated to other activities

there was no evidence of significant functional interchange of overlapping job duties. *Id.* at * 12. Here, there is significant evidence of both.

In *Odwalla, Inc.*, 357 NLRB No. 132, *22 (2011), the Board found that a unit including multiple job classifications, but excluding merchandisers was “fractured” because none of the traditional community-of-interest factors suggested that the petitioned-for employees shared a community of interest that the merchandisers did not equally share. Here, the vast majority of community of interest factors between med techs and RAs are shared with dietary employees, the LE assistant, and the wellness coordinator, namely common skills and duties, mutuality of interest in wages, hours, and other working conditions, degree of common functions, frequency of contact and interchange with other employees, and functional integration. See *Specialty Healthcare*, 357 NLRB at *9, citing *Bartlett Collins Co.*, 334 NLRB 484, 484 (2001).

In *Odwalla, Inc.*, the petitioned-for grouping of employees did not all work in the same department. However, whether employees are organized into a single department is not the only overwhelming community of interest factor. For example, the Board in *Specialty Healthcare* suggested that the traditional community of interest test “focuses almost exclusively on how *the employer* has chosen to structure its workplace.” *Id.* at fn. 19. The structuring of the workplace goes beyond departmental lines. Here, in addition to all the other community of interest standards, Champlin Shores has chosen to fully integrate its med techs and RAs into meals and activities services. The Regional Director departed from Board precedent in that the traditional community of interest factors overlap almost completely and, even under *Specialty Healthcare*, the unit is fractured and inappropriate.

B. There are Compelling Reasons for Reconsideration of *Specialty Healthcare*

Two decades ago, the Board sought harmonized evolving precedent in the long-term health care industry with its experience in rulemaking in acute care hospitals,⁶ approved in *American Hospital Association v. NLRB*, 499 U.S. 606 (1991), to yield a flexible, but rational approach to industry bargaining unit decisions. *Park Manor Care Center*, supra. A unanimous full Board adopted a dynamic approach:

We prefer to take a broader approach utilizing not only “community of interests” factors but also background information gathered during rulemaking and prior precedent. Thus,...our consideration will include those factors considered relevant by the Board in its rulemaking proceedings, the evidence presented during rulemaking with request to units in acute care hospitals, as well as prior cases involving either the type of unit sought or the particular type of health care facility in dispute.

305 NLRB at 875 (footnote omitted). This was called a “pragmatic” or “empirical community of interest” approach. *Id.* at 875 n. 16.⁷ The traditional “community of interest” approach to Board unit determinations had been used by the NLRB for many years. The Board examines the nature of employee skills and functions, the degree of functional integration, interchangeability and contact among employees, common work situs, common supervision, geographic separation (if any), bargaining history and commodities in general working conditions. To a certain extent, *Park Manor* adopted this community of interest test, informed by concerns associated with long-term health care facilities, and flexible enough to account for future adaptation.

⁶ Codified at 29 CFR §103.30 of the Board’s Rules and Regulations.

⁷ The Board further expressed the hope that from its experience with litigated cases over time ““certain recurring factual patterns will emerge and illustrate which units are typically appropriate.”” *Id.* at 875 (footnote and citations omitted), an approach cited with apparent approval in the Supreme Court’s opinion, regarding the Board’s rulemaking. *American Hospital Assn. v. NLRB*, supra ; *Id.* at 875 n. 17.

Specialty Healthcare needlessly abandoned a fair, workable and accepted method of collective bargaining in long-term healthcare establishments and rejected the Board's two-decade old approach for determining appropriate bargaining units in sub-acute, long-term health care institutions. In its place, it imposed a rigid model, deferring almost entirely to the union's choice of bargaining unit. This is particularly inappropriate in an industry, such as assisted living, which has largely moved to operational models employing fewer workers with a broader range of responsibilities. This operational shift is fully consistent with *Park Manor* but cuts against the narrow-unit objective of *Specialty Healthcare*.

The new *Specialty Healthcare* standard "encourage[s] union organizing in units as small as possible, in tension with, if not actually conflicting with the statutory prohibition in Section 9(c)(5) against extent of organization as the controlling factor in determining appropriate units." *Id.*, slip op. at 19 (Member Hayes dissenting). It ignores Congressional admonition against the undue proliferation of bargaining units in the health care industry. Finally, we agree with Member Hayes in his dissent in *DTG Operations, Inc.* 357 NLRB No. 175 (2011):

I adhere to the previously expressed view that giving the Board's imprimatur to this balkanization represents an abdication of our responsibility under Section 9 and may well disrupt labor relations stability by requiring a constant process of bargaining for each micro-unit as well as pitting the narrow interests of employees in one such unit against those in other units.

