

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 6

UPMC AND ITS SUBSIDIARY, UPMC
PRESBYTERIAN SHADYSIDE, SINGLE EMPLOYER,
d/b/a UPMC PRESBYTERIAN HOSPITAL AND d/b/a
UPMC SHADYSIDE HOSPITAL

- Cases 06-CA-102465
- 06-CA-102494
- 06-CA-102516
- 06-CA-102518
- 06-CA-102525
- 06-CA-102534
- 06-CA-102540
- 06-CA-102542
- 06-CA-102544
- 06-CA-102555
- 06-CA-102559
- 06-CA-102566
- 06-CA-104090
- 06-CA-104104
- 06-CA-106636
- 06-CA-107127
- 06-CA-107431
- 06-CA-107532
- 06-CA-107896
- 06-CA-108547
- 06-CA-111578
- 06-CA-115826

and

SEIU HEALTHCARE PENNSYLVANIA, CTW, CLC

**COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION
TO RESPONDENT PRESBYTERIAN SHADYSIDE'S PETITION TO
REVOKE SUBPOENA No. B-720565**

Counsel for the General Counsel hereby files this Opposition to Presbyterian Shadyside's Petition to Revoke Subpoena No. B-720565,¹ which Respondent Presbyterian Shadyside ("Presbyterian Shadyside") filed in these matters on January 23, 2014, and in support of such opposition, states as follows:

¹ A copy of Subpoena Duces Tecum No. B-720565, issued on January 14, 2014, is attached hereto as "Exhibit A."

1. The Amended Consolidated Complaint² in this matter alleges that UPMC Presbyterian Shadyside (herein called "Presbyterian Shadyside") is a single integrated business enterprise with Respondent UPMC (herein "UPMC"), and that Presbyterian Shadyside and UPMC (herein collectively called "Respondent") constitute a "single employer" within the meaning of the Act. The Amended Consolidated Complaint further alleges, and the evidence to be adduced at the hearing will show, that Presbyterian Shadyside, UPMC and Respondent violated Section 8(a)(1) of the Act by, *inter alia*, interrogating its employees about their union activities and sympathies; threatening and impliedly threatening employees with various unfavorable consequences, including arrest, if they continued to support SEIU Healthcare Pennsylvania ("the Union") in its ongoing union organizing campaign among Respondent's employees; engaging in surveillance of its employees' union activities and creating impressions of such surveillance; intimidating its employees with respect to their union activities; selectively enforcing its solicitation policies against employees who supported the Union; and by disparaging employees who engaged in protected concerted activities. The Amended Consolidated Complaint additionally alleges that Presbyterian Shadyside, UPMC and Respondent violated Section 8(a)(2) of the Act by participating in, and giving assistance to, the ESS Employee Council, a labor organization within the meaning of the Act which was established by Respondent. The Amended Consolidated Complaint further alleges that Presbyterian Shadyside, UPMC and Respondent violated Section 8(a)(1) and (3) of the Act by taking disciplinary actions against six employees and discharging four employees, all because they engaged in protected concerted activities on behalf of the Union. Finally, the Amended Consolidated Complaint alleges that Presbyterian Shadyside, UPMC and Respondent violated Section 8(a)(1) and (4) of the Act by issuing a final written warning to one employee and

² A copy of the Second Order Further Consolidating Cases and Amended Consolidated Complaint, dated January 9, 2014 (without attachments), is attached as "Exhibit B."

discharging another employee in retaliation for their prior participation in the Board's processes.

Presbyterian Shadyside, by its Answer to Second Order Further Consolidating Cases and Amended Consolidated Complaint,³ dated January 24, 2014, explicitly denied each and every substantive allegation of unlawful conduct, as well as the allegations relating to Presbyterian Shadyside's status as a single employer with UPMC. While the Answer was not filed prior to the issuance of Subpoena No. B-720565, Presbyterian Shadyside took the position during the investigation of these cases that it is not a single employer with UPMC, and it was in anticipation of an Answer confirming that position that Counsel for the General Counsel issued Subpoena No. B-720565 on January 14, 2014.⁴

3. The information requested by Subpoena No. B-720565 directly relates to Presbyterian Shadyside's status as a single employer with UPMC, as alleged in the Amended Consolidated Complaint. On January 23, 2014, Presbyterian Shadyside filed its Petition to Revoke Subpoena No. B-720563. By Order dated January 24, 2014, Presbyterian Shadyside's Petition was referred to the Chief Administrative Law Judge for disposition.

4. Presbyterian Shadyside's Petition includes several "General Objections" to Subpoena No. B-720565. Specifically, Presbyterian Shadyside seeks revocation of the subpoena based on the grounds that the subpoena requests documents that are "confidential, proprietary and privileged information" and "non-specific and vague." Further, Presbyterian Shadyside claims that it is unable to comply with the subpoena request by the date returnable, February 3, 2014, because of the "volume of materials" requested by the subpoena, and that the subpoena is "unduly burdensome and oppressive". In connection with this claim,

³ A copy of Presbyterian Shadyside's Answer to Second Order Further Consolidating Cases and Amended Consolidated Complaint is attached as "Exhibit C."

⁴ Presbyterian Shadyside was advised at the time this subpoena was issued that if, in Respondent's Answer to the Amended Consolidated Complaint, it admitted its single employer status with UPMC, Counsel for the General Counsel would withdraw Subpoena No. B-720565. Consistent with the position it took during the investigation of these cases, however, Presbyterian Shadyside denied its single employer status in its Answer to the Amended Consolidated Complaint.

Presbyterian Shadyside contends that producing the documents requested by Subpoena No. B-720565 would "take hundreds of hours and will result in significant cost to Presbyterian Shadyside". Presbyterian Shadyside also objects to the subpoena on the grounds that it constitutes "a means of harassing Presbyterian Shadyside and coercing Presbyterian Shadyside to enter into a stipulation". Also included in Presbyterian Shadyside's General Objections to the subpoena are a claimed "right to amend and/or supplement responses"⁵ and a statement announcing that any compliance with the subpoena should not be construed as a waiver of "any part of any objection to any document request."

In addition to these "General Objections" to the subpoena, Presbyterian Shadyside's Petition includes specific objections to each and every paragraph of the subpoena, which will be addressed below. Each of the specific objections incorporates the General Objections.

5. As a threshold matter, it is well established that Agency-issued subpoenas may properly require the production of evidence that relates to any relevant matter in question. More particularly, "Section 11 of the Act clearly provides that the Board shall have access to employer records 'at all reasonable' times, whether the records belong to anyone merely 'being investigated' or to one already 'proceeded against.'" NLRB v. G.H.R. Energy Corp., 707 F.2d 110, 114 (5th Cir. 1982); NLRB v. Alaska Pulp Corp., 149 LRRM 2684, 2689 (D.C. Cir. 1995); Smitty's Supermarkets, Inc., 310 NLRB 1377 (1993).

6. It is equally well settled that the burden of demonstrating that an Agency subpoena is unreasonable remains with the respondent. Where the Agency inquiry is authorized by law and the material sought is relevant to that inquiry, as in this case, the respondent's burden is not easily met. F.T.C. v. Rockefeller, 591 F.2d 182, 190 (2nd Cir. 1979); S.E.C. v. Brigadoon Scotch Distributing Company, 480 F.2d 1047, 1056 (2nd Cir. 1973), cert.

⁵ Counsel for the General Counsel does not concede that Presbyterian Shadyside has a continued "right" to file additional objections to this subpoena. Rather, the time for filing a Petition to Revoke Subpoena is clearly set forth by the Board's Rules and Regulations at Section 102.66(c). That time has expired.

denied 415 U.S. 915 (1974). The mere assertion of a hardship, without evidence that the compelled production of the requested documents would disrupt or threaten business operations, is not sufficient to support a petition to revoke a subpoena based on these grounds. NLRB v. Brown Transport Corp., 620 F. Supp. 648, 654 (N.D. Ill., 1985). Presbyterian Shadyside's Petition must be dismissed because Presbyterian Shadyside has failed to meet its burden of showing that the subpoena is unreasonable, having provided neither case authority nor any factual bases for its boilerplate objections.

7. It is well-established that in determining whether related entities constitute a single employer, the Board looks to four principal factors: 1) common ownership or financial control; 2) common management; 3) functional interrelation of operations; and 4) centralized control of labor relations. See Radio and Television Broadcast Technicians, Local Union 1264 v. Broadcast Service of Mobile, Inc., 380 U.S. 255, 256 (1965) and cases cited therein; Sakrete of Northern California, Inc. v. NLRB, 332 F.2d 902, 905-908 (9th Cir. 1964), enforcing 137 NLRB 1220 (1962). Further, the Board has long held that while no one factor is controlling, centralized control of labor relations is particularly significant in determining single employer status. Parklane Hosiery Co., Inc., 203 NLRB 597 (1973). See H.A. Green Decorating Co., 299 NLRB 157 (1990).

It is submitted that each request in the subpoena served on Presbyterian Shadyside was carefully tailored to obtain documents to prove those elements considered by the Board and the courts in assessing single employer status. See e.g. Beverly Health and Rehabilitation Services, Inc., 335 NLRB 635, 672-684 (2001); Beverly Enterprises, Inc., 341 NLRB 296 (2004). In broad terms, the subpoena seeks documents related to the ownership of Presbyterian Shadyside (see e.g., paragraphs 1, 2, 11 and 12 of the subpoena); to its organizational structure (paragraphs 7, 13, 14, 17, 46); to the interchange of personnel between Presbyterian Shadyside and UPMC (paragraphs 23, 25, 26 and 28); to their transfer and exchange of goods and

services (paragraphs 3, 18-21, 24 and 27); to their integration of operations (paragraphs 20, 23, 26, 28 and 41); and to their centralized control of labor relations (paragraphs 26 and 47).⁶

8. With respect to Presbyterian Shadyside's "General Objections," Presbyterian Shadyside has also failed to identify which documents it deems to be "confidential, proprietary and privileged," rendering it impossible to assess the validity of Presbyterian Shadyside's claim. Ironically, its contention that the subpoena's requests are "non-specific and vague" is itself utterly without specificity, making it meaningless as a basis for revoking the subpoena. Presbyterian Shadyside's General Objection that "the *subpoena duces tecum* cannot be complied with by February 3, 2014," must also be rejected, as Presbyterian Shadyside has not offered any estimate of the number of documents that would be responsive to the request, much less an explanation as to why, within Presbyterian Shadyside's massive operations, collection and production of the documents is unachievable. A plain reading of the subpoena reveals that the requested documents are described with particularity, limited to a narrow period of time and designed to reveal evidence that is closely related to the disputed issue of Respondent's status as a single employer.

9. More particularly, with respect to Presbyterian Shadyside's assertion that Counsel for the General Counsel issued Subpoena No. B-720565 as a means of harassing Presbyterian Shadyside, Counsel for the General Counsel asserts that the subpoena is narrowly tailored to request documents related solely to the allegations in the Amended Consolidated Complaint that Presbyterian Shadyside and UPMC constitute a single employer under the Act. The allegation is appropriately included in the Amended Consolidated Complaint, and, as the subpoena was designed to reveal evidence that is closely related to the disputed issues, the petition to revoke should be dismissed.

⁶ The paragraphs stated here are meant to be by way of example, and are not intended to be a comprehensive list of the paragraphs of the subpoena which relate to each of the single employer factors.

While it is true that the initial Consolidated Complaint in this case did not include allegations concerning the single employer issue, Presbyterian Shadyside was well aware, from the time the initial charges were filed in these cases in April 2013, that the relationship between Presbyterian Shadyside and UPMC was an issue being considered by the Region. In addition, despite Presbyterian Shadyside's representation in its Petition to Revoke Subpoena No. B-720565 that the Region issued the Amended Consolidated Complaint, which included the single employer allegations, "with no explanation whatsoever", Counsel for Presbyterian Shadyside was advised telephonically, as early as December 13, 2013, of the Region's intent to amend the outstanding Consolidated Complaint to include an allegation that Presbyterian Shadyside and UPMC constituted a single employer.⁷

The allegations related to single employer status are based upon evidence adduced during the investigation of these cases and are appropriately included in the Amended Consolidated Complaint. Moreover, the General Counsel, in its prosecutorial role, may determine what party or parties should be included in a complaint. Under the Board's rules, this subject may be addressed in a *subpoena duces tecum* in connection with a hearing before an administrative law judge. This subpoena was not issued with the intent to harass Presbyterian Shadyside, but merely to elicit information relevant to this proceeding, as allowed by law and the Board's rules.

10. Notwithstanding the overall meritlessness of Presbyterian Shadyside's general objections, portions of Presbyterian Shadyside's Petition demand additional response. First, Presbyterian Shadyside objects to paragraphs 1, 2, 6, 7 and 8 as being "overly broad and so non-specific and vague" that Presbyterian Shadyside cannot respond or object to these requests. To the contrary, Counsel for the General Counsel carefully drafted the subpoena with

⁷ It should also be noted that Presbyterian Shadyside's assertion in its third General Objection that the Region "determined that there was no basis to proceed against UPMC" is not accurate. No formal determination was made on that issue at that time.

deliberate particularity, limiting the requested information to a reasonable and defined period of time (a two-year period) and clearly articulating the types of documents sought. As is the case with Presbyterian Shadyside's other vague assertions in its Petition, it has failed to identify the manner in which it contends that the subpoena's requests are insufficiently described with particularity. Having neglected to substantiate its position in this regard with factual representations or legal authority, Presbyterian Shadyside's objections that the subpoena's requests are overly broad must be rejected in their entirety.

11. Second, Presbyterian Shadyside objects to paragraphs 11 through 15⁸, 17 through 21, 36 and 37 as being "overly broad, unduly burdensome, abusive and harassing", suggesting that the requests "might" require it to produce thousands of documents. At the outset, it is noted that the face of the subpoena states that responses to paragraphs 13 through 15 may be accomplished by production of "compilations and/or analyses made from original documents". Presbyterian Shadyside has not suggested that this alternative would present any problem with respect to the production of documents sought by paragraphs 13 through 15.

With respect to the remaining paragraphs which are subject to this objection, as noted above, each of these paragraphs seeks information concerning the business relationship between Presbyterian Shadyside and UPMC, which is clearly relevant to the allegations contained in the Amended Consolidated Complaint. Presbyterian Shadyside's objection to the breadth of the subpoena, without more specific reasoning, is not sufficient to justify revocation of the subpoena.

Finally, in connection with this specific objection in its Petition to Revoke, Presbyterian Shadyside repeats one of its General Objections - that it is unable to comply with the subpoena by the hearing date of February 3, 2014. As noted above, in this specific objection, Presbyterian Shadyside has again failed to meet its burden of showing that the subpoena is

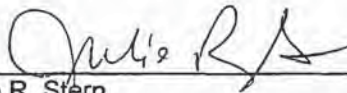
⁸ Presbyterian Shadyside correctly points out that the number 16 was not used in Subpoena No. B-720565.

unreasonable, having provided neither case authority nor any factual bases for its boilerplate objections.

12. In its third specific objection, Presbyterian Shadyside argues that paragraphs 3, 4, 5; 9, 10, 33, 34, 35 and 38-47 of the subpoena should be revoked because they are "overly broad, vague and ambiguous". As noted above, Presbyterian Shadyside's objection is itself vague and ambiguous, and therefore insufficient to support a revocation of these paragraphs of the subpoena. In addition, Presbyterian Shadyside argues that the requests in these paragraphs do not seek information related to the Amended Consolidated Complaint. Counsel for the General Counsel points out that each of these paragraphs seeks information concerning the business relationship between Presbyterian Shadyside and UPMC, which is clearly relevant to the allegations contained in the Amended Consolidated Complaint.

WHEREFORE, for all the reasons stated above, it is submitted that Presbyterian Shadyside's Petition should be denied in its entirety.

Dated at Pittsburgh, Pennsylvania, this 28th day of January 2014.



Julie R. Stern
Counsel for the General Counsel

Suzanne S. Donsky
Counsel for the General Counsel

NATIONAL LABOR RELATIONS BOARD
Region Six
1000 Liberty Avenue, Room 904
Pittsburgh, Pennsylvania 15222

FORM NLRB-31
(12-12)

SUBPOENA DUCES TECUM

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

To Custodian of Records
UPMC Presbyterian Shadyside
600 Grant Street, 58th Floor, Pittsburgh, PA 15219-2739

As requested by Suzanne S. Donsky, Attorney and Julie R. Stern, Attorney for the National Labor Relations Board
whose address is William S. Moorhead Federal Building, 1000 Liberty Avenue, Room 904, Pittsburgh, Pennsylvania 15222
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE _____
an Administrative Law Judge _____ of the National Labor Relations Board
at William S. Moorhead Federal Building, RM 904, 1000 Liberty Ave.,
in the City of Pittsburgh, PA 15222

on the 3rd day of February 20 14 at 11:00 (a.m.) (p.m.) or any adjourned
or rescheduled date to testify in UPMC and its subsidiary UPMC Presbyterian Shadyside Single Employer d/b/a
UPMC Presbyterian Hospital and d/b/a UPMC Shadyside Hospital Case 06-CA-102465, et al
(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

See attachment

In accordance with the Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings), objections to the subpoena must be made by a petition to revoke and must be filed as set forth therein. Petitions to revoke must be received within five days of your having received the subpoena. 29 C.F.R. Section 102.111(b) (3). Failure to follow these regulations may result in the loss of any ability to raise such objections in court.

B - 720565

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Pittsburgh, Pennsylvania,

this 14th day of January 20 14



Paul A. Pierce
Chairman, National Labor Relations Board

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

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 representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth 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 to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

RETURN OF SERVICE

I certify that, being a person over 18 years of age, I duly served a copy of this subpoena

- by person
- by certified mail 7012 3050 0001 4161
- by registered mail
- by telegraph
- by leaving copy at principal office or place of business

(Check method used.)

on the named person on _____

11 1-14-14

(Month, day, and year)

[Signature]

(Name of person making service)

(Official title, if any)

CERTIFICATION OF ATTENDANCE

I certify that named person was in attendance as a witness at _____

on _____
(Month, day or days, and year)

(Name of person certifying)

(Official title)

ATTACHMENT

UPMC, et al.
Cases 06-CA-102465, et al.

DEFINITIONS AND INSTRUCTIONS

1. The word "document" or "documents" means, without limitation, the following items, whether printed or recorded or reproduced by any other mechanical process, or written or produced by hand, or any existing printed, typewritten, handwritten or otherwise recorded material of whatever kind and/or character, including, but not limited to: agreements, communications, correspondence, telegrams, letters, memoranda, facsimile transmissions, minutes, notes of any character, diaries, calendars, statements, affidavits, photographs, microfilm or microfiche, audio and/or video tapes, statistics, pamphlets, newsletters, press releases, bulletins, transcripts, summaries or records of telephone conversations or telephonic text messages, summaries or records or personal conversations or interviews, conferences, transcripts or summaries or reports of investigations and/or negotiations, drafts, internal or inter-office memoranda or correspondence, lists, data contained in computers, computer printouts, computer discs and/or files and all data contained therein, electronically stored records and electronic or "e" mail, any marginal or "post-it" or "sticky pad" comments appearing on or with documents, and all other writings, figures or symbols of any kind, including but not limited to carbon, photographic or other duplicative copies of any such material in the possession of, control of or available to the subpoenaed party, or any agent, representative, or other persons acting in cooperation with, in concert with, or on behalf of said subpoenaed party.
2. The words "employee" and "employees" mean all full-time and regular part-time employees employed by UPMC Presbyterian Shadyside.
3. The "Union" refers to SEIU Healthcare Pennsylvania, CTW, CLC, its agents, officers, and/or representatives.
4. Whenever used herein, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense, and vice versa; references to parties shall be deemed to refer to any and all of their owners, officers, directors, owners, managers, supervisors, agents, and representatives; "and" and "or" and any other conjunctions shall be deemed both conjunctively and disjunctively so as to make the request inclusive rather than exclusive and to require the enumeration of all information responsive to all or any part of each request in which any conjunction or disjunction appears; and, "any," "each," "every," and "all" shall be deemed to be all inclusive and to require production of each and every document responsive to the request in which such terms appear.
5. This subpoena is intended to cover all documents that are in your possession, custody or control, as well as documents that are in the possession, custody or control of your present or former agents, attorneys, accountants, advisors, investigators, and any other persons or companies directly or indirectly employed by, or connected with you.

6. As to any documents not produced in compliance with this subpoena on any ground or if any requested document was, through inadvertence or otherwise, destroyed or no longer in the possession of you, state:

- (a) the author;
- (b) the recipient;
- (c) the name of each person to whom the original or a copy was sent;
- (d) the date of the document;
- (e) the subject matter of the document; and
- (f) the circumstances under which the document was destroyed, withheld or is no longer in your possession.

7. This request is continuing in character and if additional responsive documents come to your attention following the date of production, such documents must be promptly produced.

8. This request contemplates production of responsive documents in their entirety, without abbreviation, redaction, or expurgation.

9. All documents produced pursuant to this subpoena are to be organized by what subpoena paragraph each document or set of documents are responsive to, and labels referring to that subpoena paragraph are to be affixed to each document or set of documents.

10. Unless otherwise stated, each item requested covers the period from January 1, 2012, to the date of service herein (the subject period).

