

Congress of the United States  
Washington, DC 20515

March 8, 2011

The Honorable Wilma B. Liebman  
Chairman  
National Labor Relations Board  
1099 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20570

Dear Chairman Liebman,

On December 22, 2010, you published a notice and invitation to file briefs with Members Becker and Pearce on *Specialty Healthcare and Rehabilitation Center of Mobile and United Steelworkers, District 9, Case 15-RC-8773*.<sup>1</sup> In *Specialty*, the United Steelworkers petitioned for an election of certified nursing assistants (CNA) at a nursing home.<sup>2</sup> The employer objected, arguing the appropriate unit should include all non-professional maintenance and service employees, not just the CNAs.<sup>3</sup> While the case involved nursing homes directly, the National Labor Relations Board (NLRB or Board) requested comments generally on the appropriate standard for determining bargaining units, including empirical descriptions of interested parties' experiences under existing law.<sup>4</sup> As the composition of potential bargaining units is one of the most important decisions leading up to an election, any change to the existing standard must be fully vetted and understood before it is adopted.

To ensure interested parties can provide the NLRB with thorough and informative comments in this case, as you requested, we ask the NLRB, as the steward of the most complete empirical data on bargaining units, to provide the following to the public on the NLRB website in a downloadable usable format.

1. A list of all Certification of Representative (RC) cases filed from 2000 to 2011, identifying the following in each case:
  - a. The employer;
  - b. Whether a hearing occurred;

---

<sup>1</sup> Notice and Invitation to File Briefs: Specialty Healthcare and Rehabilitation Center of Mobile and United Steelworkers, District 9, Case 15-RC-8773 (December 22, 2010) (Hayes, B., dissenting), available at <http://www.nlr.gov/sites/default/files/documents/236/356-56.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

- c. Whether the case reached the Board; and
  - d. How the case was resolved.
2. A list of all RC cases in which a hearing was held from 2000 to 2011 that involved unit determination issues such as those in the 1989 health care industry bargaining unit determination final rule, 284 NLRB 1580 (1989).
  3. A list of all RC cases in which a hearing was held from 2000 to 2011 that involved unit determinations such as those at issue in *Park Manor Care Center*, 305 NLRB 872 (1991).
  4. A list of all RC cases in which a hearing was held from 2000 to 2011 that involved unit determination issues addressing whether a petitioned-for bargaining unit had a sufficient "community of interest."
  5. A list of all RC cases from 2000 to 2011 in which the petition was dismissed on the grounds that the proposed unit was too narrow.
  6. All hearing records from all RC cases in which a hearing was held from 2000 to 2011 that involved unit determination issues such as those in the 1989 health care industry bargaining unit determination final rule, 284 NLRB 1580 (1989).
  7. All hearing records from all RC cases in which a hearing was held from 2000 to 2011 that involved unit determinations such as those at issue in *Park Manor Care Center*, 305 NLRB 872 (1991).
  8. All hearing records from all RC cases in which a hearing was held from 2000 to 2011 that involved unit determination as to whether a petitioned-for bargaining unit had a sufficient "community of interest."
  9. All documents from all RC cases from 2000 to 2011 in which the petition was dismissed on the grounds that the proposed unit was too narrow.

To give interested parties the time necessary to analyze this data and produce informative findings, we ask the NLRB to extend the comment period on the *Specialty* notice and invitation to file briefs by sixty days from the date the data requested above is made available on the NLRB website.

Finally, please provide us with the following no later than March 21, 2011.

1. All documents and communications referring or relating to *Specialty Healthcare and Rehabilitation Center of Mobile and United Steelworkers, District 9*, Case 15-RC-8733.

The Honorable Wilma B. Liebman

March 7, 2011

Page 3

2. All documents and communications referring or relating to the *Specialty Healthcare and Rehabilitation Center of Mobile and United Steelworkers, District 9, Case 15-RC-8733* notice and invitation to file briefs.
3. All documents and communications referring or relating to estimates of the financial effects of any change to the determination of an appropriate bargaining unit under the National Labor Relations Act.

Thank you for your cooperation in this matter. If you have any questions regarding this request, please contact Marvin Kaplan, House Committee on Education and the Workforce, at (202) 225-7101 or Daniel Epstein, House Committee on Oversight and Government Reform, at (202) 225-5074.

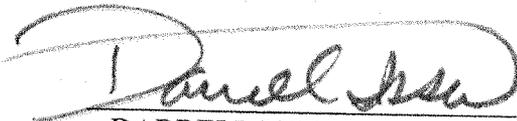
Sincerely,



JOHN KLINE

Chairman

House Committee on Education and  
the Workforce



DARRELL ISSA

Chairman

House Committee on Oversight and  
Government Reform

Enclosures

cc: The Honorable George Miller, Senior Democratic Member, House Education and the Workforce Committee

cc: The Honorable Elijah Cummings, Ranking Member, House Oversight and Government Reform Committee

### Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i. e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.
8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Four sets of documents should be delivered, one set to each of the Majority Staff and one set to each of the Minority Staff. When documents are produced to the Committees, production sets shall be delivered to 2181, 2157, 2101, and 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

#### Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals,

pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of March, 2011, *Amicus Curiae* U.S. House Education and the Workforce Committee Chairman John Kline and U.S. House Oversight Committee Chairman Darrell Issa Request for Extension of Time to File Briefs was filed with the National Labor Relations Board and true and correct copies of the request were served via first class mail by the United States Postal Service (with courtesy copies by fax) upon:

Edward J. Goddard  
Kindred Healthcare, Inc.  
680 South Fourth Street  
Louisville, KY 40202

Clifford H. Nelson Jr.  
Constangy, Brooks & Smith LLC  
230 Peachtree Street, NW  
Suite 2400  
Atlanta, GA 30303

Leigh E. Tyson  
Constangy, Brooks & Smith LLC  
230 Peachtree Street, NW  
Suite 2400  
Atlanta, GA 30303

Charles P. Roberts  
Constangy Brooks & Smith LLP  
100 North Cherry Street  
Suite 30  
Winston-Salem, NC 27101

Daniel M. Kovalik  
Assistant General Counsel  
United Steelworkers  
Five Gateway Center  
Pittsburgh, PA 15222

M. Kathleen McKinney  
Regional Director  
600 South Maestri Place  
7<sup>th</sup> Floor  
New Orleans, LA 70130-3408



---

Marvin Kaplan  
Professional Staff Member  
Committee on Education and the Workforce  
2181 Rayburn House Office Building  
Washington, D.C. 20515