Id. at slip op. 9.

The Regional Director cited *Specialty Healthcare* five times in his decision and used the "overwhelming community of interest" standard in determining the appropriateness of the unit. (DDE 11-13). For all of these reasons, there are compelling reasons for reconsideration of the Board's *Specialty Healthcare* decision and a return to the standard of *Park Manor*. Under such a standard, the petitioned-for unit is clearly inappropriate.

IV. CONCLUSION

Wherefore, for all of the foregoing reasons, the Employer respectfully requests that the Board:

- (1) Grant this Request For Review; and
- (2) Stay the Regional Director's Decision and Direction of Election, dated October 5, 2012.

/s/ Michael Passarella
Michael J. Passarella
Jackson Lewis LLP
One North Broadway
White Plains, NY 10601

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was delivered by email on this 21st day of September 2012 to the following:

Justin D. Cummins, Esq.
Miller O'Brien Cummins PLLP
One Financial Plaza, Suite 240
120 South Sixth Street
Minneapolis, MN 55402
Attorney for the Petitioner

Marlin O. Osthus
Acting Regional Director
NLRB
Region 18
330 South Second Avenue, Suite 790
Minneapolis, MN 55401-2221
Region 18

Abby E. Schneider, Esq.
Field Attorney
NLRB
Region 18
330 South Second Avenue, Suite 790
Minneapolis, MN 55401-2221
Region 18

/s/ Michael Passarella
Michael J. Passarella

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CHAMPLIN SHORES ASSISTED LIVING
Employer

and

Case 18-RC-087228

SEIU HEALTHCARE MINNESOTA
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

MARK GASTON PEARCE, CHAIRMAN

RICHARD F. GRIFFIN, JR., MEMBER

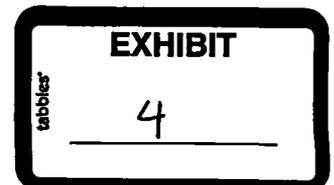
Member Hayes, dissenting:

Consistent with my dissenting position in Specialty Healthcare and Rehabilitation Center of Mobile, 357 NLRB No. 83 (2011), I would grant review.

BRIAN E. HAYES, MEMBER

Dated, Washington, D.C., October 3, 2012

¹ In denying review, we note that no party requested review of the Regional Director's finding that the Wellness Coordinator is a supervisor within the meaning of Sec. 2(11) of the Act.



UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHAMPLIN SHORES ASSISTED LIVING	Employer
and	
SEIU HEALTHCARE MINNESOTA	Petitioner

Case No. 18-RC-087228 Date Filed August 14, 2012

Date Issued OCTOBER 5, 2012

Type of Election
(Check One:)

- Stipulation
- Board Direction
- Consent Agreement
- RD Direction

Incumbent Union (Code)

(If applicable check either or both:)

- 8 (b)(7)
- Mail Ballot

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

- 1. Approximate number of eligible voters 50
- 2. Number of Void ballots 0
- 3. Number of Votes cast for PETITIONER 40
- 4. ~~Number of Votes cast for~~
- 5. ~~Number of Votes cast for~~
- 6. Number of Votes cast against participating labor organization(s) 5
- 7. Number of Valid votes counted (sum of 3, 4, 5, and 6) 45
- 8. Number of Challenged ballots 0
- 9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 45
- 10. Challenges are (not) sufficient in number to affect the results of the election.
- 11. A majority of the valid votes counted plus challenged ballots (Item 9) has (has not) been cast for PETITIONER

For the Regional Director
Region Eighteen

Roger O. Seie

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this Tally.

For CHAMPLIN SHORES ASSISTED LIVING
M J [Signature]

For SEIU HEALTHCARE MINNESOTA
[Signature]

For

For

EXHIBIT	
tabbles	5

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 18

CHAMPLIN SHORES ASSISTED LIVING Employer and SEIU HEALTHCARE MINNESOTA Petitioner	Case 18-RC-087228
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TYPE OF ELECTION: STIPULATED

CERTIFICATION OF REPRESENTATIVE

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has been selected. No timely objections have been filed.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots have been cast for

SEIU HEALTHCARE MINNESOTA

and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit.