11. This subpoena specifically requests the described documents, whether held or maintained at any facility operated by UPMC Presbyterian Shadyside, at one or another of UPMC Presbyterian Shadyside's offices, or at some other location.

DOCUMENTS SUBJECT TO SUBPOENA NO. B-720565

1. Copies of the original Articles and/or Certificate of Incorporation and/or partnership agreement of UPMC Presbyterian Shadyside.
2. Copies of any amendments to the original Articles and/or Certificate and/or partnership agreement of UPMC Presbyterian Shadyside effective during the subject period.
3. Copies of all leases, sales agreements, loans, extensions of credit, and other documents between UPMC Presbyterian Shadyside and any shareholders or partners thereof and UPMC and any shareholders or partners thereof.
4. *Copies of documents showing the names and addresses of non-patient customers of UPMC Presbyterian Shadyside during the subject period.
5. *Copies of documents showing the names and addresses of suppliers of UPMC Presbyterian Shadyside during the subject period.
6. Copies of documents showing the gift, lease, sale or other transfer of real or personal property, equipment or machinery between UPMC Presbyterian Shadyside and any shareholders or partners thereof and UPMC and any shareholders or partners thereof, and showing the terms of such gift, lease, sale or other transfer.
7. Copies of any and all minutes of meetings of the board of directors of UPMC Presbyterian Shadyside or other documents showing the actions of UPMC Presbyterian Shadyside relating to the relationship between UPMC Presbyterian Shadyside and any shareholder or partner thereof and UPMC and any shareholder or partner thereof.
8. Documents as will show the relationship between UPMC Presbyterian Shadyside and UPMC including the ownership interest of UPMC Presbyterian Shadyside or any of its shareholders or partners in UPMC for the subject period.
9. Copies of Annual Reports of UPMC Presbyterian Shadyside for 2011, 2012 and 2013.
10. Copies of audited Financial Statements of UPMC Presbyterian Shadyside for 2011, 2012 and 2013.
11. Copies of any documents showing the capital investment of each of the shareholders or partners of UPMC Presbyterian Shadyside in UPMC and UPMC Presbyterian Shadyside.
12. Copies of any documents showing the ownership interest of each of the shareholders or partners of UPMC Presbyterian Shadyside in UPMC and UPMC Presbyterian Shadyside.
13. *Documents of UPMC Presbyterian Shadyside, including corporate minutes, which disclose the names of all directors of UPMC Presbyterian Shadyside and the dates during which each such person was a director for the subject period.
14. *Documents of UPMC Presbyterian Shadyside, including corporate minutes, which disclose the following information for the subject period; the names of all officers of UPMC

Presbyterian Shadyside, the office(s) each such individual held, and the dates on which each such individual held such office(s).

15. *Documents of UPMC Presbyterian Shadyside which disclose the following information for the subject period; the names of all stockholders of UPMC Presbyterian Shadyside, the number and classes of shares held by each stockholder, and the dates and amounts of stock acquired or disposed of by each stockholder of UPMC Presbyterian Shadyside.

17. Documents that will show the organizational structure and chain of command or authority of UPMC Presbyterian Shadyside, including the name, title and position of all individuals within that organizational structure.

18. Documents of UPMC Presbyterian Shadyside which disclose the dates and amounts of all rent paid by UPMC Presbyterian Shadyside to UPMC for the subject period.

19. Documents of UPMC Presbyterian Shadyside which disclose the dates and amounts of all rent received by UPMC Presbyterian Shadyside from UPMC for the subject period.

20. All written agreements between UPMC Presbyterian Shadyside and UPMC pertaining to the lease, rental or provision of equipment by UPMC to UPMC Presbyterian Shadyside for the subject period.

21. Documents of UPMC Presbyterian Shadyside, including canceled checks, which disclose the dates and amounts of all payments by UPMC Presbyterian Shadyside to UPMC for use of equipment owned by UPMC for the subject period.

22. Documents of UPMC Presbyterian Shadyside which disclose the dates and amounts of all payments by UPMC to UPMC Presbyterian Shadyside for use of equipment owned by UPMC Presbyterian Shadyside for the subject period.

23. All written agreements in effect or entered into at any time during the subject period between UPMC Presbyterian Shadyside and UPMC pertaining to the use by UPMC Presbyterian Shadyside of individuals employed or contracted by UPMC and/or to the furnishing of services by UPMC to UPMC Presbyterian Shadyside.

24. Documents of UPMC Presbyterian Shadyside, including canceled checks, which disclose the dates and amounts of all payments by UPMC Presbyterian Shadyside to UPMC for services during the subject period, and the nature of the service provided by UPMC.

25. Documents of UPMC Presbyterian Shadyside for the subject period which show the number of hours spent by individuals employed or contracted by UPMC Presbyterian Shadyside in providing services to UPMC.

26. All written agreements in effect or entered into at any time during the subject period between UPMC Presbyterian Shadyside and UPMC pertaining to the use by UPMC of individuals employed or contracted by UPMC Presbyterian Shadyside and/or to the furnishing of services by UPMC Presbyterian Shadyside to UPMC.

27. Documents of UPMC Presbyterian Shadyside, which disclose the dates and amounts of all payments by UPMC to UPMC Presbyterian Shadyside for any services for the subject period.
28. Documents of UPMC Presbyterian Shadyside for the subject period which show the number of hours spent by individuals employed by UPMC Presbyterian Shadyside in providing services to UPMC, and which describe the nature of those services.
29. Documents of UPMC Presbyterian Shadyside which disclose the identity of the medical and health insurance plan for employees of UPMC Presbyterian Shadyside in effect at any time during the subject period, and which disclose the identity of the employee group covered by the plan.
30. Documents of UPMC Presbyterian Shadyside which disclose the identity of the pension plan for employees of UPMC Presbyterian Shadyside in effect at any time during the subject period and which disclose the identity of the employee group covered by the plan.
31. Federal and state tax returns filed by UPMC Presbyterian Shadyside for the calendar years 2011 and 2012, or, if appropriate, fiscal years 2011 and 2012.
32. Documents reflecting the telephone numbers assigned to UPMC Presbyterian Shadyside operations.
33. Copies of any and all letterheads used for business correspondence by UPMC Presbyterian Shadyside.
34. Copies of any and all advertisements used by UPMC Presbyterian Shadyside for the purpose of soliciting business for the subject period.
35. Documents reflecting any advertisements used by UPMC Presbyterian Shadyside for the purpose of soliciting applicants for employment by UPMC Presbyterian Shadyside for the period subject period.
36. Documents reflecting any applications filed by UPMC Presbyterian Shadyside for public funding of any of its operations.
37. Documents reflecting any pension or other benefit plans offered to employees of UPMC Presbyterian Shadyside.
38. Documents showing the identity of all entities having an ownership interest in the real and physical property at which UPMC Presbyterian Shadyside has its operations in Pittsburgh, Pennsylvania.
39. Copy of the Ethics, Compliance and Audit Services policies followed by UPMC Presbyterian Shadyside.
40. Documents issued by UPMC Presbyterian Shadyside's Office of Ethics, Compliance and Audit Services during the subject period.
41. Copy of the Utilization Review processes followed by UPMC Presbyterian Shadyside.

42. Documents which show all quotes or bids for contracts for goods and/or services submitted by UPMC Presbyterian Shadyside or any of its officers, directors or agents to UPMC at any time during the subject period.
43. Documents reflecting all loans issued by UPMC Presbyterian Shadyside to UPMC during the subject period.
44. Documents reflecting all lines of credit extended by UPMC Presbyterian Shadyside to UPMC during the subject period.
45. Documents reflecting the entity which owns the property used by UPMC Presbyterian Shadyside in conducting its business during the subject period.
46. Copy of any affiliation agreement between UPMC Presbyterian Shadyside and UPMC in effect at any time during the subject period.
47. Copy of any agreement between UPMC Presbyterian Shadyside and any UPMC-owned or affiliated entity including, but not limited to, Ebenefts Solutions, for the provision of human resources and/or personnel management services, in effect at any time during the subject period.

*In lieu of original documents required above, compliance with this Subpoena may be accomplished by the submission in affidavit form of compilations and/or analyses made from the original documents, setting forth the information required, provided that pertinent records be made available for checking the accuracy of the statement in the event such action is deemed necessary.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 6

UPMC AND ITS SUBSIDIARY, UPMC
PRESBYTERIAN SHADYSIDE, SINGLE EMPLOYER,
d/b/a UPMC PRESBYTERIAN HOSPITAL AND d/b/a
UPMC SHADYSIDE HOSPITAL

and

SEIU HEALTHCARE PENNSYLVANIA, CTW, CLC

Cases 06-CA-102465
06-CA-102494
06-CA-102516
06-CA-102518
06-CA-102525
06-CA-102534
06-CA-102540
06-CA-102542
06-CA-102544
06-CA-102555
06-CA-102559
06-CA-102566
06-CA-104090
06-CA-104104
06-CA-106636
06-CA-107127
06-CA-107431
06-CA-107532
06-CA-107896
06-CA-108547
06-CA-111578
06-CA-115826

SECOND ORDER FURTHER CONSOLIDATING CASES
AND AMENDED CONSOLIDATED COMPLAINT

Pursuant to Section 102.17 of the Rules and Regulations of the National Labor Relations Board (the Board), the Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, issued on September 30, 2013, and the Order Further Consolidating Cases and Amendment to Consolidated Complaint, issued on November 5, 2013, against UPMC Presbyterian Shadyside, d/b/a UPMC Presbyterian Hospital and d/b/a UPMC Shadyside Hospital, are further amended as follows:

EXHIBIT

B

This Amended Consolidated Complaint is based on charges filed by SEIU Healthcare Pennsylvania, CTW, CLC (the Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act), and Section 102.15 of the Board's Rules and Regulations and alleges that UPMC (Respondent UPMC) and its subsidiary, UPMC Presbyterian Shadyside (Respondent Presbyterian Shadyside), Single Employer, d/b/a UPMC Presbyterian Hospital (Respondent Presbyterian or Presbyterian) and d/b/a UPMC Shadyside Hospital (Respondent Shadyside or Shadyside), and collectively called Respondent, has violated the Act as described herein.

Further, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board), and to avoid unnecessary costs or delay, **IT IS ORDERED THAT** Cases 06-CA-111578 and 06-CA-115826, which are based on charges filed by the Union against Respondent, and Cases 06-CA-102465, 06-CA-102494, 06-CA-102516, 06-CA-102518, 06-CA-102525, 06-CA-102534, 06-CA-102540, 06-CA-102542, 06-CA-102544, 06-CA-102555, 06-CA-102559, 06-CA-102566, 06-CA-104090, 06-CA-104104, 06-CA-106636, 06-CA-107127, 06-CA-107431, 06-CA-107532, 06-CA-107896 and 06-CA-108547, which are based on charges filed by the Union against Respondent, are further consolidated.

1. The charges in the above cases were filed by the Union, and copies were served by regular mail upon Respondent, on the dates indicated as set forth in the following table:

<i>Case No.</i>	<i>Amendment</i>	<i>Date Filed</i>	<i>Date Served</i>	<i>Entity Served</i>
06-CA-102465		April 10, 2013	April 11, 2013	Respondent
06-CA-102465	First Amended	September 27, 2013	September 30, 2013	Respondent Presbyterian Shadyside
06-CA-102465	First Amended	September 27, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent

06-CA-102465	Second Amended	December 18, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-102494		April 10, 2013	April 11, 2013	Respondent
06-CA-102494	First Amended	June 17, 2013	June 18, 2013	Respondent
06-CA-102494	Second Amended	September 27, 2013	September 30, 2013	Respondent Presbyterian Shadyside
06-CA-102494	Second Amended	September 27, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-102494	Third Amended	December 18, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-102516		April 10, 2013	April 11, 2013	Respondent
06-CA-102516	First Amended	May 23, 2013	May 29, 2013	Respondent
06-CA-102516	Second Amended	September 13, 2013	September 13, 2013	Respondent
06-CA-102516	Third Amended	September 27, 2013	September 30, 2013	Respondent Presbyterian Shadyside
06-CA-102516	Third Amended	September 27, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-102516	Fourth Amended	December 18, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-102518		April 10, 2013	April 11, 2013	Respondent

06-CA-102518	First Amended	May 23, 2013	May 29, 2013	Respondent
06-CA-102518	Second Amended	September 27, 2013	September 30, 2013	Respondent Presbyterian Shadyside
06-CA-102518	Second Amended	September 27, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-102518	Third Amended	December 18, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-102525		April 10, 2013	April 11, 2013	Respondent
06-CA-102525	First Amended	September 27, 2013	September 30, 2013	Respondent Presbyterian Shadyside
06-CA-102525	First Amended	September 27, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-102525	Second Amended	December 18, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-102534		April 10, 2013	April 11, 2013	Respondent
06-CA-102534	First Amended	September 27, 2013	September 30, 2013	Respondent Presbyterian Shadyside
06-CA-102534	First Amended	September 27, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent

06-CA-102534	Second Amended	December 18, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-102540		April 10, 2013	April 11, 2013	Respondent
06-CA-102540	First Amended	September 27, 2013	September 30, 2013	Respondent Presbyterian Shadyside
06-CA-102540	First Amended	September 27, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-102540	Second Amended	December 18, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-102542		April 10, 2013	April 11, 2013	Respondent
06-CA-102542	First Amended	September 27, 2013	September 30, 2013	Respondent Presbyterian Shadyside
06-CA-102542	First Amended	September 27, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-102542	Second Amended	December 18, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-102544		April 10, 2013	April 11, 2013	Respondent
06-CA-102544	First Amended	May 23, 2013	May 29, 2013	Respondent
06-CA-102544	Second Amended	September 27, 2013	September 30, 2013	Respondent Presbyterian Shadyside

06-CA-102544	Second Amended	September 27, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-102544	Third Amended	December 18, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-102555		April 10, 2013	April 11, 2013	Respondent
06-CA-102555	First Amended	September 27, 2013	September 30, 2013	Respondent Presbyterian Shadyside
06-CA-102555	First Amended	September 27, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-102555	Second Amended	December 18, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-102559		April 10, 2013	April 11, 2013	Respondent
06-CA-102559	First Amended	September 27, 2013	September 30, 2013	Respondent Presbyterian Shadyside
06-CA-102559	First Amended	September 27, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-102559	Second Amended	December 18, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-102566		April 10, 2013	April 11, 2013	Respondent
06-CA-102566	First Amended	May 23, 2013	May 29, 2013	Respondent

06-CA-102566	Second Amended	September 27, 2013	September 30, 2013	Respondent Presbyterian Shadyside
06-CA-102566	Second Amended	September 27, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-102566	Third Amended	December 18, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-104090		May 1, 2013	May 2, 2013	Respondent
06-CA-104090	First Amended	September 27, 2013	September 30, 2013	Respondent Presbyterian Shadyside
06-CA-104090	First Amended	September 27, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-104090	Second Amended	December 18, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-104104		May 1, 2013	May 1, 2013	Respondent
06-CA-104104	First Amended	September 27, 2013	September 30, 2013	Respondent Presbyterian Shadyside
06-CA-104104	First Amended	September 27, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-104104	Second Amended	December 18, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-106636		June 6, 2013	June 6, 2013	Respondent

06-CA-106636	First Amended	September 27, 2013	September 30, 2013	Respondent Presbyterian Shadyside
06-CA-106636	First Amended	September 27, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-106636	Second Amended	December 18, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-107127		June 13, 2013	June 13, 2013	Respondent
06-CA-107127	First Amended	September 27, 2013	September 30, 2013	Respondent Presbyterian Shadyside
06-CA-107127	First Amended	September 27, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-107127	Second Amended	December 18, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-107431		June 18, 2013	June 18, 2013	Respondent
06-CA-107431	First Amended	September 27, 2013	September 30, 2013	Respondent Presbyterian Shadyside
06-CA-107431	First Amended	September 27, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-107431	Second Amended	December 18, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-107532		June 18, 2013	June 19, 2013	Respondent

06-CA-107532	First Amended	September 27, 2013	September 30, 2013	Respondent Presbyterian Shadyside
06-CA-107532	First Amended	September 27, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-107532	Second Amended	December 18, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-107896		June 24, 2013	June 25, 2013	Respondent
06-CA-107896	First Amended	September 10, 2013	September 11, 2013	Respondent
06-CA-107896	Second Amended	November 4, 2013	November 5, 2013	Respondent Presbyterian Shadyside
06-CA-107896	Second Amended	November 4, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-107896	Third Amended	December 18, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-108547		July 3, 2013	July 5, 2013	Respondent
06-CA-108547	First Amended	September 4, 2013	September 6, 2013	Respondent
06-CA-108547	Second Amended	September 27, 2013	September 30, 2013	Respondent Presbyterian Shadyside
06-CA-108547	Second Amended	September 27, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent

06-CA-108547	Third Amended	December 18, 2013	January 9, 2014, concurrently with Amended Consolidated Complaint	Respondent
06-CA-111578		August 20, 2013	August 20, 2013	Respondent
06-CA-111578	First Amended	December 30, 2013	December 30, 2013	
06-CA-111578	Second Amended	January 7, 2013	January 7, 2014	Respondent
06-CA-115826		October 28, 2013	October 28, 2013	Respondent
06-CA-115826	First Amended	December 20, 2013	December 24, 2013	Respondent

2. (a) At all material times, Respondent UPMC, a Pennsylvania non-profit corporation with offices and places of business in Pittsburgh, Pennsylvania, herein called Respondent UPMC's facilities, has been engaged in, inter alia, the governance and supervision of Respondent UPMC's subsidiaries, including Respondent Presbyterian Shadyside, which operates acute care hospitals providing inpatient and outpatient medical care.

(b) At all material times, Respondent Presbyterian Shadyside, a Pennsylvania non-profit corporation with offices and places of business in Pittsburgh, Pennsylvania, herein called Presbyterian and/or Shadyside, has been engaged in the operation of acute care hospitals providing inpatient and outpatient medical care.

3. (a) At all material times, Respondent UPMC and Respondent Presbyterian Shadyside have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have had interrelated operations with common system-wide technology resources under a long-term contract with a software vendor which is in effect until 2019; have applied for and are jointly and severally obligated for

payments on, Revenue Bonds Series 2011A issued by the Allegheny County Hospital Development Authority; and have held themselves out to the public as a single-integrated business enterprise.

(b) Based on its operations described above in paragraph 3(a), Respondent UPMC and Respondent Presbyterian Shadyside constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

4. (a) During the 12-month period ending March 31, 2013, Respondent UPMC, in conducting its operations described above in paragraph 2(a), derived gross revenues in excess of \$250,000.

(b) During the 12-month period ending March 31, 2013, Respondent UPMC, in conducting its operations described above in paragraph 2(a), purchased and received at its Pittsburgh, Pennsylvania, facilities goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

(c) During the 12-month period ending March 31, 2013, Respondent Presbyterian Shadyside, in conducting its operations described above in paragraph 2(b), derived gross revenues in excess of \$250,000.

(d) During the 12-month period ending March 31, 2013, Respondent Presbyterian Shadyside, in conducting its operations described above in paragraph 2(b), purchased and received at its Pittsburgh, Pennsylvania, facilities goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

5. (a) At all material times, Respondent UPMC and Respondent Presbyterian Shadyside have each been engaged in commerce within the meaning of Section 2(2), 2(6) and 2(7) of the Act, and have each been a health care institution within the meaning of Section 2(14) of the Act.

(b) At all material times, Respondent has been engaged in commerce within the meaning of Section 2(2), 2(6) and 2(7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

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

(b) At all material times, the ESS Employee Council at Presbyterian Hospital has been a labor organization within the meaning of Section 2(5) of the Act.