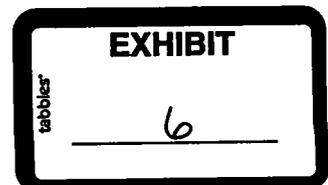
Unit: All full-time, regular part-time, and casual/on call resident assistants and medication technicians employed by the Employer at its Champlin, Minnesota facility*; excluding all other employees, office clerical employees, managerial employees, and guards and supervisors as defined in the Act. *The parties stipulated at the hearing that regular part-time and casual/on call employees are limited by the standard established in Davison-Paxon Co., 185 NLRB 2 (1970).



October 12, 2012

/s/ Marlin O. Osthus

MARLIN O. OSTHUS
Regional Director, Region 18
National Labor Relations Board



NOTICE OF BARGAINING OBLIGATION

In the recent representation election, a labor organization received a majority of the valid votes cast. Except in unusual circumstances, unless the results of the election are subsequently set aside in a post-election proceeding, the employer's legal obligation to refrain from unilaterally changing bargaining unit employees' terms and conditions of employment begins on the date of the election.

The employer is not precluded from changing bargaining unit employees' terms and conditions during the pendency of post-election proceedings, **as long as** the employer (a) gives sufficient notice to the labor organization concerning the proposed change(s); (b) negotiates in good faith with the labor organization, upon request; and (c) good faith bargaining between the employer and the labor organization leads to agreement or overall lawful impasse.

This is so even if the employer, or some other party, files objections to the election pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board (the Board). If the objections are later overruled and the labor organization is certified as the employees' collective-bargaining representative, the employer's obligation to refrain from making unilateral changes to bargaining unit employees' terms and conditions of employment begins on the date of the election, not on the date of the subsequent decision by the Board or court. Specifically, the Board has held that, absent exceptional circumstances,¹ an employer acts at its peril in making changes in wages, hours, or other terms and conditions of employment during the period while objections are pending and the final determination about certification of the labor organization has not yet been made.

It is important that all parties be aware of the potential liabilities if the employer unilaterally alters bargaining unit employees' terms and conditions of employment during the pendency of post-election proceedings. Thus, typically, if an employer makes post-election changes in employees' wages, hours, or other terms and conditions of employment without notice to or consultation with the labor organization that is ultimately certified as the employees' collective-bargaining representative, it violates Section 8(a)(1) and (5) of the National Labor Relations Act since such changes have the effect of undermining the labor organization's status as the statutory representative of the employees. This is so even if the changes were motivated by sound business considerations and not for the purpose of undermining the labor organization. As a remedy, the employer could be required to: 1) restore the status quo ante; 2) bargain, upon request, with the labor organization with respect to these changes; and 3) compensate employees, with interest, for monetary losses resulting from the unilateral implementation of these changes, until the employer bargains in good faith with the labor organization, upon request, or bargains to overall lawful impasse.

¹ Exceptions may include the presence of a longstanding past practice, discrete event, or exigent economic circumstance requiring an immediate response.



October 18, 2012

Rena Witschen, Executive Director
Champlin Shores Assisted Living
119 E. Hayden Lake Road
Champlin, MN 55316

Jamie Gulley
President

Dear Rena,

Jigme Ugen
Executive Vice President

It has come to the Union's attention that the employer has implemented the following unilateral changes with respect to the terms and conditions of employment in the bargaining unit without affording the Union an opportunity to bargain over the decision and the effects of such change.

Tee McCleary
Executive Vice President

1. The employer put narcotics in the Medication Technician's narc box that they are not responsible for distributing and have always been kept in the nurses narc box.
2. The employer is refusing to let bargaining unit employees continue to wear hats on casual days.
3. The employer promoted one individual (Jacquelyn Hansen, Resident Assistant) and refused to bargain over the person who should be promoted, and the union's position is that someone else (Shyla Aamodt, resident Assistant) is entitled to the additional pay.

David Blanchard
Executive Vice President

The employer has made post-election changes in employees' wages, hours, and terms and conditions of employment without notice to and bargaining over the decision and effects with SEIU Healthcare Minnesota, who is certified as the employees' collective-bargaining representative. The employer is currently violating Section 8(a)(1) and (5) of the National Labor Relations Act. The employer needs to cease and desist immediately, restore the status quo, compensate Shyla Aamodt (regarding above-referenced #3) and bargain in good faith with the Union with respect to these changes. No changes should occur until such bargaining has concluded.