7. (a) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act):

- Gina Barry - Unit Director, Cardiothoracic Unit - Respondent Presbyterian
- Ryan R. Beaver - Senior Manager, Supply Chain Department - Respondent Presbyterian Shadyside
- John Burns - Supervisor - Respondent Presbyterian Shadyside
- Amy Bush - Executive Director of Surgical Services - Respondent Presbyterian
- Donald Charley - Executive Director of Parking and Security - Respondent Presbyterian Shadyside
- Carlton Clark - Process Analyst - Respondent Presbyterian Shadyside
- William Dilla - Operations Manager, Department of Environmental Services - Respondent Presbyterian Shadyside
- Amy DiPasquale - Director of Environmental Services - Respondent Shadyside
- Dan Gasparovic - Director of Housekeeping - Respondent Presbyterian
- Darnell Grinage - Supervisor of Transport - Respondent Presbyterian
- Lisa Fennick - Unit Director - Respondent Presbyterian
- Linda Haas - Clinical Director - Respondent Presbyterian

Jane Hackett	-	Chief Anesthesia Technologist - Respondent Presbyterian
Ted Hill	-	Supervisor of Fleet Transportation - Respondent Presbyterian Shadyside
Jason Hogan	-	Supervisor, Environmental Services - Respondent Shadyside
Keith Lewis	-	Supervisor of Fleet Transportation - Respondent Presbyterian Shadyside
Samuel A. Kane	-	Retail Manager, 11th Floor Cafeteria - Respondent Presbyterian
Kristine Keefer Wolff	-	Clinical Administrator - Respondent Presbyterian Shadyside
Ed Kellar	-	Supervisor, Transportation Department - Respondent Presbyterian
Robert Knezovich	-	Senior Manager, Materials Management - Respondent Presbyterian
Holly Lorenz	-	Chief Nursing Officer - Respondent Presbyterian Shadyside
Gerald T. Moran	-	Security Operations Manager - Respondent Presbyterian Shadyside
Tim Nedley	-	Senior Director, Supply Chain Management - Respondent Presbyterian Shadyside
Paul Ondo	-	Supervisor, Materials Management - Respondent Presbyterian Shadyside
Carolyn Perry	-	Environmental Services Supervisor - Respondent Shadyside
Mara L. Schubert	-	Unit Director - Respondent Presbyterian
Jim Szilargy	-	Chief Executive Officer, Supply Chain Department - Respondent Presbyterian Shadyside
Sally Sterritt	-	Supervisor, Environmental Services Department - Respondent Shadyside
Kimberly N. Stewart	-	Clinician, GI Lab and Medical Procedures Unit - Respondent Presbyterian
Denise Touray	-	Director of Patient Transport and Linen Services - Respondent Presbyterian

Albert Wright	-	Vice President of Operations - Respondent Presbyterian Shadyside
Bart E. Wyss	-	Assistant Director of Transportation, Supply Chain Department - Respondent Presbyterian Shadyside
Betsy Yetiskul	-	Unit Director, GI Lab and Medical Procedures Unit - Respondent Presbyterian
Jill Zonker	-	Executive Director - Pulmonary, Neuro and GI Services - Respondent Presbyterian Shadyside
Cheryl Cinefra	-	Supervisor, Environmental Services Department - Respondent Presbyterian
Rhonda Lee	-	Supervisor, Environmental Services Department - Respondent Presbyterian
Mike Cellender	-	Supervisor, Environmental Services Department - Respondent Presbyterian
John Krolicki	-	Vice President of Facilities and Support Services Respondent

(b) At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

Emily Bowman	-	Senior Human Resources Consultant - Respondent Presbyterian Shadyside
Shannon Corcoran	-	Manager, Human Resources Department - Respondent Presbyterian Shadyside
Marina Goodman	-	Senior Human Resources Consultant - Respondent Presbyterian Shadyside
Kathy Grills	-	Human Resources Manager - Respondent Presbyterian Shadyside
Christopher Kovaly	-	Accounting Associate for Parking and Security - Respondent Presbyterian Shadyside
Jaclyn Loveridge	-	Senior Human Resources - Respondent Presbyterian Shadyside

8. About November 19, 2012, Respondent, by Bart E. Wyss, at Presbyterian, by telling employees it knew what they were discussing, created an impression among its employees that their union activities were under surveillance by Respondent.

9. About February, 2013, Respondent, by Ryan R. Beaver, at Presbyterian, impliedly threatened its employees with discipline because of their union membership, activities and sympathies.

10. About February 14, 2013, Respondent, by Jane Hackett, at Presbyterian, by telling employees it knew what they were discussing, created an impression among its employees that their union activities were under surveillance by Respondent.

11. About February 21, 2013, Respondent, by Gerald T. Moran, at Presbyterian, in the presence of its employees, threatened to arrest nonemployees as they were engaged in lawful union activities with its employees.

12. About February 21, 2013 Respondent, by Gerald T. Moran, at Presbyterian, in the presence of its employees, threatened to arrest its employees as they were engaged in lawful union activities.

13. About February 21, 2013 Respondent, by Gerald T. Moran, at Presbyterian, engaged in surveillance of its employees as they were engaged in lawful union activities.

14. About February 21, 2013, Respondent, by Gerald T. Moran, at Presbyterian, coerced and intimidated its employees by requesting that they show their identification badges to Respondent as they were engaged in lawful union activities.

15. About February 25, 2013, Respondent, by Denise Touray and/or Jaclyn Loveridge, at Presbyterian, interrogated its employees about their union membership, activities and sympathies.

16. About February 28, 2013, Respondent, by Jaclyn Loveridge and/or Linda Haas, at Presbyterian, interrogated its employees by asking them to write a statement about their union membership, activities and sympathies.

17. About March 4, 2013, Respondent, by John Burns and/or William Dilla and/or Dan Gasparovic, at Presbyterian, interrogated its employees about their union membership, activities and sympathies and the union membership, activities and sympathies of other employees.

18. About March 4, 2013, Respondent, by John Burns and/or William Dilla and/or Dan Gasparovic, at Presbyterian, threatened its employees with discipline unless they agreed to write a statement concerning their union membership, activities and sympathies and the union membership, activities and sympathies of other employees.

19. About March 22, 2013, Respondent, by Ed Kellar, at Presbyterian, interrogated its employees by asking them to write a statement about their union membership, activities and sympathies.

20. In March 2013, Respondent, by Jason Hogan, at Shadyside, impliedly threatened its employees with poor evaluations if they continued their support of the Union.

21. About April 3, 2013, Respondent, by Ryan R. Beaver and/or Paul Ondo, at Presbyterian, interrogated its employees about their union membership, activities and sympathies.

22. About April 15, 2013, Respondent, by Carlton Clark, at Respondent's South Lot, interrogated its employees about their union membership, activities and sympathies.

23. (a) About April 15, 2013, Respondent, by Tim Nedley, intimidated and coerced its employees in the exercise of their Section 7 rights by demanding to take a photograph of an employee's union buttons while the employee was wearing the buttons.

(b) About June 18, 2013, Respondent, by Amy Bush and Emily Bowman, intimidated and coerced its employees in the exercise of their Section 7 rights by disparaging employees who engaged in protected concerted activities.

24. About April 16, 2013, Respondent, by Carlton Clark and Tim Nedley, interrogated its employees about their union membership, activities and sympathies.

25. About April 26, 2013, Respondent, by Paul Ondo, at Presbyterian, interrogated its employees about their union membership, activities and sympathies.

26. (a) About early July 2013, Respondent, by Bart Wyss, interrogated employees about their participation in a Board investigation.

(b) About early July 2013, Respondent, by Bart Wyss, requested from employees copies of testimony they provided to the Board during a Board investigation.

27. At all material times, Respondent has maintained a Solicitation Policy which reads, in pertinent part, as follows:

...

II. SCOPE

This policy applies both to the person doing the soliciting or distribution of literature and the person being solicited or receiving the distribution in UPMC facilities located in the United States. Covered activities include, but are not limited to: solicitation for raffles, charity drives, sale of goods, proposing or procuring membership in any organization, or canvassing. Activities sponsored and approved by UPMC or a business unit's President are permitted, such as United Way campaigns.

...

IV. PROCEDURE

A. No staff member shall engage in solicitation of other staff members, patients, and visitors during working time.

B. No staff member may engage in solicitation during working or non-working time in patient care areas, such as patient rooms, operating rooms, patient lounges, areas where patients receive treatment, corridors and sitting rooms adjacent to patient care areas if a patient or family member is present. For other work areas, no staff member may engage in solicitation during working time.

C. No staff member may distribute any form of literature that is not related to UPMC business or staff duties at any time in any work, patient care, or treatment areas. Additionally, staff members may not use UPMC electronic messaging systems to engage in solicitation

...

E. Only professional recognition, employer service pins, and staff member ID badges may be worn in patient care or treatment areas.

...

G. All situations of unauthorized solicitation or distribution must be immediately reported to a supervisor or department director and the Human Resources Department and may subject the staff member to corrective action up to and including discharge.

28. About February 28, 2013, Respondent, by Gina Barry, enforced the rule described above in paragraph 27 selectively and disparately by applying it for disciplinary purposes only against employees who formed, joined, or assisted the Union and/or by prohibiting union solicitations and distributions, while permitting nonunion solicitations and distributions.

29. About March 28, 2013, Respondent, by Denise Touray, enforced the rule described above in paragraph 27 selectively and disparately by permitting its employees to utilize Respondent's bulletin boards for purposes not approved by, or related to, Respondent-sponsored matters, while prohibiting its employees from posting items in support of the Union on Respondent's bulletin boards.

30. About late March 2013, Respondent, by Emily Bowman, enforced the rule described above in paragraph 27 selectively and disparately by permitting its employees to utilize Respondent's bulletin boards for purposes not approved by, or related to, Respondent-sponsored matters, while prohibiting its employees from posting items in support of the Union on Respondent's bulletin boards.

31. About April 4, 2013, Respondent, by Ryan Beaver and Paul Ondo, enforced the rule described above in paragraph 27 selectively and disparately by applying it for disciplinary

purposes only against employees who formed, joined, or assisted the Union and/or by prohibiting union solicitations and distributions, while permitting nonunion solicitations and distributions.

32. About April 26, 2013, Respondent, by Paul Ondo, enforced the rule described above in paragraph 27 selectively and disparately by applying it for disciplinary purposes only against employees who formed, joined, or assisted the Union and/or by prohibiting union solicitations and distributions, while permitting nonunion solicitations and distributions.

33. About May 14, 2013, Respondent, by Betsy Yetiskul, enforced the rule described above in paragraph 27 selectively and disparately by permitting its employees to solicit in patient care areas for purposes not approved by, or related to, Respondent-sponsored matters, while prohibiting its employees from soliciting in patient care areas in support of the Union.

34. About the dates set forth below, in the locations described below, Respondent, by the below-named supervisors, selectively and disparately enforced its rule described above in paragraph 27, by requiring its employees to remove items bearing pro-Union insignia, while permitting its employees to wear, in patient care areas, items bearing insignia that did not qualify as "professional recognition" items, "employer service pins" and/or "staff member ID badges":

- (a) Early February 2013 - Albert Wright - Presbyterian
- (b) March 2013 - Jane Hackett - Presbyterian
- (c) March 3, 2013 - Ted Hill - Respondent's Employee Transit facility
- (d) April 2013 - Tim Nedley - Respondent's Employee Transit facility
- (e) April 5, 2013 - Lisa Fennick - Presbyterian
- (f) April 16, 2013 - Carlton Clark - Respondent's Employee Transit facility

35. (a) Since about February 20, 2013, Respondent, by John Krolicki and Dan Gasparovic, has participated in the affairs of the ESS Employee Council (the Employee Council) at Presbyterian Hospital, a labor organization that Respondent established in or about September 2012, and has supervised the Employee Council's regular meetings.

(b) Since about February 20, 2013, Respondent, by John Krolicki and Dan Gasparovic, has given assistance and support to the ESS Employee Council by permitting the Employee Council to utilize Respondent's facilities and equipment, by compensating employees for their participation in the Employee Council, and by providing funds and food items for the Employee Council's social event on May 26, 2013.

(c) Since about February 20, 2013, Respondent, by John Krolicki and Dan Gasparovic, has dominated and given assistance and support to the Employee Council by funding the "Employee of the Month" award at the Employee Council's request.

(d) Since about February 20, 2013, Respondent, by John Krolicki and Dan Gasparovic, has recognized the Employee Council as the exclusive collective-bargaining representative of its ESS employees at Presbyterian Hospital and has dealt with the Employee Council concerning the working conditions, wages and hours of its employees.

36. About December 20, 2012, Respondent issued a final written warning to its employee Felicia Penn.

37. About February 27, 2013, Respondent issued a written warning to its employee David Jones.

38. (a) About February 28, 2013, Respondent suspended its employee Leslie Poston.

(b) About March 11, 2013, Respondent issued a final written warning to its employee Leslie Poston.

39. About March 9, 2013, Respondent discharged its employee Finley Littlejohn.

40. About March 20, 2013, Respondent discharged its employee Ronald Oakes.

41. About March 28, 2013, Respondent issued a final written warning to its employee Chaney Lewis.

42. About April 4, 2013, Respondent issued a verbal warning to its employee James Staus.

43. About April 23, 2013, Respondent issued a final written warning to its employee Albert Turner.

44. About April 26, 2013, Respondent issued a verbal warning to its employee James Staus.

45. About May 14, 2013, Respondent placed its employee James Staus on a Performance Improvement Plan.

46. About June 18, 2013, Respondent discharged its employee Albert Turner.

47. About July 1, 2013, Respondent discharged its employee James Staus.

48. Respondent engaged in the conduct described above in paragraphs 36-47 because the named employees of Respondent joined or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

49. Respondent engaged in the conduct described above in paragraph 40 because Ronald Oakes gave testimony to the Board in the form of an affidavit and cooperated in a Board investigation in connection with Cases 06-CA-081896, et al.

50. Respondent engaged in the conduct described above in paragraph 41 because Chaney Lewis gave testimony to the Board in the form of an affidavit and cooperated in a Board investigation in connection with Cases 06-CA-081896, et al.

51. By the conduct described above in paragraphs 8-26 and 28-34, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

52. By the conduct described above in paragraphs 35(a) through 35(d), Respondent has dominated and interfered with the administration of, and has been rendering unlawful assistance and support to, a labor organization in violation of Section 8(a)(1) and (2) of the Act.

53. By the conduct described above in paragraphs 36-48, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

54. By the conduct described above in paragraphs 40, 41, 49 and 50, Respondent has been discriminating against employees for filing charges or giving testimony under the Act in violation of Section 8(a)(1) and (4) of the Act.

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

REQUESTED REMEDIES

As part of the remedy for the unfair labor practices alleged above in paragraphs 8 through 26 and paragraphs 28 through 50, the General Counsel seeks an Order requiring Respondent Presbyterian Shadyside to take the following affirmative actions:

(a) Post, for 120 days, in all appropriate locations in Respondent UPMC Presbyterian Shadyside's facilities where notices to employees are customarily posted, any NLRB Notice to Employees that may issue in this proceeding;

(b) At a meeting or meetings of UPMC Presbyterian Shadyside employees, scheduled to ensure the widest possible employee attendance, during employees' working hours and in the presence of a Board agent, read aloud any NLRB Notice to Employees that may issue in this

(c) Grant to the Union access to public areas in its UPMC Presbyterian Shadyside facilities, with the right to speak to employees during employees' non-working time; and

(d) During the period that the NLRB Notice to Employees is posted in connection with this proceeding, permit current employees to post Union literature and notices on its bulletin boards and all places where notices to employees are customarily posted within Respondent's UPMC Presbyterian Shadyside facilities.

Furthermore, as part of the remedy for the unfair labor practices alleged above in paragraphs 38(a), 39, 40, 46 and 47, the General Counsel seeks an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination.

The General Counsel further seeks, as part of the remedy for the allegations in paragraphs 38(a), 39, 40, 46 and 47, that Respondent be required to submit the appropriate documentation to the Social Security Administration so that when back pay is paid, it will be allocated to the appropriate periods.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

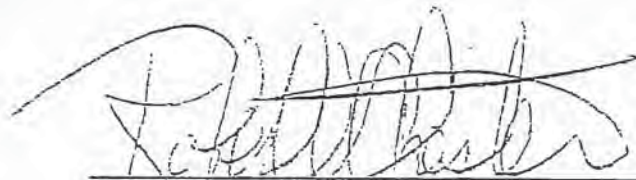
ANSWER REQUIREMENT

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 amended consolidated complaint. The answer must be **received by this office on or before January 23, 2014, or postmarked on or before January 22, 2014.** 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

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 amended consolidated complaint are true.

Dated: January 9, 2014.

A handwritten signature in black ink, appearing to read 'Robert W. Chester', is written over a horizontal line.

Robert W. Chester, Regional Director
National Labor Relations Board, Region 6
1000 Liberty Avenue, Room 904
Pittsburgh, PA 15222-4111

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

**UPMC AND ITS SUBSIDIARY, UPMC
PRESBYTERIAN SHADYSIDE, SINGLE
EMPLOYER, d/b/a UPMC
PRESBYTERIAN HOSPITAL AND
d/b/a UPMC SHADYSIDE HOSPITAL**

and

**SEIU HEALTHCARE
PENNSYLVANIA, CTW, CLC**

**Cases: 06-CA-102465
06-CA-102494
06-CA-102516
06-CA-102518
06-CA-102525
06-CA-102534
06-CA-102540
06-CA-102542
06-CA-102544
06-CA-102555
06-CA-102559
06-CA-102566
06-CA-104090
06-CA-104104
06-CA-106636
06-CA-107127
06-CA-107431
06-CA-107532
06-CA-107896
06-CA-108547
06-CA-111578
06-CA-115826**

**UPMC PRESBYTERIAN SHADYSIDE'S ANSWER TO SECOND ORDER FURTHER
CONSOLIDATING CASES AND AMENDED CONSOLIDATED COMPLAINT**

UPMC Presbyterian Shadyside, pursuant to Sections 102.20 and 102.21 of the Rules and Regulations of the National Labor Relations Board, answers the Second Order Further Consolidating Cases and Amended Consolidated Complaint dated January 9, 2014 ("Second Amended Consolidated Complaint") as follows:

EXHIBIT C

FIRST DEFENSE

In response to the unnumbered first paragraph of the Second Amended Consolidated Complaint, UPMC Presbyterian Shadyside asserts that it is not a single employer with UPMC. UPMC Presbyterian Shadyside denies that it has engaged or is engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151, *et seq.*

In response to the unnumbered second paragraph of the Second Amended Consolidated Complaint, UPMC Presbyterian Shadyside acknowledges that the following Case Numbers have been consolidated: 06-CA-102465, 06-CA-102494, 06-CA-102516, 06-CA-102518, 06-CA-102525, 06-CA-102534, 06-CA-102540, 06-CA-102542, 06-CA-102544, 06-CA-102555, 06-CA-102559, 06-CA-102566, 06-CA-104090, 06-CA-104104, 06-CA-106636, 06-CA-107127, 06-CA-107431, 06-CA-107532, 06-CA-107896, 06-CA-108547, 06-CA-111578 and 06-CA-115826. UPMC Presbyterian Shadyside objects to the consolidation of case numbers 06-CA-111578 and 06-CA-115826 in this matter, as Region 6 has previously expressly represented that such matters would not be consolidated into this case.

1. Some of the allegations in Paragraph 1 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside and therefore no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. With respect to the allegations in Paragraph 1 that are directed at UPMC Presbyterian Shadyside, upon information and belief those allegations are admitted.

2.

(a) The allegations in Paragraph 2(a) of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside and therefore no response is

required. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to the allegations and therefore denies the allegations.

(b) UPMC Presbyterian Shadyside admits that it is a Pennsylvania non-profit corporation with offices and places of business in Pittsburgh, Pennsylvania, including UPMC Presbyterian Hospital and UPMC Shadyside Hospital, and that UPMC Presbyterian Shadyside is engaged in the operation of acute care hospitals providing inpatient and outpatient medical care.

3.

(a) Denied.

(b) The allegations in Paragraph 3(b) of the Second Amended Consolidated Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, they are denied.

4.

(a) The allegations in Paragraph 4(a) of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside and therefore no response is required. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to the allegations and therefore denies the allegations.

(b) The allegations in Paragraph 4(b) of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside and therefore no response is required. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to the allegations and therefore denies the allegations.

(c) Upon information and belief, UPMC Presbyterian Shadyside admits the allegations in Paragraph 4(c) of the Second Amended Consolidated Complaint.

(d) Upon information and belief, UPMC Presbyterian Shadyside¹ admits the allegations in Paragraph 4(d) of the Second Amended Consolidated Complaint.

5.

(a) Some of the allegations in Paragraph 5(a) of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside and therefore no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. The allegations in Paragraph 5(a) of the Second Amended Consolidated Complaint directed at UPMC Presbyterian Shadyside are conclusions of law to which no response is required. To the extent a response is deemed necessary, UPMC Presbyterian Shadyside admits that it has been engaged in commerce within the meaning of Section 2(2), 2(6), and 2(7) and has been a health care institution within the meaning of Section 2(14) of the Act.

(b) UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. Some of the allegations in Paragraph 5(b) of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside and therefore no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. The allegations in Paragraph 5(b) of the Second Amended Consolidated Complaint directed at UPMC Presbyterian Shadyside are conclusions of law to which no response is required. To the extent a response is deemed necessary, UPMC Presbyterian Shadyside admits that it has been engaged in commerce within the meaning of Section 2(2), 2(6), and 2(7) and has been a health care institution within the meaning of Section 2(14) of the Act.

6.

(a) The allegations in Paragraph 6(a) of the Second Amended Consolidated Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, upon information and belief, UPMC Presbyterian Shadyside admits the allegations in Paragraph 6(a) of the Second Amended Consolidated Complaint.

(b) The allegations in Paragraph 6(b) of the Second Amended Consolidated Complaint are conclusions of law to which no response is required. To the extent a response is deemed necessary, upon information and belief, UPMC Presbyterian Shadyside denies the allegations in Paragraph 6(b) of the Second Amended Consolidated Complaint.

7.

(a) UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. Some of the allegations in Paragraph 7(a) of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside and therefore no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 7(a) of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that the individuals identified in the unnumbered paragraphs below Paragraph 7(a) of the Second Amended Consolidated Complaint are or were supervisors or agents for UPMC Presbyterian Shadyside.

(b) UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. Some of the allegations in Paragraph 7(b) of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside and therefore no response to those

allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 7(b) of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that the individuals listed in the unnumbered paragraphs below Paragraph 7(b) of the Second Amended Consolidated Complaint are or were agents of UPMC Presbyterian Shadyside.

8. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 8 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 8 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Bart E. Wyss is employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 8 of the Second Amended Consolidated Complaint.

9. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 9 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 9 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Ryan R. Beaver is

employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 9 of the Second Amended Consolidated Complaint.

10. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 10 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 10 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Jane Hackett was employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 10 of the Second Amended Consolidated Complaint.

11. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 11 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 11 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Gerald T. Moran is employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 11 of the Second Amended Consolidated Complaint.

12. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 12 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the

extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 12 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Gerald T. Moran is employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 12 of the Second Amended Consolidated Complaint.

13. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 13 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 13 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Gerald T. Moran is employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 13 of the Second Amended Consolidated Complaint.

14. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 14 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 14 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Gerald T. Moran is

employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 14 of the Second Amended Consolidated Complaint.

15. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 15 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 15 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Denise Touray and Jaclyn Loveridge are employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 15 of the Second Amended Consolidated Complaint.

16. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 16 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 16 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Jaclyn Loveridge is employed by UPMC Presbyterian Shadyside and Linda Haas was employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 16 of the Second Amended Consolidated Complaint.

17. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 17 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 17 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that John Burns is employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies that Dan Gasparovic and William Dilla are employed by UPMC Presbyterian Shadyside; however, UPMC Presbyterian Shadyside admits that Dan Gasparovic and William Dilla are agents of UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 17 of the Second Amended Consolidated Complaint.

18. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 18 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 18 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that John Burns is employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies that Dan Gasparovic and William Dilla are employed by UPMC Presbyterian Shadyside; however, UPMC Presbyterian Shadyside admits that Dan Gasparovic and William Dilla are agents of UPMC

Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 18 of the Second Amended Consolidated Complaint.

19. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 19 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 19 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Ed Kellar is employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all allegations in Paragraph 19 of the Second Amended Consolidated Complaint.

20. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 20 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 20 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Jason Hogan is employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 20 of the Second Amended Consolidated Complaint.

21. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 21 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the

extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 21 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Ryan R. Beaver and Paul Ondo are employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 21 of the Second Amended Consolidated Complaint.

22. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 22 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 22 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Carlton Clark is employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 22 of the Second Amended Consolidated Complaint.

23.

(a) UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 23(a) of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 23(a) of the Second Amended Consolidated Complaint are

directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Tim Nedley is employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 23(a) of the Second Amended Consolidated Complaint.

(b) UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 23(b) of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 23(b) of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Amy Bush and Emily Bowman are employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 23(b) of the Second Amended Consolidated Complaint.

24. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 24 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 24 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Carlton Clark and Tim Nedley are employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 24 of the Second Amended Consolidated Complaint.

25. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 25 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 25 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Paul Ondo is employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 25 of the Second Amended Consolidated Complaint.

26.

(a) UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 26(a) of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 26(a) of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Bart Wyss is employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 26(a) of the Second Amended Consolidated Complaint.

(b) UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 26(b) of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without

sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 26(b) of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Bart Wyss is employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 26(b) of the Second Amended Consolidated Complaint.

27. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 27 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 27 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside's Solicitation Policy is in writing, speaks for itself, and is the best evidence of its contents; therefore, UPMC Presbyterian Shadyside denies all averments or characterizations of fact concerning that document in Paragraph 27 of the Second Amended Consolidated Complaint and the unnumbered paragraphs below it.

28. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 28 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 28 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Gina Berry is

employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 28 of the Second Amended Consolidated Complaint.

29. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 29 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 29 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Denise Touray is employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 29 of the Second Amended Consolidated Complaint.

30. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 30 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 30 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Emily Bowman is employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 30 of the Second Amended Consolidated Complaint.

31. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 31 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the

extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 31 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Ryan Beaver and Paul Ondo are employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 31 of the Second Amended Consolidated Complaint.

32. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 32 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 32 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Paul Ondo is employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 32 of the Second Amended Consolidated Complaint.

33. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 33 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 33 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Betsy Yetiskul was

employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies all remaining allegations in Paragraph 33 of the Second Amended Consolidated Complaint.

34. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 34 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 34 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that Albert Wright, Jane Hackett, Ted Hill, Tim Nedley, Lisa Fennick and Carlton Clark are current or former employees of UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies that the individuals identified in Paragraph 34 subparagraphs (a) through (f) of the Second Amended Consolidated Complaint selectively and disparately enforced UPMC Presbyterian Shadyside rules as alleged.

35.

(a) UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 35(a) of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 35(a) of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that John Krolicki is employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies that Dan Gasparovic is employed by UPMC Presbyterian Shadyside; however, UPMC

Presbyterian Shadyside admits that Dan Gasparovic is an agent of UPMC Presbyterian Shadyside. The remaining allegations directed at UPMC Presbyterian Shadyside contain conclusions of law to which no response is required. To the extent a response is deemed necessary, they are denied.

(b) UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 35(b) of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 35(b) of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that John Krolicki is employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies that Dan Gasparovic is employed by UPMC Presbyterian Shadyside; however, UPMC Presbyterian Shadyside admits that Dan Gasparovic is an agent of UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside admits that it has permitted the ESS Employee Council to make limited use of UPMC Presbyterian Shadyside's facilities and equipment, has compensated employees for time spent participating in the Employee Council, and has provided funds and food items for an event on May 26, 2013. The remaining allegations directed at UPMC Presbyterian Shadyside in paragraph 35(b) contain conclusions of law to which no response is required. To the extent a response is deemed necessary, they are denied.

(c) UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 35(c) of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To

the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 35(c) of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that John Krolicki is employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies that Dan Gasparovic is employed by UPMC Presbyterian Shadyside; however, UPMC Presbyterian Shadyside admits that Dan Gasparovic is an agent of UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies that it has and admits that Aramark has funded the "Employee of the Month" award. The remaining allegations directed at UPMC Presbyterian Shadyside in paragraph 35(c) contain conclusions of law to which no response is required. To the extent a response is deemed necessary, they are denied.

(d) UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 35(d) of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 35(d) of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that John Krolicki is employed by UPMC Presbyterian Shadyside. UPMC Presbyterian Shadyside denies that Dan Gasparovic is employed by UPMC Presbyterian Shadyside; however, UPMC Presbyterian Shadyside admits that Dan Gasparovic is an agent of UPMC Presbyterian Shadyside. The remaining allegations directed at UPMC Presbyterian Shadyside in paragraph

35(d) contain conclusions of law to which no response is required. To the extent a response is deemed necessary, they are denied.

36. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 36 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 36 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that on or about December 20, 2013, Felicia Penn, a UPMC Presbyterian Shadyside employee, received a final written warning. UPMC Presbyterian Shadyside further answers that Felicia Penn was notified in writing dated June 14, 2013 that this final written warning had been rescinded.

37. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 37 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 37 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that on or about February 27, 2013, David Jones, a UPMC Presbyterian Shadyside employee, received a written warning. UPMC Presbyterian Shadyside further answers that David Jones was notified in writing dated July 30, 2013 that this written warning had been rescinded.

38.

(a) UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 38(a) of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 38(a) of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that on or about February 28, 2013, Leslie Poston, a UPMC Presbyterian Shadyside employee, was suspended.

(b) UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 38(b) of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 38(b) of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that on or about March 11, 2013, Leslie Poston, a UPMC Presbyterian Shadyside employee, received a final written warning.

39. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 39 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient

information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 39 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that on or about March 8, 2013, Finley Littlejohn, a former UPMC Presbyterian Shadyside employee, was discharged.

40. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 40 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 40 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that on or about March 20, 2013, Ronald Oakes, a former UPMC Presbyterian Shadyside employee, was discharged.

41. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 41 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 41 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that on or about March 28, 2013, Chaney Lewis, a UPMC Presbyterian Shadyside employee, received a final written warning. UPMC Presbyterian Shadyside further answers that Chaney Lewis was notified in writing dated May 15, 2013 that this final written warning had been rescinded.

42. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 42 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 42 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that on or about April 4, 2013, James Staus, a former UPMC Presbyterian Shadyside employee, received a verbal warning. UPMC Presbyterian Shadyside further answers that James Staus was notified in writing dated June 21, 2013 that this verbal warning had been rescinded.

43. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 43 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 43 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that on or about April 23, 2013, Albert Turner, a former UPMC Presbyterian Shadyside employee, received a final written warning.

44. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 44 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient

information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 44 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that on or about April 26, 2013, James Staus, a former UPMC Presbyterian Shadyside employee, received a verbal warning.

45. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 45 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 45 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that on or about May 14, 2013, James Staus, a former UPMC Presbyterian Shadyside employee, was placed on a Performance Improvement Plan.

46. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 46 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 46 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that on or about June 18, 2013, Albert Turner, a former UPMC Presbyterian Shadyside employee, was discharged.

47. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 47 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 47 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, UPMC Presbyterian Shadyside admits that on or about July 1, 2013, James Staus, a former UPMC Presbyterian Shadyside employee, was discharged.

48. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 48 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 48 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, some of those allegations are conclusions of law to which no response is required. To the extent a response is deemed necessary, they are denied. UPMC Presbyterian Shadyside denies all remaining allegations of Paragraph 48 of the Second Amended Consolidated Complaint.

49. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 49 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent

the allegations in Paragraph 49 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, some of those allegations are conclusions of law to which no response is required. To the extent a response is deemed necessary, they are denied. UPMC Presbyterian Shadyside denies all remaining allegations of Paragraph 49 of the Second Amended Consolidated Complaint.

50. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 50 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 50 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, some of those allegations are conclusions of law to which no response is required. To the extent a response is deemed necessary, they are denied. UPMC Presbyterian Shadyside denies all remaining allegations of Paragraph 50 of the Second Amended Consolidated Complaint.

51. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 51 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 51 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, some of those allegations are conclusions of law to which no response is required. To the extent a response is deemed necessary, they are denied. UPMC

Presbyterian Shadyside denies all remaining allegations of Paragraph 51 of the Second Amended Consolidated Complaint.

52. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 52 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 52 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, some of those allegations are conclusions of law to which no response is required. To the extent a response is deemed necessary, they are denied. UPMC Presbyterian Shadyside denies all remaining allegations of Paragraph 52 of the Second Amended Consolidated Complaint.

53. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 53 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 53 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, some of those allegations are conclusions of law to which no response is required. To the extent a response is deemed necessary, they are denied. UPMC Presbyterian Shadyside denies all remaining allegations of Paragraph 53 of the Second Amended Consolidated Complaint.

54. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent allegations in Paragraph 54 of the Second Amended Consolidated Complaint are not directed at UPMC Presbyterian Shadyside, no response to those allegations is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to those allegations and therefore denies those allegations. To the extent the allegations in Paragraph 54 of the Second Amended Consolidated Complaint are directed at UPMC Presbyterian Shadyside, some of those allegations are conclusions of law to which no response is required. To the extent a response is deemed necessary, they are denied. UPMC Presbyterian Shadyside denies all remaining allegations of Paragraph 54 of the Second Amended Consolidated Complaint.

55. UPMC Presbyterian Shadyside denies that it is a single employer with UPMC. To the extent the allegation in Paragraph 55 of the Second Amended Consolidated Complaint is not directed at UPMC Presbyterian Shadyside, no response to the allegation is necessary. To the extent that a response is deemed necessary, UPMC Presbyterian Shadyside is without sufficient information to respond to the allegation and therefore denies the allegation. To the extent the allegation in Paragraph 55 of the Second Amended Consolidated Complaint is directed at UPMC Presbyterian Shadyside, the allegation is a conclusion of law to which no response is required. To the extent a response is deemed necessary, the allegation is denied.

In response to the **REQUESTED REMEDIES** in the Second Amended Consolidated Complaint, UPMC Presbyterian Shadyside denies the unnumbered paragraphs under that heading. UPMC Presbyterian Shadyside specifically denies both that it has engaged in any unfair labor practices and that the Acting General Counsel is entitled to the relief requested in sub-paragraphs (a) through (d), or to any relief whatsoever.

UPMC Presbyterian Shadyside denies each and every allegation of the Second Amended Consolidated Complaint unless specifically admitted or denied above.

SECOND DEFENSE

The Second Amended Consolidated Complaint fails to state a cause of action upon which relief can be granted and should be dismissed in its entirety.

THIRD DEFENSE

UPMC Presbyterian Shadyside has not engaged in nor is it engaging in any unfair labor practices, both generally and as specifically alleged in the Second Amended Consolidated Complaint.

FOURTH DEFENSE

Any and all claims in the Second Amended Consolidated Complaint that are based on alleged acts that were not made the subject of an unfair labor practice charge filed with the National Labor Relations Board within six months of the acts' alleged occurrence are barred by the statute of limitations set forth in Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b), as amended.

FIFTH DEFENSE

All actions in which UPMC Presbyterian Shadyside has engaged constitute legally permissible activity within the meaning of the relevant sections of the National Labor Relations Act.

SIXTH DEFENSE

To the extent that UPMC Presbyterian Shadyside is found to be an employer of any discharged individuals, such individuals were discharged for cause and Section 10(c) of the National Labor Relations Act forbids reinstatement or any make-whole remedies for such individuals.

SEVENTH DEFENSE

Any decisions made by UPMC Presbyterian Shadyside that are the subject of this Second Amended Consolidated Complaint were based on legitimate, non-retaliatory reasons wholly unrelated to any anti-union animus.

EIGHTH DEFENSE

The Second Amended Consolidated Complaint fails to plead its allegations with sufficient specificity to provide UPMC Presbyterian Shadyside notice of the allegations raised against it and thus denies UPMC Presbyterian Shadyside administrative due process and should be dismissed in its entirety.

NINTH DEFENSE

The allegations made in the Second Amended Consolidated Complaint are barred by the doctrines of laches, waiver and estoppel because the Region failed to pursue these allegations in a timely manner resulting in extreme prejudice to the Respondent.

TENTH DEFENSE

The Second Amended Consolidated Complaint fails to state a claim upon which relief can be granted to the extent that UPMC Presbyterian Shadyside has already remedied the complained of conduct, for example, by training supervisors and security personnel, posting notices of employee rights, rescinding discipline and other measures.

ELEVENTH DEFENSE

UPMC Presbyterian Shadyside alleges and asserts those affirmative defenses provided by law as may be determined applicable to factual specifics of this litigation and pleads the same as affirmative defenses to the Second Amended Consolidated Complaint.

TWELFTH DEFENSE

UPMC Presbyterian Shadyside will rely upon all proper defenses, affirmative or otherwise, lawfully available that may be disclosed by evidence and reserves the right to amend this Answer to state such other affirmative and additional defenses and/or otherwise supplement this Answer upon discovery of facts or evidence rendering such action appropriate.

THIRTEENTH DEFENSE

UPMC Presbyterian Shadyside is not a single employer with UPMC.

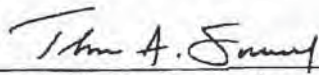
FOURTEENTH DEFENSE

The Second Amended Consolidated Complaint denies UPMC Presbyterian Shadyside due process to the extent that it includes case numbers 06-CA-111578 and 06-CA-115826, which Region 6 previously expressly represented would not be consolidated into this case.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By: _____


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Counsel for UPMC Presbyterian Shadyside

Dated: January 23, 2014

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the within Answer to Second Order Further Consolidating Cases and Amended Consolidated Complaint has been served on all parties listed below this 23rd day of January, 2014 as follows:

VIA HAND DELIVERY

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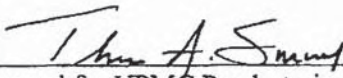
VIA U.S. MAIL

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By: 
Counsel for UPMC Presbyterian Shadyside

16886716 1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 6

UPMC AND ITS SUBSIDIARY, UPMC
PRESBYTERIAN SHADYSIDE, SINGLE EMPLOYER,
d/b/a UPMC PRESBYTERIAN HOSPITAL AND d/b/a
UPMC SHADYSIDE HOSPITAL

and

SEIU HEALTHCARE PENNSYLVANIA,
CTW, CLC

Cases 06-CA-102465
06-CA-102494
06-CA-102516
06-CA-102518
06-CA-102525
06-CA-102534
06-CA-102540
06-CA-102542
06-CA-102544
06-CA-102555
06-CA-102559
06-CA-102566
06-CA-104090
06-CA-104104
06-CA-106636
06-CA-107127
06-CA-107431
06-CA-107532
06-CA-107896
06-CA-108547
06-CA-111578 and
06-CA-115826

**AFFIDAVIT OF SERVICE OF: COUNSEL FOR THE GENERAL COUNSEL'S
OPPOSITION TO RESPONDENT PRESBYTERIAN SHADYSIDE'S PETITION TO
REVOKE SUBPOENA NO. B-720565**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on January 28, 2014, I served the above-entitled document(s) by **electronic mail**, unless otherwise noted below, upon the following persons, addressed to them at the following addresses:

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January 28, 2014

Date

Charlene Prosser, Designated Agent of NLRB

Name


Signature

1 UNITED STATES OF AMERICA
2 BEFORE THE NATIONAL LABOR RELATIONS BOARD
3 REGION SIX

4 _____
5 UPMC AND ITS SUBSIDIARY UPMC PRESBYTERIAN
SHADYSIDE, A SINGLE EMPLOYER D/B/A
6 SHADYSIDE HOSPITAL, AND/OR PRESBYTERIAN
HOSPITAL AND/OR MONTEFIORE HOSPITAL

7 Charged Party

8 and

9 SEIU HEALTHCARE PENNSYLVANIA, CTW, CLC

10 Charging Party
11 _____

Case No. 06-CA-102465,
et al.

12
13 The above entitled matter came on for hearing pursuant to
notice, before MARK CARISSIMI, Administrative Law Judge, in the
14 Hearing Room of the National Labor Relations Board, 1000 Liberty
Avenue, Suite 904, Federal Building, Pittsburgh, Pennsylvania
15 15222, on Wednesday, February 12, 2014, commencing at
9:32 o'clock a.m.
16

17
18
19
20 MORSE, GANTVERG & HODGE, INC.
21 Suite 719, One Bigelow Square
Pittsburgh, Pennsylvania 15219
22 412/281-0189
23
24
25

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

UPMC AND ITS SUBSIDIARY UPMC PRESBYTERIAN
SHADYSIDE, A SINGLE EMPLOYER D/B/A
SHADYSIDE HOSPITAL, AND/OR PRESBYTERIAN
HOSPITAL AND/OR MONTEFIORE HOSPITAL

Charged Party

and

SEIU HEALTHCARE PENNSYLVANIA, CTW, CLC

Charging Party

Case No.
06-CA-102465
et al.

Place: National Labor Relations Board
1000 Liberty Avenue, Suite 904
Pittsburgh, Pennsylvania

Date: Monday, February 24, 2014

Volume VI
Pages 834 through 916

MORSE, GANTVERG & HODGE, INC.
Suite 719, One Bigelow Square
Pittsburgh, Pennsylvania 15219
412/281-0189

1 MS. DAVIDSON: If not, then we'll pipe up later.

2 THE ADMINISTRATIVE LAW JUDGE: I'm going to admit Respondent
3 500, 501, 502, 503, 504.

4 (Respondent Exhibit No. PS-500 through 504 was admitted.)

5 THE ADMINISTRATIVE LAW JUDGE: All right. Now, I'll issue
6 my rulings on the petitions to revoke. The Respondent has not
7 been willing to discuss the production of documents until I
8 issued a ruling on the petitions to revoke, so I will do so at
9 this time.

10 The Board has held that subpoenaed information must be
11 reasonably relevant to the issues raised in the Complaint.
12 *Perdue Farms*, 323 NLRB 345 at Page 348, 1997, and that was
13 affirmed in relevant part at 144 Fed 3rd, 830 by the D.C.
14 Circuit in 1999.

15 The subpoenas at issue at this point principally involve the
16 issue of whether UPMC and UPMC Presbyterian Shadyside constitute
17 a single employer. The factors that the Board applies in
18 determining this issue involve the following considerations:
19 Whether there is, No. 1, common ownership; No. 2, whether there
20 is common management; No. 3, whether there is an inter-relation
21 of operations and No. 4, whether there is centralized control of
22 labor relations.

23 Now, the Board has set forth these factors in numerous
24 cases, one of which is *Massey Energy*, which can be found at 358
25 NLRB No. 159. It's a 2012 case.

1 The Board has also held however that broad requests for
2 records can be mere fishing expeditions, and the production of
3 such records is not required, Burns Security Services 278 NLRB
4 565, 1986.

5 If a party asserts that it would be unduly burdensome to
6 produce a large number of records, the party must show that the
7 production of the subpoenaed information would seriously disrupt
8 its business operations, McAllister Towing and Transportation,
9 341 NLRB 394, 2004.

10 The Board has also noted in resolving subpoena issues in
11 CNN America, 352 NLRB 675, 2008, various matters that I think
12 are helpful in resolving this case. Now, I recognize that CNN
13 was decided by a two-member panel and, therefore, is not binding
14 precedent under New Process Steel, 130 Supreme Court 2635 and
15 the Sheraton Anchorage, 359 NLRB No. 95 in 2013, but I find that
16 the Board's decision in CNN at least offers some guidance in
17 resolving issues such as this.