Please contact me within seven (7) calendar days to schedule dates to bargain over the decision and the effects with respect to these changes and/or notify me that the employer has ceased and desisted, restored the status quo, and compensated Shyla Aamodt. If you fail to respond and have not restored the status quo and compensated Shyla Aamodt I will file Unfair Labor Practice charges for violating the National Labor Relations Act.

You can contact me by email lisa.weed@seiuhealthcaremn.org or by phone 612-747-0073.

Sincerely,

Lisa Weed
Long Term Care Director

345 Randolph Avenue
Suite 100
St. Paul, MN
55102

CC: Damon Krumrey
MAC

651.294.8100
800.828.0206

:klh@seiu#12

(Minnesota & Wisconsin only)
(fax) 651.294.8200
www.seiuhealthcaremn.org





November 8, 2012

Rena Witschen, Executive Director or
Current Executive Director
Champlin Shores Assisted Living
119 E. Hayden Lake Road
Champlin, MN 55316

Jamie Gulley
President

Jigme Ugen
Executive Vice President

Tee McClenty
Executive Vice President

David Blanchard
Executive Vice President

Re: Bargaining Dates

Dear Executive Director,

The Union bargaining committee will initially include: Jackie Rollings, Damon Krumrey, Donald Gwako and Japheth Omwoyo. We propose to bargain from 8:30 a.m. to 4:00 p.m. on the following dates: December 5, December 6, December 10, December 12, December 27, and to bargain on Tuesdays, including the following dates: January 8, January 15, January 22, January 29, February 5, and if needed February 12th. In order for such time to be productive the Union requests that the members of its bargaining committee be released from any work assignments during the time of negotiations. The Union further proposes that the employer release its committee for a bargaining preparation day on November 29, in order that the union can spend the day in caucus preparing a list of language proposals for the employer to consider. Please let us know at your earliest convenience if these dates and our proposal to release the bargaining team is acceptable to the employer.

Sincerely,

SEIU Healthcare Minnesota

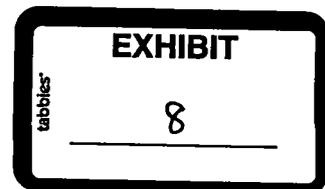
Lisa Weed
Director of Long Term Care

345 Randolph Avenue
Suite 100
St. Paul, MN
55102

cc: Bargaining Team

651.294.8100
800.828.0206

(Minnesota & Wisconsin only)
(fax) 651.294.8200
www.seiuhealthcaremn.org



jackson | lewis
Attorneys at Law

Representing Management Exclusively in Workplace Law and Related Litigation

Jackson Lewis LLP One North Broadway White Plains, New York 10601 Tel 914 328-0404 Fax 914 328-1882 www.jacksonlewis.com	ALBANY, NY ALBUQUERQUE, NM ATLANTA, GA AUSTIN, TX BALTIMORE, MD BIRMINGHAM, AL BOSTON, MA CHICAGO, IL CINCINNATI, OH CLEVELAND, OH DALLAS, TX DENVER, CO	DETROIT, MI GREENVILLE, SC HARTFORD, CT HOUSTON, TX INDIANAPOLIS, IN JACKSONVILLE, FL LAS VEGAS, NV LONG ISLAND, NY LOS ANGELES, CA MEMPHIS, TN MIAMI, FL MILWAUKEE, WI	MINNEAPOLIS, MN MORRISTOWN, NJ NEW ORLEANS, LA NEW YORK, NY NORFOLK, VA OMAHA, NE ORANGE COUNTY, CA ORLANDO, FL PHILADELPHIA, PA PHOENIX, AZ PITTSBURGH, PA PORTLAND, OR	PORTSMOUTH, NH PROVIDENCE, RI RALEIGH-DURHAM, NC RICHMOND, VA SACRAMENTO, CA SAINT LOUIS, MO SAN DIEGO, CA SAN FRANCISCO, CA SEATTLE, WA STAMFORD, CT WASHINGTON, DC REGION WHITE PLAINS, NY
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November 26, 2012

VIA FACSIMILE

Ms. Lisa Weed
SEIU Healthcare Minnesota
345 Randolph Avenue
Suite 100
St. Paul, MN 55102

RE: Champlin Shores Assisted Living

Dear Ms. Weed:

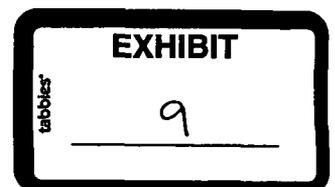
I am attorney with Jackson Lewis. We represent Champlin Shores Assisted Living. The employer is not going to release the employees named in your letter. They, of course, are always welcome to request time off for any reason through the community's normal procedures and, subject to those procedures and the operational needs of the community, their requests may be granted. Further, the employer will not engage in collective bargaining with your union until a court of competent jurisdiction orders it to do so. The employer believes that the standard under which the NLRB found a bargaining unit of resident assistants and medication technicians appropriate was improper and, therefore, the certification is invalid.

Very truly yours,

JACKSON LEWIS LLP

Michael J. Passarella
Michael J. Passarella

MJP/bb



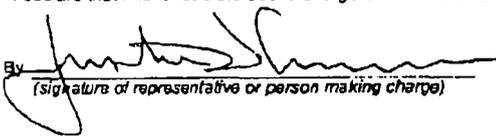
INTERNET
FORM NLRB-601
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 18-CA-093776	Date Filed November 27, 2012

INSTRUCTIONS:

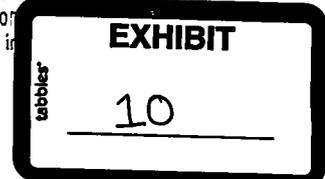
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Emeritus Assisted Living, d/b/a Champlin Shores Assisted Living	b. Tel. No. 914-328-0404
	c. Cell No.
	f. Fax No. 914-328-1882
d. Address (Street, city, state, and ZIP code) 119 East Hayden Road Champlin, MN 55316	e. Employer Representative Michael Passarella, Esq. Jackson Lewis LLP One North Broadway White Plains, NY 10601
	g. e-Mail
	h. Number of workers employed
i. Type of Establishment (factory, mine, wholesaler, etc.) Nursing Home	j. Identify principal product or service Assisted Living
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 8(a)(5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) On or about October 15, 2012, the Union was certified as the exclusive representative of certain employees of the Employer. On or about the same day, the Union submitted a bargaining and information request to the Employer. On or about November 8, 2012, the Union submitted a second bargaining and information request to the Employer, proposed dates for bargaining, and a request that the bargaining team be released from work on or about November 29, 2012. On or about November 15, 2012 the Union submitted a third bargaining and information request. At all relevant times, the Employer has refused to bargain with the Union and refused to provide requested information. On or about November 26, 2012, the Employer, through its attorney, notified the Union in writing that it will not bargain with the Union "until a court of competent jurisdiction orders it to do so."	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) SEIU Healthcare Minnesota	
4a. Address (Street and number, city, state, and ZIP code) 345 Randolph Avenue, Suite 100 Saint Paul, MN 55102	4b. Tel. No. 651-294-8100
	4c. Cell No.
	4d. Fax No. 651-294-8200
	4e. e-Mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) Service Employees International Union	
6. DECLARATION	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  Justin D. Cummins (Signature of representative or person making charge) (Print type name and title or office, if any)	Tel. No. 612-465-0108
	Office, if any, Cell No.
	Fax No. 612-465-0109
	e-Mail justin@cummins-law.com
Address 920 Second Ave South Suite 1245 Minneapolis, MN 55402	11/27/12 (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are published in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

**EMERITUS ASSISTED LIVING, D/B/A
CHAMPLIN SHORES ASSISTED LIVING**

Charged Party

and

SEIU HEALTHCARE MINNESOTA

Charging Party

Case 18-CA-093766

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on November 27, 2012, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

MICHAEL J. PASSARELLA, ATTORNEY
JACKSON LEWIS LLP
ONE NORTH BROADWAY
WHITE PLAINS, NY 10601

EMERITUS ASSISTED LIVING, D/B/A
CHAMPLIN SHORES ASSISTED LIVING
119 EAST HAYDEN ROAD
CHAMPLIN, MN 55316

November 27, 2012

Date

/s/Deborah Amburn, Designated Agent of
NLRB

Name

Signature

EXHIBIT

11

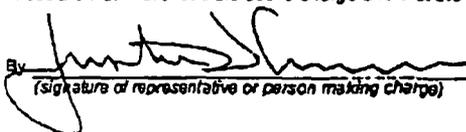
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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 18-CA-93766	Date Filed November 27, 2012