18 CNN suggests that the Judge should strike a balance between
19 the competing interest of the party and the relevancy and
20 necessity of the information and the potential cost and
21 burdensomeness of the production in the form requested.

22 In analyzing these factors, the Board suggests that Rule
23 26(b)(2)(c) of the Federal Rules of Civil Procedure are a
24 helpful guide in resolving issues, such as those involved in the
25 present petitions to revoke.

1 Those are the considerations that I have relied on in
2 reaching my decisions in this matter.

3 The first issue we'll take up is the General Counsel's
4 position with regard to the subpoena issued in Subpoena B720563.
5 That is the subpoena issued to UPMC and UPMC's petition to
6 revoke that subpoena and the General Counsel's opposition to the
7 petition to revoke. I have determined that with respect to that
8 subpoena that the Respondent must produce all of the documents
9 requested except for that set forth in Paragraph 35, which I
10 find to be overly broad.

11 With respect to the issue involved in the General Counsel
12 subpoena issued to Presbyterian Shadyside, which is Subpoena
13 B720565, I have determined that the Respondent must produce
14 All the documents requested except for those asked for in
15 Paragraph 35, which again I find to be overly broad.

16 With respect to the subpoena issued by the Union and
17 UPMC's petition to revoke that subpoena, the subpoena number is
18 B720504. I will grant the petition to revoke with respect to
19 the following paragraphs -- paragraphs that I do not mention as
20 revoked, I am ordering the production of documents in the
21 remaining paragraphs.

22 I am granting the petition to revoke with respects to
23 Paragraphs 1 through 4, which I find to be overly broad. I
24 revoke Paragraphs 10 and 11, which I also find to be overly
25 broad. I revoke Paragraph 17, which I find to be overly broad.

1 I revoke Paragraph 19, which I find to be overly broad. I
2 revoke Paragraph 20, which I find to be overly broad.

3 I revoke Paragraph 21 as being overly broad and not
4 relevant. I revoke Paragraph 26 as being overly broad. I
5 revoke 27 as being overly broad, and I also revoke 28 as being
6 overly broad. I revoke paragraph 39 as being overly broad and
7 not relevant.

8 I revoke Paragraphs 49 through 53 as being overly broad.
9 I revoke Paragraph 57 as being overly broad. I revoke
10 Paragraphs 60 through 65 as being overly broad, and I revoke
11 Paragraphs 67 through 69 as being overly broad.

12 As I indicated previously, all other paragraphs of the
13 subpoena I order the Respondent to produce the documents
14 requested. I make these rulings based upon the subpoenas and
15 the petitions to revoke because as I indicated the parties took
16 no steps to narrow the issues before me, so I was required to
17 make a decision based upon the documents filed and now
18 introduced into the record. And that concludes my order.

19 Off the record.

20 (Discussion held off the record.)

21 THE ADMINISTRATIVE LAW JUDGE: With the issuance of these
22 rulings, the trial is going to be in adjournment until 9:00 a.m.
23 tomorrow morning. We're going to begin again with witnesses.

24 I indicated off the record while I would like the Respondent
25 to file a privileged log and any supporting documents and

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

UPMC AND ITS SUBSIDIARY, UPMC PRESBYTERIAN SHADYSIDE, SINGLE EMPLOYER, d/b/a UPMC PRESBYTERIAN HOSPITAL AND d/b/a UPMC SHADYSIDE HOSPITAL	Cases: 06-CA-102465 06-CA-102494 06-CA-102516 06-CA-102518 06-CA-102525 06-CA-102534 06-CA-102540 06-CA-102542 06-CA-102544 06-CA-102555 06-CA-102559 06-CA-102566 06-CA-104090 06-CA-104104 06-CA-106636 06-CA-107127 06-CA-107431 06-CA-107532 06-CA-107896 06-CA-108547 06-CA-111578 06-CA-115826
and	
SEIU HEALTHCARE PENNSYLVANIA, CTW, CLC	

MOTION TO DISMISS AMENDMENTS

Now come Respondents, UPMC and UPMC Presbyterian Shadyside, by their undersigned counsel, and move that (1) the single employer allegations concerning them be dismissed from the Amended Consolidated Complaint; and (2) UPMC be dismissed as a Respondent herein and in support thereof state as follows:

I. The within matter commenced with the filing of numerous unfair labor practice charges in April of 2013 by SEIU Healthcare Pennsylvania ("the Union") against UPMC and UPMC Presbyterian Shadyside alleging various violations of the National Labor Relations Act

(the “Act”) including, *inter alia*, that the two constituted a “single employer.” See each charge listed in Paragraph 1 of the Amended Consolidated Complaint as having been served on April 10, 2013.

2. UPMC is a legal holding company that includes independent entities (both for profit and not for profit) with multiple entities, including over twenty hospitals including UPMC Presbyterian Shadyside.

3. From time to time after April of 2013 and before September 30, 2013, the Union filed additional unfair labor practice charges making similar single employer allegations against UPMC and UPMC Presbyterian Shadyside. See each charge listed in Paragraph 1 of the Amended Consolidated Complaint as having been served during this interval.

4. Region 6 investigated each of the referenced charges over the course of several months, and determined insofar as UPMC Presbyterian Shadyside was concerned that about half the charges were “meritorious” and that the remainder were not “meritorious.”

5. Region 6 also determined after thorough investigation that UPMC was not a necessary party and the Union’s single employer allegations had no relevance to any of the charges.

6. Region 6 allowed the Union to withdraw the charges as to which no merit had been found regarding UPMC Presbyterian Shadyside and directed the Union to file an amended charge with respect to each charge as to which the Region had made a finding of “merit” regarding UPMC Presbyterian Shadyside, the point of which amendments was to delete UPMC as a respondent and to delete the Union’s single employer allegations.

7. The Union complied. See each amended charge listed in Paragraph 1 of the Amended Consolidated Complaint as having been served on September 30, 2013.

8. Region 6 issued a Consolidated Complaint on September 30, 2013 addressing the remaining, amended charges naming UPMC Presbyterian Shadyside as the sole respondent. See the Consolidated Complaint served on that date.

9. Consistent with its “no merit” findings and the newly filed amended charges, the Consolidated Complaint did not list UPMC as a respondent and did not assert any single employer allegations. See Consolidated Complaint.

10. The parties, minus UPMC, prepared for the hearing on the basis of the Consolidated Complaint, which hearing was initially set for December 16, 2013.

11. Due to scheduling conflicts, the hearing was postponed twice, ultimately to be set to commence on February 3, 2014.

12. In light of the previous determinations by Region 6 on these specific issues and bearing in mind that the substantive allegations of the Amended Consolidated Complaint, just like the allegations of the Consolidated Complaint filed September 30, 2013, do not: a) allege any involvement by any entity other than UPMC Presbyterian Shadyside in any of the alleged unfair labor practices, b) do not concern any alleged incident that occurred at any facility owned or operated by any entity other than UPMC Presbyterian Shadyside, c) do not mention any managers, supervisors, agents or employees of any entity other than UPMC Presbyterian Shadyside, d) do not seek any remedy against any party other than UPMC Presbyterian Shadyside, e) do not allege that UPMC Presbyterian Shadyside cannot fully remedy any or all of the alleged violations, and f) do not allege any scheme or artifice among UPMC and UPMC Presbyterian Shadyside to frustrate the application of the Act; there is similarly no justification for Region 6’s addition of UPMC as a respondent and inclusion of single employer allegations in the Amended Consolidated Complaint.

13. On the face of the Amended Consolidated Complaint, no substantive allegation implicates UPMC or necessitates UPMC's presence as a respondent.

14. On the face of the Amended Consolidated Complaint, no allegation is made that any alleged unfair labor practice is beyond the capability of UPMC Presbyterian Shadyside to fully remediate if a violation is found to have occurred.

15. On the face of the Amended Consolidated Complaint, no allegation is made of a "scheme" or artifice between UPMC and UPMC Presbyterian Shadyside to thwart the enforcement of the Act.

16. On the face of the Amended Consolidated Complaint and the separate burdensome "single employer" subpoenas served on both UPMC and UPMC Presbyterian Shadyside, including UPMC as a respondent and litigating the single employer issue in this case will create undue demands in terms of time and expense and will waste the resources of all parties, as well as those of the Office of Administrative Law Judges, without furthering the purposes of the Act.

17. On the face of the Amended Consolidated Complaint, the allegations set forth in paragraphs 2(a), 3(a), 3(b), 4(a), 4(b) and 5(a) are time-barred under Section 10(b) of the Act.

18. The filing of the Amended Consolidated Complaint a mere twenty-four (24) days before the hearing date of February 3, 2014, has deprived UPMC and UPMC Presbyterian Shadyside of their procedural due process rights. Indeed, UPMC is forced to prepare an entire case in response to all of the allegations (not just the single employer issue) for the hearing in three weeks.

20. This sequence of events defines the denial of due process, where the emphasis (at least in the context of Board proceedings) lies in fair notice and an understanding of the allegations being brought against an employer.

WHEREFORE, Respondents UPMC Presbyterian Shadyside and UPMC move that (1) the single employer allegations concerning them be dismissed from the Amended Consolidated Complaint; and (2) UPMC be dismissed as a Respondent herein.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

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Dated: January 27, 2014

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the within Motion to Dismiss has been served by First Class U.S. Mail on all parties listed below this 27th day of January, 2014:

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By: Thomas A. Spruy
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UPMC Presbyterian Shadyside

16797856.1

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 6**

**UPMC AND ITS SUBSIDIARY, UPMC
PRESBYTERIAN SHADYSIDE, SINGLE EMPLOYER,
d/b/a UPMC PRESBYTERIAN HOSPITAL AND d/b/a
UPMC SHADYSIDE HOSPITAL**

and

SEIU HEALTHCARE PENNSYLVANIA, CTW, CLC

**Cases 06-CA-102465
06-CA-102494
06-CA-102516
06-CA-102518
06-CA-102525
06-CA-102534
06-CA-102540
06-CA-102542
06-CA-102544
06-CA-102555
06-CA-102559
06-CA-102566
06-CA-104090
06-CA-104104
06-CA-106636
06-CA-107127
06-CA-107431
06-CA-107532
06-CA-107896
06-CA-108547
06-CA-111578
06-CA-115826**

**COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO
RESPONDENTS' MOTION TO DISMISS AMENDMENTS**

Counsel for the General Counsel hereby files this Opposition to Respondents' Motion to Dismiss Amendments, filed on January 27, 2014, by Respondent UPMC and Respondent UPMC Presbyterian Shadyside. By the Motion to Dismiss, Respondents UPMC and UPMC Presbyterian Shadyside seek to have the single employer allegations concerning them dismissed from the Amended Consolidated Complaint. Respondents further seek to have

UPMC dismissed as a Respondent in these cases. Counsel for the General Counsel strongly opposes both bases for Respondents' Motion and in support thereof, states as follows:

Introduction

Respondents' Motion must be denied because it is unsupported by fact and case authority. More particularly, Section 102.17 of the Board's Rules and Regulations permits the General Counsel to amend a complaint up to, during and even after the hearing, as may be deemed just. The subject single employer allegations of the Amended Consolidated Complaint are based on evidence that affirmatively establishes that Respondent UPMC and Respondent UPMC Presbyterian Shadyside constitute a single-integrated enterprise, with derivative liability. The addition to the Consolidated Complaint of allegations that UPMC is a single employer with UPMC Presbyterian Shadyside is a matter of permissible prosecutorial discretion and one that the Regional Director of Region Six deemed necessary for effectuating the Act.

The inclusion of Respondent UPMC and the attendant single employer allegations in the Amended Consolidated Complaint places the single employer question squarely in issue and requires an opportunity for the General Counsel to prove the allegations at trial. To dismiss the single employer allegations from the proceedings prior to the hearing would undermine the Agency's statutorily mandated ability to exercise its prosecutorial discretion, thereby weakening the power and purposes of the Act. Respondents' arguments in the Memorandum filed in support of its Motion warrant no contrary conclusion, as they are based both on misstatements of fact and legal authority that is entirely distinguishable from the circumstances of these cases.

Background

On September 30, 2013, the Regional Director of Region Six of the National Labor Relations Board issued a Consolidated Complaint against Respondent UPMC Presbyterian Shadyside. The Consolidated Complaint alleged numerous violations of Section 8(a)(1), (3) and (4) of the Act, all of which arose in the context of a union organizing campaign that SEIU Healthcare Pennsylvania ("the Union") is conducting among Respondent's employees. At the

time the Regional Director issued the Consolidated Complaint, and since that time, the Region has been in the process of investigating additional unfair labor practice charges that the Union filed against Respondents UPMC and UPMC Presbyterian Shadyside as a single employer.

The Regional Director of Region Six issued an Order Further Consolidating Cases and Amendment to Consolidated Complaint on November 5, 2013, against Respondent UPMC Presbyterian Shadyside. The accompanying Notice of Hearing set the trial commencement date for December 16, 2013. Respondent UPMC Presbyterian Shadyside filed its Answers to the complaints on October 14, 2013, and November 18, 2014, respectively, denying each and every substantive allegation of the Consolidated Complaint.

The Federal Government was shut down between October 1, 2014, through October 16, 2013, due to lack of funding. Based on the shutdown, by Order dated November 5, 2013, the Acting Regional Director of Region Six rescheduled the hearing to commence on January 13, 2014.¹ Immediately thereafter, Respondents' counsel requested a postponement due to a previously scheduled vacation. The Regional Director granted counsel's request and on November 13, 2013, issued a Second Order Rescheduling Hearing. The newly rescheduled date for hearing was February 3, 2014.²

On January 9, 2014, the Regional Director of Region Six issued a Second Order Further Consolidating Cases and Amended Consolidated Complaint in these matters. The consolidation involved two additional cases beyond those that appeared in the initial Consolidated Complaint, Cases 6-CA-111578 and 6-CA-115826. Also included in the Amended Consolidated Complaint are allegations that Respondent UPMC is a single employer with

¹ Respondents' assertion that the trial was rescheduled "due to scheduling conflicts" (see, "Motion to Dismiss Amendments," paragraph 11) is a misrepresentation of fact.

² Thereafter, by an Order Postponing Hearing dated January 30, 2014, Administrative Law Judge Mark Carissimi rescheduled the trial to commence on February 10, 2014, "in order to allow additional time for the production of the substantial amount of documents" subpoenaed by the parties in connection with these cases.

Respondent UPMC Presbyterian Shadyside. It is these latter allegations that are the subject of Respondents' Motion to Dismiss.³ Respondents filed their respective Answers to the Amended Consolidated Complaint on January 23, 2014. By these Answers, Respondents denied all allegations related to the single employer status of Respondent UPMC and Respondent UPMC Presbyterian Shadyside, as well as all substantive allegations.

Analysis

A. The Amendments to the Consolidated Complaint were Timely

Respondents urge the Board to dismiss as untimely those portions of the Consolidated Complaint that pertain to Respondent UPMC's status as a single employer with Respondent UPMC Presbyterian Shadyside. Specifically, Respondents argue that the following allegations of the Amended Consolidated Complaint are time-barred under Section 10(b) of the Act: Paragraphs 2(a), 3(a), 3(b), 4(a), 4(b) and 5(a). In support of this argument, Respondent mistakenly relies on a number of cases, including Ducane Heating Corp., 273 NLRB 1389 (1985) (citations omitted) and Redd-I, Inc., 209 NLRB 1115 (1988), and its progeny.⁴ In these seminal cases, the Board specifically addressed the question of whether otherwise untimely *allegations of wrongdoing* were sufficiently "closely related" to the allegations set forth in charges filed within the Section 10(b) period. Here, the question is not whether certain *conduct* alleged in the Amended Consolidated Complaint is "closely related" to allegations articulated in

³ In yet another of many misstatements of fact that appear in Respondents' Motion to Dismiss and the supporting Memorandum, Respondents incorrectly represent that the Amended Consolidated Complaint was "identical" to the Consolidated Complaint except as to the addition of Respondent UPMC and the attendant single employer allegations. In fact, the Amended Consolidated Complaint also alleges conduct arising from Cases 6-CA-111578 and 115826 concerning Respondents' interrogation of employees regarding their Board testimony and Respondents' unlawful maintenance of an Electromation committee, in violation of Section 8(a)(1) and (2) of the Act.

⁴ In an effort to render the timeliness argument more persuasive, Respondents blatantly mischaracterize the procedural history of these cases, stating that the Region "dismissed UPMC as a party altogether" (Respondents' Memorandum at p. 5). Notwithstanding Respondents' assertions to the contrary, there was no "merit" determination concerning the single employer question and the Region issued no such dismissals. Indeed, an entity's status as a single employer is not an issue of "merit." Nor did the Region ever find, as Respondents inaccurately state, that Respondent UPMC's single employer status with Respondent UPMC Presbyterian Shadyside was "irrelevant" to the proceedings.

the Union's initial charges, but rather the identification and definition of the appropriately charged entity or entities as Respondent(s).⁵

It is well established that derivative liability may be imposed upon a party at the compliance stage of Board proceedings, even if the added party was not involved in the underlying unfair labor practice proceedings. For such derivative liability to attach, the General Counsel need only establish that the two nominally separate entities are so closely related as to constitute a single-integrated enterprise. See, e.g., Teckwal Corp., 263 NLRB 892, 894 (1982), citing Coast Delivery Service, 198 NLRB 1026 (1972). In determining whether two or more companies constitute a single employer, the controlling criteria are 1) common ownership; 2) integration of operations; 3) common management; and 4) centralized control of labor relations. Radio & Television Broadcast Technicians Local 1264 v. Broadcast Service of Mobile, 380 U.S. 255 (1965). Notably, all of the criteria need not be present in order to establish single employer status; rather, a determination will be based on "all the circumstances of the case." Emsing's Supermarket, 284 NLRB 302 (1987). Dismissal of the single employer allegations in the instant cases prior to an evidentiary hearing would be clearly premature, as the General Counsel must be given the opportunity to proffer its evidence as to these criteria.

In short, as long as Respondent UPMC and Respondent UPMC Presbyterian Shadyside exist as a single integrated enterprise, identification of the two entities as a "single employer" is timely. Further, if the two entities are found to comprise a single employer, then valid service on one of the two corporations within the Section 10(b) period constitutes valid service on both.

⁵ Respondents' reliance on the Board's decision in Canned Foods, Inc., 332 NLRB 1449 (2000) is similarly misplaced. While it is true that Canned Foods actually involved a single employer issue (unlike Ducane and Redd-I, supra), as well as the question of whether a different legal theory had been raised by an untimely charge, the Board in that matter actually remanded the case to the Administrative Law Judge for the taking of evidence concerning the single employer issue. Nothing less is required here, that is, an opportunity for the General Counsel to have the single employer evidence heard by the Administrative Law Judge.

See, e.g., Electrical Workers IUE (Spartus Corp.), 271 NLRB 607 (1984) and Silver Brothers Co., Inc. d/b/a The Good Life Beverage Company, JD-258-91 (1991).

B. Respondents UPMC and UPMC Presbyterian Shadyside Have Not Been Denied Due Process by the Amendments to the Consolidated Complaint

In addition to arguing that the single employer allegations of the Amended Consolidated Complaint are untimely under Section 10(b) of the Act, Respondents also make the bold claim that the amendments deny them their due process rights under the United States Constitution. Citing issues of "fair notice," Respondents argue that the addition of Respondent UPMC and the single employer allegations in the Amended Consolidated Complaint prevents Respondents from preparing an adequate defense. At the outset, it must be noted that Respondents' repeated references to a three-week notice period (between the issuance of the Amended Consolidated Complaint and the hearing date) are nothing short of a complete misrepresentation of fact. More particularly, a full three weeks *prior to the issuance of the Amended Consolidated Complaint*, Counsel for the General Counsel notified Respondent of the Region's intent to include the single employer allegations in a forthcoming Amended Consolidated Complaint. Respondents' counsel communicated its opposition to the amendments to the Region, which was duly considered. Thus, Respondent's actual notice of the complaint allegations was at least six weeks prior to the hearing, which became seven weeks upon the Administrative Law Judge's subsequent Order Postponing Hearing.

While Respondents would have one believe that the single employer issue was "sprung" on them at the eleventh hour, this could not be more distant from the truth. Indeed, in a series of prior cases involving the same parties and the same union organizing campaign (Cases 6-CA-081896, et al., referred to as "UPMC I"), Respondents were charged as a single employer and prepared for trial as such. During the course of pre-trial preparations, Respondents and the General Counsel had ongoing discussions concerning Respondent UPMC's possible

willingness to stipulate to the single employer status for remedial purposes only.⁶ Ultimately, the stipulation possibility became moot because the cases were concluded with an Informal Board Settlement Agreement, which representatives of Respondent UPMC signed in February 2013. Thus, Respondents' suggestion that it is somehow surprised by the inclusion of the single employer allegations in the subject Amended Consolidated Complaint defies credulity.⁷

The case authority on which Respondents rely in support of the due process arguments is distinguishable from the facts of these cases. More particularly, Respondents cite NLRB v. Complas Industries, Inc., 714 F.2d 729 (7th Cir. 1983) for the proposition that the government is obligated to give charged parties an opportunity to prepare a "meaningful defense." In that matter, however, the Seventh Circuit Court of Appeals considered whether due process had been achieved when an administrative law judge limited the employer's defense to the "mere opportunity to question witnesses" on cross-examination after the General Counsel moved to amend a complaint during the course of a single-day proceeding, without the benefit of prior notice to the employer. To liken the facts of the instant cases to the due process considerations in Complas Industries, is to liken apples to oranges; it is without consequence.

Equally distinguishable is EEOC v. CRST Van Expedited, Inc., 679 F.3d 657 (8th Cir. 2012), which Respondents cite in support of the claim that due process was denied by the General Counsel's addition of the single employer allegations to the complaint "after the investigative phase" (See, Respondents' Memorandum at p. 11). In that matter, the Eighth Circuit Court of Appeals held that the EEOC's attempt to pursue evidence uncovered during the course of formal discovery for a lawsuit (post-investigation) amounted to an impermissible

⁶ The General Counsel initially sought a similar stipulation in these matters prior to issuing the Amended Consolidated Complaint. Respondents' counsel at first indicated its willingness to enter into such a stipulation, but subsequently rejected the proffered stipulation, leaving the Region Director no choice but to include the single employer allegations in the Amended Consolidated Complaint.

⁷ Respondents' due process claim is further undermined by counsel's recent declaration during a pre-trial conference call with the Administrative Law Judge that Respondents were "ready to go" (to begin the hearing) as of February 3, 2014.

"fishing expedition." *Id.* at 674-675. As Respondents well know, there *is* no discovery process in Board proceedings and, as stated previously, the Board's Rules and Regulations specifically permit amendments to the complaint throughout the process, until the time the case is transferred to the Board. Section 102.17, Board's Rules and Regulations. Thus, Respondents' reliance on CRST is wholly misplaced.

In sum, Respondents have not been denied their due process rights by the issuance of the Amended Consolidated Complaint. Respondents have been provided with ample notice and an opportunity to prepare adequate defenses to both the substantive allegations and the single employer allegations. Thus, the Motion to Dismiss should not be granted on the basis of Respondents' due process contentions.

C. The Inclusion of Respondent UPMC and the Single Employer Allegations in the Amended Consolidated Complaint Advance the Purposes of the Act.

In addition to arguing that the single employer amendments and Respondent UPMC should be dismissed from the Amended Consolidated Complaint because they are time-barred and because they have resulted in a denial of due process to both entities, Respondents claim that inclusion of the amendments fails to advance the purposes of the Act. In proffering this final argument, Respondents refer to the Region's "motivation" for the amendments.⁸ It is worth noting that there need not be, nor is there, any "motivation" for the inclusion of Respondent UPMC in the Amended Consolidated Complaint other than to effectuate the purposes and policies of the Act. Further, Respondents are mistaken in the contention that the Amended Consolidated Complaint must include specific links between the Respondent UPMC's agents and the conduct alleged in the Amended Consolidated Complaint. As stated above, there is no requirement that Respondent UPMC actually commit the alleged unfair labor practices in order

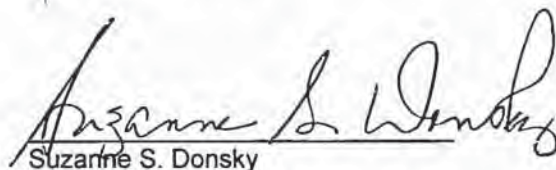
⁸ This reference is not unlike prior suggestions by Respondents' counsel to the effect that the Region has somehow become mired in a community-wide dispute concerning Respondent UPMC's status as a non-profit institution. There is, of course, no truth to this suggestion

to be held liable for them by virtue of its single employer status with Respondent UPMC Presbyterian Shadyside. This concept of derivative liability is not, as Respondents misrepresent in the Memorandum, a "new" policy; rather, it has long been the Board's practice to regard holding companies as liable for the unfair labor practices of their subsidiaries when they constitute a single-integrated enterprise. See, e.g., Massey Energy Co., 358 NLRB No. 159 (2012).⁹ See, also, American Electric Power Co., 302 NLRB 1021, 1023 (1991).

Notwithstanding Respondents' assertions to the contrary, inclusion of Respondent UPMC and the attendant single employer allegations in the Amended Consolidated Complaint only serve to advance the purposes of the Act. As long as Respondent UPMC is a single-integrated enterprise with Respondent UPMC Presbyterian Shadyside, and as long as Respondent UPMC has a controlling hand in the actions of Respondent UPMC Presbyterian Shadyside, as the General Counsel will establish at trial, the purposes of the Act are advanced by its inclusion in the case.

WHEREFORE, based on all of the foregoing, Counsel for the General Counsel respectfully urges that Respondents' Motion to Dismiss be denied in its entirety.

Dated at Pittsburgh, Pennsylvania, this 3rd day of February, 2014.



Suzanne S. Donsky
Julie R. Stern
Counsel for the General Counsel

NATIONAL LABOR RELATIONS BOARD,
REGION SIX
1000 Liberty Avenue, Room 904
Pittsburgh, Pennsylvania 15222

⁹ Specifically, the Board in Massey stated, in pertinent part: "Although the two companies are separately incorporated and Massey has no "operations" other than as a holding company, the factors of interrelated operations and centralized control of labor relations establish the absence of an arm's-length relationship between Massey and Mammoth. Accordingly, we find that Massey is accountable, along with Mammoth, for the unfair labor practices found here." Id. at 14.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 6

UPMC AND ITS SUBSIDIARY, UPMC
PRESBYTERIAN SHADYSIDE, SINGLE EMPLOYER,
d/b/a UPMC PRESBYTERIAN HOSPITAL AND d/b/a
UPMC SHADYSIDE HOSPITAL

and

SEIU HEALTHCARE PENNSYLVANIA,
CTW, CLC

Cases 06-CA-102465
06-CA-102494
06-CA-102516
06-CA-102518
06-CA-102525
06-CA-102534
06-CA-102540
06-CA-102542
06-CA-102544
06-CA-102555
06-CA-102559
06-CA-102566
06-CA-104090
06-CA-104104
06-CA-106636
06-CA-107127
06-CA-107431
06-CA-107532
06-CA-107896
06-CA-108547
06-CA-111578 and
06-CA-115826

AFFIDAVIT OF SERVICE OF: Counsel for the General Counsel's Opposition to Respondent's Motion to Dismiss Amendments dated February 3, 2014.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on February 3, 2014, I served the above-entitled document(s) by **electronic mail**, unless otherwise noted below, upon the following persons, addressed to them at the following addresses:

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February 3, 2014

Shirley McIntyre, Agent of NLRB

Date

Name


Signature

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

**UPMC AND ITS SUBSIDIARY
UPMC PRESBYTERIAN SHADYSIDE,
SINGLE EMPLOYER, D/B/A UPMC
PRESBYTERIAN HOSPITAL AND
D/B/A UPMC SHADYSIDE HOSPITAL**

and

**SEIU HEALTHCARE PENNSYLVANIA,
CTW, CLC**

**Cases 06-CA-102465
06-CA-102494
06-CA-102516
06-CA-102518
06-CA-102525
06-CA-102534
06-CA-102540
06-CA-102542
06-CA-102544
06-CA-102555
06-CA-102559
06-CA-102566
06-CA-104090
06-CA-104104
06-CA-106636
06-CA-107127
06-CA-107431
06-CA-107532
06-CA-107896
06-CA-108547
06-CA-111578
06-CA-115826**

ORDER DENYING MOTION¹

The Respondents' Motion to Dismiss Amendments to the consolidated complaint is denied. The Respondents have failed to establish that the amendments are improper

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

EXHIBIT J

and that they are entitled to judgment as a matter of law.

Dated, Washington, D.C. February 7, 2014.

MARK GASTON PEARCE, CHAIRMAN

PHILIP A. MISCIMARRA, MEMBER

KENT Y. HIROZAWA, MEMBER

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NATIONAL LABOR RELATIONS BOARD,

Applicant

v.

No.

UPMC,

Respondent

**APPLICATION FOR SUMMARY ORDER
ENFORCING SUBPOENA DUCES TECUM No. B-720563**

The National Labor Relations Board (the “Board”), an administrative agency of the Federal Government, respectfully applies to this Honorable Court, pursuant to Section 11(2) of the National Labor Relations Act, as amended (29 U.S.C. §151, et seq.) (the “Act”), for an Order enforcing Subpoena Duces Tecum No. B-720563, issued by the Board upon UPMC (“Respondent”) and duly served on this entity in the manner provided by law. Despite the issuance of a subpoena duces tecum, and an administrative law judge’s ruling requiring production of the vast majority of subpoenaed documents, Respondent has failed and refused to comply with the subpoena. In support of this application, the Board states as follows:

1. The Board is an administrative agency of the United States Government created by the Act, and is empowered and directed to administer provisions of the Act, including the issuance of subpoenas for evidence that relates to any matter in question.

2. This Court has jurisdiction over the subject matter of the proceeding, and of Respondent, by virtue of Section 11(2) of the Act [29 U.S.C. §161(2)].¹ The subpoena was issued within this judicial district and Respondent is a non-profit Pennsylvania corporation which is headquartered and conducts its business within this judicial district. In addition, the unfair labor practice charges concerning which Respondent was subpoenaed to produce documents were filed within this judicial district.

3. This application arises as a result of events alleged in unfair labor practice charges which were found to have merit and are currently being tried before an administrative law judge of the Board in Region Six of the Board.

On September 30, 2013, the Regional Director of Region Six of the National Labor Relations Board issued an Order Consolidating Cases and a Consolidated Complaint and Notice of Hearing (“Consolidated Complaint”) against UPMC Presbyterian Shadyside d/b/a UPMC Presbyterian Hospital and UPMC Shadyside Hospital (“UPMC Presbyterian Shadyside”). The Consolidated Complaint alleged numerous violations of Sections 8(a)(1), (3) and (4) of the Act, which arose in the context of a union organizing campaign that SEIU Healthcare Pennsylvania, CTW, CLC, is conducting among UPMC Presbyterian Shadyside’s employees.

¹ Section 11(2) of the Act states, in pertinent part: “In cases of contumacy or refusal to obey a subpoena issued to any person, any United States district court . . . within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, . . . and any failure to obey such order of the court may be punished by said court as a contempt thereof.”

Thereafter, on January 9, 2014, a Second Order Further Consolidating Cases and Amended Consolidated Complaint (“Amended Consolidated Complaint”) in these matters issued. The consolidation added two additional cases beyond those that appeared in the initial Consolidated Complaint, and added allegations that UPMC Presbyterian Shadyside is a single employer with Respondent. A copy of the Second Order Further Consolidating Cases and Amended Consolidated Complaint is attached hereto as Exhibit A. The Amended Consolidated Complaint was prepared, filed and served consistent with the requirements of Section 10(b) of the Act and of 29 C.F.R. §102.15 of the Board’s Rules and Regulations.²

4. Pursuant to the authority derived from Section 11(1) of the Act, which authorizes the issuance of subpoenas for evidence that relates to any matter in question, the Regional Director for Region Six issued a subpoena duces tecum upon Respondent.³

5. Specifically, on January 14, 2014, the Regional Director for Region Six issued Subpoena Duces Tecum No. B-720563, directing the Custodian of Records of Respondent to appear before an administrative law judge of the National Labor

² These Rules and Regulations have been issued pursuant to Section 6 of the Act (29 U.S.C. §156) and have been published in the Federal Register (24 F.R. §9095), pursuant to the Administrative Procedure Act (5 U.S.C. §552). This court may take judicial notice of the Board’s Rules and Regulations under 44 U.S.C. §1507.

³ Section 11(1) of the Act provides in pertinent part: “The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. . . .”

Relations Board on February 3, 2014, and to produce certain books, records, correspondence and documents. The issuance of this subpoena is consistent with the requirements of Section 11(1) of the Act and Section 102.31(a) of the Board's Rules and Regulations. The subpoena was served on Respondent by certified mail, as provided for in Section 11(4) of the Act and Section 102.113 of the Board's Rules and Regulations. Copies of the subpoena, and the USPS notice of delivery, are attached as Exhibits B and C, respectively.

6. On or about January 23, 2014, Respondent filed a petition to revoke Subpoena Duces Tecum No. B-720563, as provided by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. The petition to revoke Subpoena Duces Tecum No. B-720563 is attached hereto as Exhibit D. Counsel for the General Counsel filed an Opposition to the Petition to Revoke on January 28, 2014. The Opposition is attached hereto as Exhibit F.

7. Respondent's petition to revoke was duly considered by Administrative Law Judge Mark Carissimi, who has been assigned to the hearing in the unfair labor practice proceeding. Administrative Law Judge Carissimi made his ruling on February 24, 2014, on the record during said hearing. Administrative Law Judge Carissimi denied Respondent's petition to revoke the subpoena with respect to all paragraphs of the subpoena except paragraph 35, ordering Respondent to produce records requested by the remaining paragraphs of the subpoena.⁴

8. By electronic mail message dated February 27, 2014, to Counsels for the General Counsel, Counsel for Respondent asserted that, notwithstanding Administrative

⁴ That portion of the transcript of the hearing containing the Administrative Law Judge Carissimi's ruling is attached hereto as Exhibit G.

Law Judge Carissimi's ruling, it does not intend to comply with Subpoena Duces Tecum No. B-720563. The electronic mail message is attached as Exhibit E.

9. Following issuance of Subpoena Duces Tecum No. B-720563, Respondent and UPMC Presbyterian Shadyside filed a Motion to Dismiss with the Board, requesting that the Board dismiss the amendments to the Consolidated Complaint reflecting the "single employer" allegations which are included in the Amended Consolidated Complaint. In addition, Respondent and UPMC Presbyterian Shadyside moved that Respondent be dismissed as a party to the unfair labor practice case. Respondent argued that it had been denied due process, that the amendments were time-barred, and that the single employer allegations do not advance the purposes of the Act.⁵

On February 7, 2014, the Board issued an Order Denying Motion, which in its entirety reads: "The Respondents' [6] Motion to Dismiss Amendments to the consolidated complaint is denied. The Respondents have failed to establish that the amendments are improper and that they are entitled to judgment as a matter of law."⁷

10. Respondent has failed to produce any documents pursuant to Subpoena Duces Tecum No. B-720563.

11. By this conduct, Respondent has flouted the law by failing to obey a validly issued subpoena requiring the production of relevant documents. Respondent's

⁵ The Motion to Dismiss is attached as Exhibit H. Counsel for the General Counsel filed an opposition to the motion, which is attached as Exhibit I.

⁶ "Respondents" in the Board's Order refers to Respondent herein and UPMC Presbyterian Shadyside collectively.

⁷ A copy of the Board's Order is attached hereto as Exhibit J.

failure to produce the subpoenaed documents, which are relevant to the issues in the proceeding before the Board, constitutes contumacious conduct within the meaning of Section 11(2) of the Act. Furthermore, Respondent's conduct has impeded and continues to impede the unfair labor practice proceeding before the Board at the expense of the alleged discriminatees as well as the taxpayers, and is preventing the Board from carrying out its duties and functions under the Act.

12. As noted previously, Section 11(2) of the Act specifically authorizes the Board to make an "application" to the district court for a summary disposition of the Board's application to enforce the Board's subpoenas. The Board's application is a dispositive matter, not a pre-trial civil discovery matter in district court. "It is significant that the statute calls for an 'application' rather than a petition, an 'order' rather than a judgment and that it details no other procedural steps." Goodyear Tire & Rubber Co. v. NLRB, 122 F. 2d 450, 451 (6th Cir. 1941).

WHEREFORE, in view of Respondent's contumacious conduct, the Board respectfully prays that this Court enter an order forthwith:

1. Directing Respondent to produce all documents (as defined in Subpoena Duces Tecum No. B-720563) of every paragraph of Subpoena Duces Tecum No. B-720563, with the exception of paragraph 35, as requested by Suzanne Donsky and Julie Stern, Counsels for the General Counsel, immediately.

2. Granting the Board such other and further relief as may be necessary and appropriate.

No previous application has been made for the relief sought herein.

Respectfully submitted,

s/ Julie R. Stern

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PA Attorney ID 47833

Dated at Pittsburgh, Pennsylvania

This 20th day of March, 2014

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NATIONAL LABOR RELATIONS BOARD,

Applicant

v.

No.

UPMC,

Respondent

**APPLICATION FOR SUMMARY ORDER
ENFORCING SUBPOENA DUCES TECUM No. B-720504**

The National Labor Relations Board (the “Board”), an administrative agency of the Federal Government, respectfully applies to this Honorable Court, pursuant to Section 11(2) of the National Labor Relations Act, as amended (29 U.S.C. §151, et seq.) (the “Act”), for an Order enforcing Subpoena Duces Tecum No. B-720504, issued by the Board upon UPMC (“Respondent”) at the request of Claudia Davidson, Esq., Counsel for SEIU Healthcare Pennsylvania, CTW, CLC (the “Union”) and duly served on Respondent in the manner provided by law. Despite the issuance of a subpoena duces tecum, and an administrative law judge’s ruling requiring production of the majority of subpoenaed documents, Respondent has failed to comply with the subpoena. In support of this application, the Board states as follows:

1. The Board is an administrative agency of the United States Government created by the Act, and is empowered and directed to administer provisions of the Act, including the issuance of subpoenas for evidence that relates to any matter in question.

2. This Court has jurisdiction over the subject matter of the proceeding, and over Respondent, by virtue of Section 11(2) of the Act [29 U.S.C. §161(2)].¹ The subpoena was issued within this judicial district and Respondent is a non-profit Pennsylvania corporation which is headquartered and conducts its business within this judicial district. In addition, the unfair labor practice charges concerning which Respondent was subpoenaed to produce documents were filed within this judicial district.

3. This application arises as a result of events alleged in unfair labor practice charges filed by the Union which were found to have merit and are currently being tried before an administrative law judge of the Board in Region Six of the Board.

On September 30, 2013, the Regional Director of Region Six of the Board issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (“Consolidated Complaint”) against UPMC Presbyterian Shadyside d/b/a UPMC Presbyterian Hospital and UPMC Shadyside Hospital (“UPMC Presbyterian Shadyside”). The Consolidated Complaint alleged numerous violations of Sections 8(a)(1), (3) and (4) of the Act, which arose in the context of an organizing campaign which the Union is conducting among UPMC Presbyterian Shadyside’s employees.

Thereafter, on January 9, 2014, a Second Order Further Consolidating Cases and Amended Consolidated Complaint (“Amended Consolidated Complaint”) in

¹ Section 11(2) of the Act states, in pertinent part: “In cases of contumacy or refusal to obey a subpoena issued to any person, any United States district court . . . within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, . . . and any failure to obey such order of the court may be punished by said court as a contempt thereof.”

these matters issued. The consolidation added two additional cases beyond those that appeared in the Consolidated Complaint, and added allegations that UPMC Presbyterian Shadyside is a single employer with Respondent. A copy of the Amended Consolidated Complaint is attached hereto as Exhibit A. The Amended Consolidated Complaint was prepared, filed and served consistent with the requirements of Section 10(b) of the Act and of 29 C.F.R. §102.15 of the Board's Rules and Regulations.²

4. Pursuant to the authority derived from Section 11(1) of the Act, which authorizes the issuance of subpoenas for evidence that relates to any matter in question, the Regional Director for Region Six issued a subpoena duces tecum upon Respondent.³

5. Specifically, on October 25, 2013, at the request of Counsel for the Union, the Regional Director for Region Six issued subpoena duces tecum B-720504, directing the Custodian of Records of Respondent to appear before an administrative law judge of the National Labor Relations Board on February 3, 2014, and to produce certain books, records, correspondence and documents. The issuance of this subpoena is

² These Rules and Regulations have been issued pursuant to Section 6 of the Act (29 U.S.C. §156) and have been published in the Federal Register (24 F.R. §9095), pursuant to the Administrative Procedure Act (5 U.S.C. §552). This court may take judicial notice of the Board's Rules and Regulations under 44 U.S.C. §1507.

³ Section 11(1) of the Act provides in pertinent part: "The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. . . ."

consistent with the requirements of Section 11(1) of the Act and Section 102.31(a) of the Board's Rules and Regulations.

6. Upon information and belief, undersigned Counsel asserts that the subpoena was served on Respondent by way of service upon Respondent's Counsel, by mail, on January 16, 2014, as provided for in Section 11(4) of the Act and Section 102.113 of the Board's Rules and Regulations. Copies of the subpoena, and the cover letter⁴, are attached as Exhibits B and C, respectively.

7. Pursuant to Section 11(2) of the Act and Section 102.31(d) of the Board's Rule's and Regulations, subpoena enforcement proceedings for enforcement of subpoenas issued at the request of a private party shall be instituted by the General Counsel in the name of the Board, but on relation of such private party.

8. Accordingly, this Application for Summary Order Enforcing Subpoena Duces Tecum with respect to the Union's Subpoena Duces Tecum No. B-720504 is appropriate.

9. On or about January 27, 2014, Respondent filed a petition to revoke Subpoena Duces Tecum No. B-720504, as provided by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. The petition to revoke Subpoena Duces Tecum No. B-720504 is attached hereto as Exhibit D.