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Emeritus Assisted Living, d/b/a Champlin Shores Assisted Living	b. Tel. No. 914-328-0404
	c. Cell No.
	f. Fax No. 914-328-1882
d. Address (Street, city, state, and ZIP code) 119 East Hayden Road Champlin, MN 55316	e. Employer Representative Michael Passarella, Esq. Jackson Lewis LLP One North Broadway White Plains, NY 10601
	g. e-Mail
	h. Number of workers employed
i. Type of Establishment (factory, mine, wholesaler, etc.) Nursing Home	j. Identify principal product or service Assisted Living
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) <u>8(a)(5)</u> of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) On or about October 15, 2012, the Union was certified as the exclusive representative of certain employees of the Employer. On or about the same day, the Union submitted a bargaining and information request to the Employer. On or about November 8, 2012, the Union submitted a second bargaining and information request to the Employer, proposed dates for bargaining, and a request that the bargaining team be released from work on or about November 29, 2012. On or about November 15, 2012 the Union submitted a third bargaining and information request. At all relevant times, the Employer has refused to bargain with the Union and refused to provide requested information. On or about November 26, 2012, the Employer, through its attorney, notified the Union in writing that it will not bargain with the Union "until a court of competent jurisdiction orders it to do so."	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) SEIU Healthcare Minnesota	
4a. Address (Street and number, city, state, and ZIP code) 345 Randolph Avenue, Suite 100 Saint Paul, MN 55102	4b. Tel. No. 651-294-8100
	4c. Cell No.
	4d. Fax No. 651-294-8200
	4e. e-Mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) Service Employees International Union	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  (Signature of representative or person making charge)	Justin D. Cummins (Print/type name and title or office, if any)
920 Second Ave South Suite 1245 Minneapolis, MN 55402 Address	11/27/12 (date)
	Tel. No. 612-465-0108
	Office, if any, Cell No.
	Fax No. 812-465-0108
	e-Mail justin@cummins-law.com

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EXHIBIT
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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 18
330 2ND AVE S
STE 790
MINNEAPOLIS, MN 55401-2221

Agency Website: www.nlrb.gov
Telephone: (612)348-1757
Fax: (612)348-1785

Agent's Direct Dial: (612)348-1787

December 4, 2012

EMERITUS ASSISTED LIVING, D/B/A
CHAMPLIN SHORES ASSISTED LIVING
119 EAST HAYDEN ROAD
CHAMPLIN, MN 55316

MICHAEL J. PASSARELLA, ATTORNEY
JACKSON LEWIS LLP
ONE NORTH BROADWAY
WHITE PLAINS, NY 10601-2310

LISA L. WEED, DIRECTOR LONG TERM CARE
SERVICE EMPLOYEES INTERNATIONAL UNION
(SEIU) HEALTHCARE MINNESOTA
345 RANDOLPH AVE., STE 100
SAINT PAUL, MN 55102-3610

JUSTIN D. CUMMINS, ATTORNEY
CUMMINS & CUMMINS, LLP
1245 INTERNATIONAL CENTRE
920 SECOND AVENUE SOUTH
MINNEAPOLIS, MN 55402

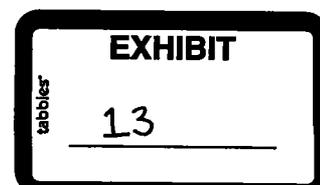
Re: EMERITUS ASSISTED LIVING, d/b/a
CHAMPLIN SHORES ASSISTED
LIVING
Case 18-CA-093766

Ladies and Gentlemen:

The above-captioned charge was received and docketed on November 27, 2012. The copy of the charge sent to you had a typographical error in the case number. Please disregard the previous charge sent to you and replace it with the enclosed charge containing the corrected case number.

Very truly yours,

/s/ Marlin O. Osthus
MARLIN O. OSTHUS
Regional Director



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 18

CHAMPLIN SHORES ASSISTED LIVING

and

SEIU HEALTHCARE MINNESOTA

Case 18-CA-093766

COMPLAINT

This Complaint, which is based on a charge filed by SEIU Healthcare Minnesota (the Union), is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, and alleges that Emeritus Assisted Living d/b/a Champlin Shores Assisted Living, herein described by its correct name, Champlin Shores Assisted Living and hereinafter called Respondent, has violated the Act as described below:

1. The charge in this proceeding was filed by the Union on November 27, 2012, and a copy was served by regular mail on Respondent on about the same date.

2.(a) At all material times, Respondent, a Washington corporation with an office and place of business located in Champlin, Minnesota, has been engaged in the operation of an assisted living facility providing personal care and other services to its residents.