10. Respondent's petition to revoke was duly considered by Administrative Law Judge Mark Carissimi, who has been assigned to the hearing in the unfair labor practice proceeding. Administrative Law Judge Carissimi made his ruling on February 24, 2014, on the record during said hearing. Administrative Law Judge Carissimi

⁴ Although the date on the cover letter reads "January 16, 2015", Counsel for the Board asserts that the letter was sent in 2014, and the date on the cover letter contains a typographical error.

granted Respondent's petition to revoke with respect to paragraphs 1-4, 10-11, 17, 19-21, 26-28, 39, 49-53, 57, 60-65, and 67-69, and denied Respondent's petition to revoke with respect to the remaining paragraphs of the subpoena, ruling that Respondent must comply with paragraphs 5-9, 12-16, 18, 22-25, 29-38, 40-48, 54-56, 58-59,66 and 70-89.⁵

11. By electronic mail message dated February 27, 2014 to Counsels for the Union, Counsel for Respondent asserted that, notwithstanding Administrative Law Judge Carissimi's ruling, it does not intend to comply with Subpoena Duces Tecum No. B-720504. The electronic mail message is attached as Exhibit E.

12. Following issuance of Subpoena Duces Tecum No. B-720504, Respondent and UPMC Presbyterian Shadyside filed a Motion to Dismiss with the Board, requesting that the Board dismiss the amendments to the Consolidated Complaint reflecting the "single employer" allegations which are included in the Amended Consolidated Complaint. In addition, Respondent and UPMC Presbyterian Shadyside moved that Respondent be dismissed as a party to the unfair labor practice case. Respondent argued that it had been denied due process, that the amendments were time-barred, and that the single employer allegations do not advance the purposes of the Act.⁶

⁵ That portion of the transcript of the hearing containing the Administrative Law Judge Carissimi's ruling on the record is attached hereto as Exhibit F. In light of Administrative Law Judge Carissimi's ruling, only compliance with paragraphs 5-9, 12-16, 18, 22-25, 29-38, 40-48, 54-56, 58-59,66 and 70-89 of Subpoena Duces Tecum No. B-720504 is sought herein.

⁶ The Motion to Dismiss is attached as Exhibit G.

On February 7, 2014, the Board issued an Order Denying Motion, which in its entirety reads: “The Respondents’⁷ Motion to Dismiss Amendments to the consolidated complaint is denied. The Respondents have failed to establish that the amendments are improper and that they are entitled to judgment as a matter of law.”⁸

13. Respondent has failed to produce any documents pursuant to Subpoena Duces Tecum No. B-720504.

14. By this conduct, Respondent has flouted the law by failing to obey a validly issued subpoena requiring the production of relevant documents. Respondent’s failure to produce the subpoenaed documents, which are relevant to the issues in the proceeding before the Board, constitutes contumacious conduct within the meaning of Section 11(2) of the Act. Furthermore, Respondent’s conduct has impeded and continues to impede the unfair labor practice proceeding before the Board at the expense of the alleged discriminatees as well as the taxpayers, and is preventing the Board from carrying out its duties and functions under the Act.

15. As noted previously, Section 11(2) of the Act specifically authorizes the Board to make an “application” to the district court for a summary disposition of the Board’s application to enforce the Board’s subpoenas. The Board’s application is a dispositive matter, not a pre-trial civil discovery matter in district court. “It is significant that the statute calls for an ‘application’ rather than a petition, an ‘order’ rather than a judgment and that it details no other procedural steps.” Goodyear Tire & Rubber Co. v. NLRB, 122 F. 2d 450, 451 (6th Cir. 1941).

⁷ “Respondents” in the Board’s Order refers to Respondent herein and UPMC Presbyterian Shadyside collectively.

⁸ A copy of the Board’s Order is attached hereto as Exhibit H.

WHEREFORE, in view of Respondent's contumacious conduct, the Board respectfully prays that this Court enter an order forthwith:

1. Directing Respondent to produce all documents (as defined in Subpoena Duces Tecum No. B-720504) responsive to paragraphs 5-9, 12-16, 18, 22-25, 29-38, 40-48, 54-56, 58-59, 66 and 70-89 of Subpoena Duces Tecum No. B-720504, as requested by Claudia Davidson, Esq., Counsel for the Union, immediately.

2. Granting the Board such other and further relief as may be necessary and appropriate.

No previous application has been made for the relief sought herein.

Respectfully submitted,

s/ Julie R. Stern

Julie R. Stern
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Dated at Pittsburgh, Pennsylvania

This 20th day of March, 2014

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NATIONAL LABOR RELATIONS BOARD,)	
)	
Applicant,)	
)	
v.	)	Case No. 2:14-mc-00109-AJS
)	
UPMC PRESBYTERIAN SHADYSIDE,)	
)	
Respondent.)	
)	

**RESPONSE IN OPPOSITION TO APPLICATION FOR AN ORDER
ENFORCING SUBPOENA *DUCES TECUM* No. B-720565**

Respondent UPMC Presbyterian Shadyside (sometimes referred to as “Respondent”) submits this Response in Opposition to the Application (Doc. 1) filed by the National Labor Relations Board (“NLRB”) seeking enforcement of its Subpoena *duces tecum* No. B-720565.

INTRODUCTION

The NLRB’s application for an order enforcing its subpoena *duces tecum* should be denied. The burden of compliance with the subpoena is completely disproportionate to the modest amount in controversy below. As of January 27, 2014, the total amount of back pay at issue in the underlying proceeding, for all five alleged victims of discrimination, is a mere **\$75,619**. Respondent respectfully submits that this total amount in controversy must be taken into account when determining the unreasonableness of Subpoena B-720565. Additionally, the subpoena was not issued for proper purpose, and the documents sought by the subpoena are not relevant to the issues in dispute. Accordingly, the NLRB’s application must be denied.

RELEVANT FACTS

In April 2013, SEIU Healthcare Pennsylvania (“the Union”) filed numerous charges against UPMC Presbyterian Shadyside and its holding company UPMC. These charges alleged various violations of the Act, including that UPMC Presbyterian Shadyside and its holding company UPMC constituted a “single employer.”

Throughout the investigation of these charges, counsel for UPMC and its subsidiary UPMC Presbyterian Shadyside disputed that the two entities constitute a single employer. The Regional Director for NLRB Region 6 was presented with overwhelming evidence that the holding company, UPMC, which does not employ any employees, could not be a charged party as it had not participated in any of the alleged unfair labor practices named in the charges.

After a thorough evaluation of the facts, Region 6, in September 2013, rejected the Union’s single employer theories and determined that UPMC should not be a part of the proceedings. The Region’s conclusion was confirmed when in that same month the Union filed amended charges, the obvious and only impact of which was the removal of UPMC as a named employer and the stripping of any single employer theory from the underlying litigation. Region 6 thereafter issued a Consolidated Complaint on September 30, 2013. The Consolidated Complaint did not list the holding company UPMC as a respondent. It did not include any single employer allegations. Region 6 did not serve a copy of the Consolidated Complaint on the holding company UPMC.

Thus, all parties to the underlying litigation understood that UPMC was not a party to the litigation and that no unfair labor practice charges had been filed against it. UPMC Presbyterian Shadyside’s preparation for the hearing, which was initially set for December 16, 2013 (but which actually commenced on February 10, 2014 after three postponements), therefore, did not

address any of the complex legal and factual issues associated with its relationship to UPMC and the question of single employer status.

Notwithstanding this initial determination that UPMC would play no role in the protracted underlying litigation, Region 6 subsequently made an abrupt U-turn. Based on a recently articulated “policy” issued by the NLRB’s Office of General Counsel, and more than three months after it issued the Consolidated Complaint but only *weeks before the hearing*, the Region issued an Amended Consolidated Complaint (received by UPMC Presbyterian Shadyside on January 10, 2014) that makes allegations of single employer status between UPMC and UPMC Presbyterian Shadyside. Thus, only weeks before the hearing, Region 6 inserted the complex legal and factual issues associated with determining single employer status into the underlying litigation.

The only explanation proffered by Region 6 for releasing UPMC as a charged party in September 2013 (along with all single employer allegations), only to change course three months later and re-insert UPMC into the case as a respondent without any additional fact-gathering and without any opportunity for UPMC Presbyterian Shadyside to respond was its reliance on a new, generic “policy.”

In all material respects, the Amended Consolidated Complaint is identical to the Consolidated Complaint. In other words, the Amended Consolidated Complaint alleges unfair labor practices against UPMC Presbyterian Shadyside only; references facilities owned or operated only by UPMC Presbyterian Shadyside only; and implicates managers, supervisors, agents and employees of UPMC Presbyterian Shadyside only.

Because the amendments were untimely, violated the due process rights of UPMC, and did not advance the purposes of the Act, UPMC filed its Motion to Dismiss Amendments Adding

UPMC as an Additional Respondent on January 27, 2014. The Board denied that Motion on February 2, 2014.¹

On or about January 14, 2014, only weeks before the anticipated opening of the hearing, Region 6 issued Subpoena *duces tecum* B-720565, which is the focus of the case at bar. The subpoena, which consisted of 48 separate requests, sought information and documents from UPMC related to the newly added single employer allegations contained in the Amended Consolidated Complaint. Thereafter, on or about January 23, 2014, UPMC filed a timely petition to revoke the subpoena. The improper purpose of this subpoena was further evidenced by the fact the Amended Consolidated Complaint was time-barred insofar as paragraphs 2(a), 3(a), 3(b), 4(a), 4(b), and 5(a) were concerned, UPMC was denied due process, and the amendment to add UPMC as a respondent did not advance the purposes of the Act.

LAW AND ARGUMENT

Sections 11(1) and 11(2) of the Act govern the procedure, scope and enforcement of NLRB subpoenas (whether investigative or trial subpoenas). Read together, Section 11(1) vests the NLRB with the authority to issue and define the scope of an agency subpoena. 29 U.S.C § 161(1). Section 11(1) also vests the NLRB with the authority to revoke or limit subpoenas as well as receive evidence. 29 U.S. C. § 161(1).

Congress, however, did not entrust the NLRB with authority to enforce its own subpoenas. Instead, Section 11(2) vests the district courts with the exclusive jurisdiction for enforcing NLRB subpoenas, including objections and privilege issues, as only the district courts may order a party to produce “evidence” responsive to a NLRB subpoena:

¹ Under Board rules and procedure, UPMC cannot appeal this ruling until after the case on the merits is appealed to the Board.

In case of contumacy or refusal to obey a subpoena issued to any person, any district court of the United States or the United States courts of any Territory or possession, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there **to produce evidence** if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

29 U.S.C. § 161(2) (emphasis added). *See also N.L.R.B. v. Detroit Newspapers*, 185 F.3d 602, 605-06 (6th Cir. 1999) (“Despite the general policy that the NLRB should have jurisdiction in labor-management disputes, Congress specifically reserved to the federal courts the authority to provide for enforcement of subpoenas.”)

Thus, the NLRB does not have any authority to order an employer to produce or disclose documents. That authority is vested exclusively in the district courts who may order parties to produce evidence to the NLRB. As the Sixth Circuit has held, a “court may not enforce an administrative subpoena unless the request seeks relevant material and is not unduly burdensome.” *EEOC v. Ford Motor Credit Co.*, 26 F.3d 44, 47 (6th Cir. 1994). The Third Circuit similarly holds that “[a] district court should enforce an agency subpoena if the subpoena is for a proper purpose, the information sought is relevant to that purpose, and statutory procedures are observed.” *NLRB v. Frazier*, 966 F.2d 812, 815 (3rd Cir. 1992). *See also EEOC v. Kronos Inc.*, 620 F.3d 287, 298 n.3 (3rd Cir. 2010) (“To obtain enforcement of an administrative subpoena, an agency must demonstrate that . . . the demand is not ‘unreasonably broad or burdensome.’” (internal citations omitted)).

I. The Burden of Complying with the Subpoena is Disproportionate to the Remedies Sought.

A subpoena *must* be revoked or limited if it “subjects a person to undue burden,” F.R.C.P. 45(d)(3)(A)(iv), or if “the burden or expense of the proposed discovery outweighs its likely benefit” F.R.C.P. 26(b)(2)(C)(iii). The Board has announced, both in reported decisions and its own rules and regulations, that the Federal Rules of Civil Procedure govern proceedings before the Board. *See CNN America, Inc.*, 352 NLRB 675, 678 n.6 (2008) (quoting § 101.10(a) of the Board’s Rules and Regulations: “[t]he rules of evidence applicable in the district courts of the United States under the Rules of Civil Procedure adopted by the Supreme Court are, so far as practicable, controlling.”).

Respondent maintains that the subpoena to UPMC Presbyterian Shadyside is unduly burdensome. Even taking into account the rulings of the presiding Administrative Law Judge (ALJ) limiting the scope of the subpoena, UPMC Presbyterian Shadyside is still required to produce a voluminous number of documents at significant monetary and labor costs. If UPMC Presbyterian Shadyside is forced to comply with this oppressive subpoena, substantial amounts of money and hours will necessarily be expended. This is the “serious[] disrupt[ion of] normal business operations” that the Fourth Circuit Court of Appeals found would make a Board subpoena unduly burdensome. *See NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507, 512 (4th Cir. 1996).

In the same vein, F.R.C.P. 26(b)(2)(C)(iii), *supra*, commands that a subpoena must be revoked when “the burden or expense of the proposed discovery outweighs its likely benefit.” If the broad targets of the subpoena to UPMC Presbyterian Shadyside could be expected to be of any benefit in the prosecution of the alleged unfair labor practices, the General Counsel would

have sought enforcement of the subpoena prior to the conclusion of the merits portion of the hearing.

Importantly, as of January 27, 2014, the total amount of back pay at issue in the underlying proceeding, for all alleged victims of discrimination, is a mere **\$75,619**. Respondent respectfully submits that this total amount in controversy in the underlying litigation must be taken into account when determining the unreasonableness of Subpoena B-720565. The burden of compliance with the subpoena is completely disproportionate to the modest relief to be awarded in the underlying proceedings even if Applicant is successful there, which has yet to be determined.

II. UPMC is an Improper Party and Therefore the Subpoena was Issued for an Improper Purpose.

The addition of UPMC in the Amended Consolidated Complaint denies Respondent its due process rights as guaranteed by the United States Constitution. As a result, any subpoena relating to the allegations against UPMC as a single employer with UPMC Shadyside Presbyterian is also improper. The Administrative Procedure Act codifies this requirement: “Persons entitled to notice of an agency hearing shall be **timely** informed of . . . the matters of fact and law asserted.” 5 U.S.C. § 554(b)(3) (emphasis added).

“The test of due process in this setting is a determination of fair notice . . . [where] the crucial focus is at all times on whether notice was given which provided the party with an adequate opportunity to prepare and present its evidence. . . . The test of due process in these circumstances remains one of fairness under the circumstances of each case . . .” *NLRB v. Quality C.A.T.V., Inc.*, 824 F.2d 542, 546 (7th Cir. 1987) (internal citations omitted). *See also Russell-Newman Mfg. Co. v. NLRB*, 370 F.2d 980, 984 (5th Cir. 1967) (“Due process in an

administrative hearing includes a fair trial, conducted in accordance with fundamental principles of fair play and applicable procedural standards established by law. Administrative convenience or necessity cannot override this requirement.”). The court in *NLRB v. Complas Industries, Inc.*, 714 F.2d 729 (7th Cir. 1983), expounded further:

[A]dequacy of notice is an essential prerequisite to fair and effective adjudication. Due process requires that before the government can take enforcement action against persons charged with unlawful conduct, it must inform such persons of the basis of the complaint and give them a meaningful opportunity to meet the complaint. . . .

The amending of the complaint . . . did not involve a minor variation from the claim in the original complaint for which respondent prepared a defense. . . . Due process is not satisfied by giving respondent a mere opportunity to question witnesses without a prior opportunity to prepare a meaningful defense. We do not believe that the amended claim was fairly tried since the company was not given a meaningful opportunity to preserve relevant evidence, prepare for, and present a meaningful defense to the unlawful interrogation claim.

Complas, 714 F.2d at 733-34 (emphasis added).

Here, as of September 2013, when Region 6 informed the holding company it was no longer a charged party, UPMC’s involvement in these proceedings ended. The charges were amended and the Consolidated Complaint issued – none of which were served on UPMC or implicated it in any fashion.

The hearing date was first set for December 16, 2013, later set for February 3, 2014, and opened on February 10, 2014. Only three weeks before the hearing, the Counsel for the General Counsel amended the Consolidated Complaint naming UPMC as a respondent and alleging that it and UPMC Presbyterian Shadyside are a single integrated enterprise. The only explanation for this abrupt change has been reference from Counsel to the General Counsel to a “policy” of

inclusion of the parent corporation – a policy that apparently did not exist or was not deemed important in September 2013.

UPMC Presbyterian Shadyside was forced to prepare for the newly resurrected single employer issue in three weeks. Yet it has no idea why UPMC was brought back into the underlying proceedings. Facing the substantial and complex factual and legal considerations implicated by a single employer allegation as well as the *merit* allegations, which only implicate UPMC Presbyterian Shadyside Hospital and its managers and supervisors, Respondent was forced to tread blindly, as the evidence they had initially proffered convinced the Region that whether the entities were or were not a single employer was irrelevant to this proceeding. The same evidence upon which the Region relied to dismiss UPMC from the case, was then used to argue the exact opposite conclusion by the Counsel for the General Counsel.

This sequence of events defines the denial of due process, where the emphasis (at least in the context of Board proceedings) lies in fair notice and an understanding of the allegations being brought against a party. “Failure to clearly define the issues and advise an employer² charged with a violation of the law . . . is, of course, to deny procedural due process of the law.” *NLRB v. I.W.G., Inc.*, 144 F.3d 685, 688-89 (10th Cir. 1998) (internal citations omitted). Not only did the Region fail to clearly define the issues (its flip-flopping would leave any employer guessing), it left UPMC less than a month to figure it out.

The court’s reasoning in *NLRB v. Pepsi-Bottling Company*, 613 F.2d 267 (10th Cir. 1980), is instructive:

This is not a case of a minor variation from the charge in the complaint.
...

² As argued more fully below, UPMC denies it is an employer as defined under the Act.

Many labor dispute cases involve multiple charges based on a variety of occurrences. This case was complex and confusing Simply because violations could have been alleged in addition to those in the complaint does not obligate the employer to defend against all possibilities.

Pepsi-Bottling, 613 F.2d at 273-74.

Even before the Amended Consolidated Complaint issued and the complex single employer allegation resurfaced, the Consolidated Complaint consisted of twenty separate charges filed by UPMC Presbyterian Shadyside employees against their employer, UPMC Presbyterian Shadyside. The charges allege as many as fifty distinct unfair labor practices. UPMC Presbyterian Shadyside could not have anticipated or predicted that the Region would reverse course *sua sponte* and bring in complex and substantial questions of law and fact so close to the commencement of the hearing. The Board's position that due process is denied when the General Counsel "lull[s] Respondent into thinking that it did not need to defend the charge" is squarely at odds with what the Counsel for the General Counsel did in the instant case. *El Paso Healthcare System, LTD.*, 358 NLRB No. 54, *3 (2012).

The denial of due process is also epitomized by the Region's decision *during the investigative phase* to remove UPMC from these proceedings because the Union's single employer allegations lacked any relevance to this proceeding, only to reverse that decision *after the investigative phase*, after the Consolidated Complaint issued, and after the hearing date was set. The court's recent decision in *EEOC v. CRST Van Expedited, Inc.*, 679 F.3d 657 (8th Cir. 2012) supports the position of UPMC Presbyterian Shadyside:

[W]hile [an agency] may seek relief on behalf of individuals beyond the charging parties and for alleged wrongdoing beyond those originally charged, it must discover such individuals and wrongdoing *during the course of its investigation*. . . .

In summary, while we recognize that [an agency] enjoys significant latitude to investigate claims, and to allege claims in federal court based on the

results of its investigations, we find a clear and important distinction between facts gathered during the scope of an investigation and facts gathered during the discovery phase of an already-filed [complaint].

CRST, 679 F.3d at 674-75 (internal citations omitted) (emphasis in original).

Here, *during the course of its investigation*, Region 6 concluded that UPMC should not be subject to a complaint because there was no relevance to the single employer allegations in this proceeding. Thus, the Region found *during the course of its investigation* that the single employer issue was not a proper part of the underlying proceedings. Under *CRST*, the Region's subsequent reversal (after its investigation and after the Consolidated Complaint issued) denied due process to UPMC and tainted any subsequent subpoena to UPMC Presbyterian Shadyside relative to the single employer issue.

III. The Subject Matter of the Subpoena is Not Relevant to the Issues in Dispute.

Whatever the reason or motivation behind Region 6 adding UPMC as a respondent in the Amended Consolidated Complaint, two things are clear from the face of the Amended Consolidated Complaint itself: 1) The documents sought by the subpoena are not relevant to the issues in dispute; and 2) including the single employer allegation does not advance the purposes of the Act. Other than the addition of UPMC as a respondent and the corresponding single employer allegation, the remainder of the Amended Consolidated Complaint is identical to the Consolidated Complaint, where UPMC does not appear in any fashion. The Amended Consolidated Complaint still alleges unfair labor practices against only UPMC Presbyterian Shadyside, references facilities owned or operated only by UPMC Presbyterian Shadyside, and implicates managers, supervisors, agents and employees of only UPMC Presbyterian Shadyside. Even more telling, the remedies requested in the Amended Consolidated Complaint do not reference the holding company UPMC; rather, the remedies only implicate UPMC Presbyterian

Shadyside. By agreement of the parties, the hearing on the merit allegations in the Amended Consolidated Complaint proceeded without delay, and the record on the merits has closed. Indeed, during the seven weeks of hearing on the merits before the ALJ, there was no evidence introduced regarding any action or conduct on the part of UPMC relative to the allegations in the Amended Consolidated Complaint.