EXHIBIT

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(b) In conducting its operations described above in subparagraph (a) during the calendar year ending December 31, 2011, Respondent derived gross revenues in excess of \$250,000.

(c) In conducting its operations described above in subparagraph (a) during the calendar year ending December 31, 2011, Respondent purchased and received goods and services at its Champlin, Minnesota facility valued in excess of \$5,000 directly from suppliers located outside the State of Minnesota.

(d) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. On September 7, 2012, a Decision and Direction of Election issued in Case 18-RC-087228 directing an election among all full-time, regular part-time, and casual/on call resident assistants and medication technicians employed by Respondent at its Champlin, Minnesota facility.

5. On September 21, 2012, Respondent filed with the Board a Request for Review of the Decision and Direction of Election referred to above in paragraph 4.

6. On October 3, 2012, the Board issued an Order denying Respondent's Request for Review of the Decision and Direction of Election as the request raised no substantial issues warranting review.

7. Pursuant to the Decision and Direction of Election referred to above in paragraph 4, an election was held on October 5, 2012, and the employees voted in favor of the Union.

8. On October 12, 2012, pursuant to the authority vested in me by the Board, I issued a Certification of Representative certifying the Union as the exclusive collective-bargaining representative of the employees in the following unit (the Unit):

All full-time, regular part-time, and casual/on call resident assistants and medication technicians employed by the Employer at its Champlin, Minnesota facility*; excluding all other employees, office clerical employees, managerial employees, and guards and supervisors as defined in the Act. *The parties stipulated at the hearing that regular part-time and casual/on call employees are limited by the standard established in Davison-Paxon Co. 185 NLRB 2 (1970).

9. The Unit described above in paragraph 8 constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

10. At all times since October 12, 2012, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

11. At all times since October 12, 2012, including by letters dated October 18 and November 8, 2012, the Union requested that Respondent recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

12. By letter dated November 26, 2012, and at all times thereafter, Respondent has refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit on the ground that the certification described above in paragraph 8 is invalid.

13. By the conduct described above in paragraph 12, Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in the Unit, in violation of Section 8(a)(1) and (5) of the Act.

14. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before December 20, 2012, or postmarked on or before December 19, 2012.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature

continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

Dated: December 6, 2012.

/s/ Marlin O. Osthus

Marlin O. Osthus, Regional Director
Region 18
National Labor Relations Board
330 South Second Avenue, Suite 790
Minneapolis, Minnesota 55401

Attachments

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 18**

CHAMPLIN SHORES ASSISTED LIVING

and

SEIU HEALTHCARE MINNESOTA

Case 18-CA-093766

AFFIDAVIT OF SERVICE OF: Complaint (with forms NLRB-4338 and NLRB-4668 attached)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **December 6, 2012**, I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

MICHAEL J. PASSARELLA, ATTORNEY **REGULAR MAIL**
JACKSON LEWIS LLP
ONE NORTH BROADWAY
WHITE PLAINS, NY 10601-2310

CHAMPLIN SHORES ASSISTED LIVING **CERTIFIED MAIL, RETURN RECEIPT
119 EAST HAYDEN ROAD REQUESTED**
CHAMPLIN, MN 55316

LISA L. WEED, DIR., LONG TERM CARE **CERTIFIED MAIL**
SEIU HEALTHCARE MINNESOTA
345 RANDOLPH AVE., STE 100
SAINT PAUL, MN 55102-3610

JUSTIN D. CUMMINS, ATTORNEY **REGULAR MAIL**
CUMMINS & CUMMINS, LLP
1245 INTERNATIONAL CENTRE
920 SECOND AVENUE SOUTH
MINNEAPOLIS, MN 55402

December 6, 2012

Date

Olga Bestilny, Designated Agent of NLRB

Name

/s/ Olga Bestilny

Signature

EXHIBIT

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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 18-CA-093766

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

CHAMPLIN SHORES ASSISTED LIVING
119 EAST HAYDEN ROAD
CHAMPLIN, MN 55316

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JACKSON LEWIS LLP
ONE NORTH BROADWAY
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JUSTIN D. CUMMINS, ATTORNEY
CUMMINS & CUMMINS, LLP
1245 INTERNATIONAL CENTRE
920 SECOND AVENUE SOUTH
MINNEAPOLIS, MN 55402

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8 1/2 by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board: No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 18**

CHAMPLIN SHORES ASSISTED LIVING

and

CASE 18-CA-093766

SEIU HEALTHCARE MINNESOTA

ANSWER TO COMPLAINT

Champlin Shores Assisted Living (hereafter "Respondent"), through its attorneys, Jackson Lewis LLP, answers the allegations in the Complaint, stating as follows:

I

Respondent denies sufficient knowledge of the facts to allow it to admit, deny or explain the allegations of paragraph 1.

II

- (a) Respondent admits the allegations of paragraph 2(a).
- (b) Respondent admits the allegations of paragraph 2(b).
- (c) Respondent admits the allegations of paragraph 2(c).
- (d) Respondent admits the allegations of paragraph 2(d) and further asserts and admits that it is an Employer within the meaning of Section 2(14) of the Act.

III

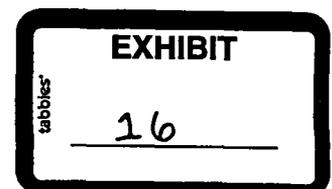
Respondent admits the allegations of paragraph 3.

IV

Respondent admits the allegations of paragraph 4.

V

Respondent admits the allegations of paragraph 5.



VI

Respondent denies the allegations of paragraph 6, except admits that the Board- with one dissent- denied Respondent's Request for Review.

VII

Respondent denies the allegation of paragraph 7, except admits that a majority of employees in the unit subject to the direction in this paragraph voted in favor of the Union.

VIII

Respondent admits the allegations of paragraph 8, except avers that the certification of the Union as the collective bargaining was improper because the bargaining unit is inappropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

IX

Respondent denies the allegation of paragraph 9.

X

Respondent denies the allegations of paragraph 10.

XI

Respondent admits the allegation of paragraph 11.

XII

Respondent denies the allegations of paragraph 12, except avers that the unit subject to the direction in paragraph 7 is invalid and further admits that it has not recognized or bargained with the union and affirmatively states that the Respondent is testing the Regional Director's certification of this bargaining unit.

XIII

Respondent denies the allegation of paragraph 13.

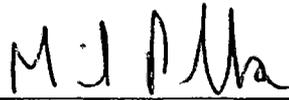
XIII

Respondent denies the allegation of paragraph 14.

WHEREFORE, the Complaint should be dismissed or, in the alternative, the Certification should be invalidated because the standard used to determine the appropriateness of the bargaining unit was improper.

Dated: December 20, 2012

CHAMPLIN SHORES ASSISTED LIVING

By: 

One of Its Attorneys

Michael J. Passarella
Jackson Lewis LLP
1 North Broadway
White Plains, NY 10601
Telephone: 914.328.0404
Facsimile: 914.514.6181

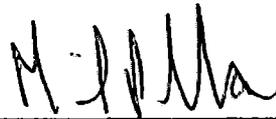
CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2012 I caused a copy of the foregoing
ANSWER TO COMPLAINT to be served by electronic mail upon:

Justin D. Cummins, Esq.
Cummins & Cummins, LLP
1245 International Centre
920 Second Avenue South
Minneapolis, MN 55402

And by Federal Express upon:

Lisa L. Weed
Director of Long Term Care
SEIU Healthcare Minnesota
345 Randolph Avenue, Suite 100
Saint Paul, MN 55102-3610



Michael J. Passarella

CERTIFICATE OF SERVICE

I hereby certify that on December 26, 2012, copies of the Acting General Counsel's Motion for Summary Judgment, Acting General Counsel's Brief in Support of Motion for Summary Judgment, and Acting General Counsel's Exhibits 1 through 16 were served on the following by electronic mail:

MICHAEL J. PASSARELLA, ATTORNEY
JACKSON LEWIS LLP
ONE NORTH BROADWAY
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LISA L. WEED, DIR., LONG TERM CARE
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JUSTIN D. CUMMINS, ATTORNEY
CUMMINS & CUMMINS, LLP
1245 INTERNATIONAL CENTRE
920 SECOND AVENUE SOUTH
MINNEAPOLIS, MN 55402
JUSTIN@CUMMINS-LAW.COM

I further certify that on December 26, 2012, a copy of the Acting General Counsel's Motion for Summary Judgment, Acting General Counsel's Brief in Support of Motion for Summary Judgment, and Acting General Counsel's Exhibits 1 through 16 were served on the following by overnight delivery:

CHAMPLIN SHORES ASSISTED LIVING
119 EAST HAYDEN ROAD
CHAMPLIN, MN 55316



Abby E. Schneider
Counsel for the Acting General Counsel
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