The Region has not and cannot explain how the documents sought by the subpoena are relevant or how including UPMC as a respondent advances the purposes of the Act in any fashion. At all relevant times, UPMC Presbyterian Shadyside has made clear it is fully capable of satisfying any potential remedy sought, and the Region has never questioned this nor is there any reason to do so. UPMC Presbyterian Shadyside by itself is one of the larger hospitals in the country, with multiple campuses, and can satisfy any remedial order that could arise from these proceedings. The single employer allegation simply does not belong in this case, precisely as the Region found back in September 2013 during its investigation upon weighing all the evidence and arguments, and therefore the documents sought by the subpoena are not relevant to the underlying proceeding. Without the possibility of advancing any purpose under the Act, UPMC should not have been added as a respondent in the Amended Consolidated Complaint. The single employer allegation is improper. Petitioner's application seeking enforcement of Subpoena 720565, which seeks documents relating only to the single employer allegation, should be denied.

CONCLUSION

For the foregoing reasons, UPMC Presbyterian Shadyside respectfully requests denial of the NLRB's Application for enforcement of subpoena *duces tecum* B-720565.

Respectfully submitted,

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Dated: May 30, 2014

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NATIONAL LABOR RELATIONS BOARD,)	
)	
Applicant,	)	Case No. 2:14-mc-00109-AJS
)	
v.	)	Judge Arthur J. Schwab
)	
UPMC PRESBYTERIAN SHADYSIDE,	)	<i>Filed Electronically</i>
)	
Respondent.)	

MOTION FOR RECONSIDERATION

Newly-discovered evidence reveals that the SEIU, on whose behalf the NLRB served as the “litigation arm” (Doc. 27, p. 3), grossly abused the administrative subpoena process, justifying reconsideration of the Court’s September 2, 2014 Memorandum Opinion (Doc. 27) and related Order (Doc. 28). This evidence, which was secured through a Right to Know Law Request served on the City of Pittsburgh (“City”), reveals that the true purpose in the subpoena served on UPMC Presbyterian Shadyside was to advance collateral litigation filed by former Mayor Luke Ravenstahl and the City bogusly attacking UPMC’s tax-exempt status. Invoices submitted to the City by its outside lawyers reveal that SEIU lawyers secretly orchestrated the City’s recently dismissed payroll tax lawsuit against UPMC Presbyterian Shadyside’s parent corporation, UPMC, and steered that doomed lawsuit in furtherance of the SEIU’s corporate campaign and unionization efforts. Critically, for purposes of this motion, this newly-discovered evidence confirms that the administrative subpoena process was used not for a legitimate discovery purpose in the NLRB proceeding, but rather as part of the SEIU’s corporate campaign and in an ultimately unsuccessful attempt to prevent dismissal of the payroll tax lawsuit against UPMC.

For these reasons, and the reasons detailed more fully herein, UPMC Presbyterian Shadyside respectfully requests that this Court reconsider its September 2, 2014 Order. Alternatively, UPMC Presbyterian Shadyside requests that this Court, based on the good cause shown herein, grant UPMC Presbyterian Shadyside leave to take limited discovery of the SEIU, the NLRB, and other third parties regarding the impropriety of the subpoenas in question.

INTRODUCTION

1. In the words of this Court, “[t]he purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence.” *U.S. v. Askew*, No. 03-244, 2014 WL 3670139, at *2 (W.D. Pa. July 23, 2014) (Schwab, J.) (internal citations omitted).

2. Here, new evidence demonstrates that the subpoena at issue was used and is being used for an improper purpose. Thus, reconsideration of this Court’s September 2, 2014 Memorandum Opinion (Doc. 27) and related Order (Doc. 28) is necessary to correct a manifest error of law occurring in the enforcement of the subpoena.

3. Specifically, telling evidence discovered on August 29, 2014 and thereafter demonstrates that during the course of the City’s lawsuit against UPMC to revoke its tax-exempt status and impose a payroll tax against UPMC (a parent holding company with no employees), the law firm employed by the City to pursue this lawsuit – Strassburger, McKenna, Gutnick & Gefsky (“Strassburger”), coordinated with lawyers paid over \$235,000 by the SEIU for “labor organizing efforts,” Caplin & Drysdale, during that same time period.

4. This evidence includes billing records submitted to the City by Strassburger, partially unredacted copies of which were recently provided to UPMC under the Right to Know Law, 65 P.S. § 67.101.¹

5. The numerous consultations between Strassburger and Caplin & Drysdale attorneys are referenced in 44 pages of billing records showing charges from and services rendered by Strassburger to the City throughout 2013. Exhibit A.

6. Upon information and belief, UPMC submits that these billing records also establish that Strassburger conferred with Howard Berliner, the SEIU's national Director of Health Policy, contemporaneously with the filing of its payroll tax complaint against UPMC. Exhibit A, Entry Nos. 147 and 149; Exhibit B, p. 16, SEIU Form LM-2 Labor Organization Annual Report for January 1, 2013 through December 31, 2013 ("SEIU 2013 Annual Report"), the SEIU paid Berliner nearly \$115,000 in 2013.²

7. This evidence, considered in connection with the factual and procedural history underlying the NLRB proceedings against UPMC and UPMC Presbyterian Shadyside and the enforcement proceedings before this Court, leads to the inescapable conclusion that both the City's lawsuit to revoke UPMC's tax-exempt status and to collect a payroll tax from UPMC and these pending enforcement proceedings were waged principally by the SEIU against UPMC as part of a "corporate campaign."

¹ Prior to August 29, 2014, the City had redacted this information – which it identified as entries reflecting meetings with third party persons or entities” regarding UPMC – on the basis that it was protected by the attorney-client privilege and work product doctrine. UPMC challenged this claim in the recently resolved Right to Know Law Proceedings. *See UPMC v. City of Pittsburgh*, Allegheny County Court of Common Pleas, GD-13-021251 (O'Brien, J.); *City of Pittsburgh v. UPMC*, Allegheny County Court of Common Pleas, SA-14-000550 (O'Brien, J.).

² A full copy of the SEIU 2013 Annual Report is available at <http://www.workforcefreedom.com/sites/default/files/SEIU%202013.pdf>; *see also* https://www.health.ny.gov/facilities/public_health_and_health_planning_council/membership_list.htm.

8. This corporate campaign, taken straight from the SEIU playbook, was designed to drive a wedge between SEIU-targeted hospitals like UPMC and the community upon which they rely for their existence, using a “challenge” to UPMC’s tax-exempt status as a pretense to advance stark union motives. *See, e.g., Anthony P. Merza, Hospital Charity Care and the Corporate Campaign: Labor Union Exploitation of Dysfunctional Tax Exemption Laws*, 11 Depaul J. Health Care L. 203, 229-30 (2008).³

9. The addition of the “single employer” allegations to the NLRB proceedings and the issuance of the at-issue subpoena seeking “single employer” discovery only occurred when it became clear that the payroll tax lawsuit that the SEIU orchestrated against UPMC was in jeopardy because UPMC’s subsidiary hospitals, not UPMC (the parent holding company), were the employers from which the City was required to collect any payroll tax allegedly owed.

10. In other words, the SEIU infused the “single employer” allegations and issues into the NLRB proceedings for the improper purpose of obtaining discovery or a legal ruling to support the sinking and since-dismissed litigation by the City against UPMC.

³ As discussed by Dr. Merza, to wage their war through a “corporate campaign:”

[T]he union uses its allies in the news media, government, and among special interest groups – the stark union motives are thereby blunted and the campaign acquires an appearance of legitimacy through the involvement of these other entities. The campaign involves economic, regulatory, legal, political and psychological warfare. The hospital’s relationship with its community base is disrupted and the hospital’s ability to conduct business is impeded. The message to the hospital is ‘We unionize your workforce, or we destroy your reputation.’ Often the complaint that the union presents to the public through the campaign is that a not-for-profit hospital is not doing enough charity work to justify its tax-exempt status. . . . The unions say that they simply wish to partner with hospitals to improve patient care and community service. Unionized hospitals, however, are not targeted for corporate campaigns. Furthermore, there is the clear understanding that the corporate campaign will cease when management accedes to [union demands].

See Merza, 11 Depaul J. Health Care L. at 235-236.

11. In light of the new evidence, this enforcement action should be dismissed.

BACKGROUND

12. This is an NLRB enforcement proceeding. In three separate actions, the NLRB asked the Court to enforce subpoenas directed towards UPMC, and UPMC Presbyterian Shadyside. Two of the subpoenas were served by the NLRB. The third, at issue in this case, was served by the SEIU, an “interested party” in this litigation. (Doc. 3).

13. The Court is familiar with the background of this litigation. A brief timeline of underlying events places the new evidence in context.

A. Timeline of Relevant Litigation Events

14. At the request of former Mayor Luke Ravenstahl in January 2013, the Strassburger law firm began to research whether UPMC is an Institution of Purely Public Charity (“IPPC”) and, as such, entitled to Real Estate and Payroll Tax Exemptions. *See* Sean D. Hammill, *UPMC, Pittsburgh Stake Positions for Court Fight on Nonprofit Status*, Pittsburgh Post-Gazette, March 22, 2013.⁴

15. On March 20, 2013, City Mayor Luke Ravenstahl (“Mayor”) held a high-profile press conference to announce that the City was suing UPMC to challenge its status under Pennsylvania law as an IPPC and to revoke the payroll tax exemption attendant with this status. *See* Jeremy Boren and Bobby Kerlik, *Ravenstahl: Pittsburgh Sues to Remove UPMC’s Tax Exempt Status*, Pittsburgh Tribune Review, March 20, 2013;⁵ Chris Potter, *Ravenstahl*

⁴ Available at <http://www.post-gazette.com/local/city/2013/03/22/UPMC-Pittsburgh-stake-positions-for-court-fight-on-nonprofit-status/stories/201303220224>

⁵ Available at <http://triblive.com/news/adminpage/3696701-74/upmc-tax-ravenstahl#axzz2a5315QOI>

Challenges UPMC's Tax Exempt Status, Pittsburgh City Paper, March 20, 2013;⁶ Emily Farah, *Pittsburgh Starts Legal Battle with UPMC Over Nonprofit Status*, 90.5 FM WESA, March 20, 2013);⁷ Moriah Balingit, *Pittsburgh Lawsuit Challenges UPMC's Tax Status*, Pittsburgh Post-Gazette, March 21, 2013.⁸

16. According to published news reports, the Mayor was joined at the press conference by SEIU members who urged him to challenge UPMC. *See* Boren and Kerlik, *supra* note 5, *Ravenstahl: Pittsburgh Sues to Remove UPMC's Tax Exempt Status*; *see also* *Ravenstahl Wants UPMC to Pay Tax on All 150 Properties in Pittsburgh*, WPXI, March 20, 2013⁹ (“SEIU members and representatives from other labor unions filled much of the mayor’s conference room during the news conference.”).

17. During that press conference, the Mayor justified his decision to file the City’s lawsuit based on the analysis and advice of the City’s law department and Strassburger, stating that “after a very thorough and exhaustive review by our law department and a third party law firm that we hired, it is very clear to me that the University of Pittsburgh Medical Center is not an Institution of Purely Public Charity and therefore today the City of Pittsburgh will take action to challenge that claim.” *See* <http://www.youtube.com/watch?v=W9YGwCBn4HY>; *see also* Potter, *supra* note 6, *Ravenstahl Challenges UPMC's Tax Exempt Status*, (“Working from guidance provided by the city's legal counsel on the issue, the law firm of Strassburger McKenna Gutnick & Gefsky, Ravenstahl said that UPMC failed at least three of those tests.”).

⁶ Available at <http://www.pghcitypaper.com/Blogh/archives/2013/03/20/ravenstahl-challenges-upmcs-tax-exempt-status>

⁷ Available at <http://wesa.fm/post/pittsburgh-starts-legal-battle-upmc-over-nonprofit-status>

⁸ Available at <http://www.post-gazette.com/stories/local/neighborhoods-city/pittsburgh-lawsuit-challenges-upmcs-tax-status-680194/>

⁹ Available at <http://www.wpxi.com/news/news/local/ravenstahl-wants-upmc-pay-tax-all-150-properties-p/nWyLc/>

18. During the press conference, the City distributed a 13-page letter dated March 5, 2013 from Strassburger to City Solicitor Daniel Regan (the “Privileged and Confidential Letter”) purporting to justify the lawsuit. *See id.*, (“Still, a Strassburger McKenna legal opinion, which the city handed out to reporters, argued that UPMC ran afoul of several legal tests to see whether a charity was operating with a profit motive.”).¹⁰ The City also posted the Privileged and Confidential Letter on the City’s website that same day along with a press release, where it remained accessible to the public through 2013.

19. Contemporaneously, the SEIU had been attempting unsuccessfully to unionize workers at UPMC-subsidary hospitals.

20. In the press conference announcing the City’s lawsuit against UPMC, flanked by SEIU members, Mayor Ravenstahl acknowledged his support for the SEIU’s unionization efforts. *See Boren and Kerlik, supra note 5, Ravenstahl: Pittsburgh Sues to Remove UPMC’s Tax Exempt Status.*

21. On March 20, 2013, the City commenced a civil action by filing an 18-paragraph Complaint against UPMC in the Allegheny County Court of Common Pleas, captioned *City of Pittsburgh v. UPMC*, No. GD 13-005115 (“Tax-Exempt Litigation”). The City alleged that UPMC should not be classified as a tax-exempt organization, and therefore owed the City quarterly payroll taxes for all of its subsidiaries’ employees going back to March 31, 2007. *City v. UPMC*, GD 13-005115, Complaint.

22. Soon after the City retained Strassburger, Strassburger attorneys began consulting with lawyers from the Caplin & Drysdale law firm in Washington D.C., and specifically with

¹⁰ The *Pittsburgh Post-Gazette* even posted the Privileged and Confidential Letter on its website with its article published the following day. *See* <http://www.post-gazette.com/stories/local/neighborhoods-city/pittsburgh-lawsuit-challenges-upmcs-tax-status-680194/>

two attorneys in its Exempt Organization Group: Marcus S. Owens and Sharon W. Nokes.¹¹ See Exhibit A, Entry Nos. 47, 92, 97, 104, 116, 117, 129, 131, 139.

23. Continuing throughout 2013, as discussed further herein, Strassburger attorneys consulted with Caplin & Drysdale on an ongoing basis in connection with the City's efforts to revoke UPMC's tax-exempt status. See Exhibit A, Entry Nos. 47, 92, 104, 116, 117, 129, 131, 139, 163, 197, 791, 820, 823, 834, 916.

24. From February 2013 to December 2013, the SEIU paid Caplin & Drysdale a total of \$235,726 for "legal support for organizing." See Exhibit B, SEIU 2013 Annual Report, p. 84. The amount paid in 2014 is presently unknown.

25. Additionally, shortly after the filing of the lawsuit against UPMC on March 20, 2013, Strassburger also consulted with the SEIU's Director of Health Policy Howard Berliner regarding the City's lawsuit against UPMC. See Exhibit A, Entry Nos. 147 and 149.

26. On April 1, 2013, only 11 days after the Tax-Exempt Litigation was filed, the SEIU began filing numerous unfair labor practice charges against UPMC and UPMC Presbyterian Shadyside.

27. On April 19, 2013, UPMC removed the City's Tax-Exempt Litigation to the United States District Court for the Western District of Pennsylvania. *City v. UPMC*, No. 2:13-cv-00565-JFC (Doc. 1).

28. That same day, April 19, 2013, UPMC filed a federal lawsuit against the City and the former Mayor, alleging that the City and Mayor violated UPMC's constitutional rights by,

¹¹ While the Strassburger billing records use initials to refer to the third-party individuals with whom Strassburger communicated, UPMC believes that the initials M.O. and S.N., respectively, refer to Caplin & Drysdale attorneys Marcus Owens and Sharon Nokes. This belief is based, in part, on the fact that Mr. Owens and Ms. Nokes, who had not entered an appearance in any of the litigation between the City and UPMC, were copied on a letter sent by Strassburger to UPMC's lawyers regarding the City's lawsuit against UPMC. Exhibit C.

among other things, instituting a legal action for payroll taxes against UPMC (a parent holding company) – rather than the various UPMC organizations that employ over 40,000 individuals who work in the City. *UPMC v. City, et al.*, No. 2:13-cv-00563-JFC (Doc. 1, ¶ 23).

29. At the same time, and as a component of the SEIU’s “corporate campaign,” the Fair Share Pittsburgh Action Fund (“Fair Share Pittsburgh”) – a “project” of the SEIU that was incorporated in the Commonwealth of Pennsylvania shortly after the filing of the City’s lawsuit for the purpose of “influencing local elections” – began bulk mailing UPMC-critical flyers to City of Pittsburgh residents as early as April 27, 2014.

30. On June 6, 2014, UPMC filed an Amended Complaint against the City and Mayor and joined Fair Share Pittsburgh as a Defendant. *UPMC v. City, et al.*, No. 2:13-cv-00563-JFC (Doc. 18). UPMC alleged that the City, Mayor, Fair Share Pittsburgh and two John Doe defendants collectively conspired to violate UPMC’s constitutional rights by, among other things, targeting UPMC and filing a lawsuit seeking to make UPMC, a parent holding company, pay payroll taxes when the City knew that UPMC has no employees – let alone payroll – to tax. *Id.*

31. Fair Share Pittsburgh was represented by Washington, D.C. lawyers Leon Dayan and Kathleen Keller of the Breedhoff & Kaiser law firm. The Strassburger billing records show numerous communications between Strassburger and Breedhoff & Kaiser attorneys throughout 2013. *See* Exhibit A, Entry Nos. 346, 418, 438, 480, 483, 484, 486, 498, 500, 587, 712, 720, 723, 724, 734, 741, 851, 855, 856, 918.

32. In August 2013, the Tax-Exempt Litigation was remanded to the Allegheny County Court of Common Pleas and thereafter assigned to the Honorable R. Stanton Wettick of the Commerce and Complex Litigation Center.

33. Following assignment of the case to Judge Wettick, UPMC filed Preliminary Objections to the City's then-pending Amended Complaint.

34. Judge Wettick has a general practice of staying discovery until the pleadings are closed. *Potts v. Consolidated Rail Corporation*, 147 PLJ 40, 37 Pa. D&C. 4th 196 (Allegheny County 1998) (Wettick, J.).

35. Also in August 2013, Fair Share Pittsburgh Action Fund filed not only a Motion to Dismiss UPMC's Claims, but also a Rule 11 Motion for Sanctions against UPMC, contending that the factual allegations alleging involvement by Fair Share Pittsburgh in a conspiracy with the City and Mayor were baseless. *UPMC v. City, et al.*, No. 2:13-cv-00563-JFC (Doc. 37 and Doc. 40). In its Rule 11 Motion for Sanctions, the SEIU's "project" Fair Share Pittsburgh went so far as to state that it never entered into any agreement with the City or its Mayor to take action that violates UPMC's constitutional rights.

36. Thereafter, the City and Mayor, with the consent of Fair Share Pittsburgh, sought to stay discovery in UPMC's suit pending the outcome of their motions to dismiss, discovery they assuredly recognized would have revealed their collaboration with the SEIU's counsel. *UPMC v. City, et al.*, No. 2:13-cv-00563-JFC (Doc. 50).

37. In the NLRB proceedings, certain of the SEIU's unfair labor practice charges were combined into a Consolidated Complaint issued by Region 6 of the NLRB on September 30, 2013. No single employer allegations, however, were included in the Consolidated Complaint.

38. On September 27, 2013, UPMC, the City, Mayor, and Fair Share Pittsburgh filed a Rule 26(f) Report of the Parties. In this Report, UPMC left no doubt that it intended to pursue discovery that would ultimately reveal the conspiracy hatched between SEIU, Fair Share

Pittsburgh and the City of Pittsburgh, including discovery regarding: (a) The “Make it Our UPMC” Campaign; (b) unionization efforts; (c) a Corporate Campaign involving SEIU; and (d) the “Fair Share Pittsburgh” Publicity Campaign. *UPMC v. City, et al.*, No. 2:13-cv-00563-JFC (Doc. 55).

39. Thereafter, on October 4 and October 10, 2013, UPMC served interrogatories and requests for production of documents in the federal court litigation directed to the City, Mayor, and Fair Share Pittsburgh, seeking, *inter alia*, communications by and among the City, Mayor, Fair Share Pittsburgh, and the SEIU. UPMC also served deposition notices and subpoenas directed to various individuals, including Fair Share Pittsburgh organizer John Lacny.

40. In response to Fair Share Pittsburgh’s motion, discovery was later stayed by Judge Conti on October 25, 2013 before the Defendants responded to UPMC’s discovery requests.

41. On October 21, 2013, Judge Wettick heard oral argument on UPMC’s Preliminary Objections to the City’s Amended Complaint in the Tax-Exempt Litigation. Lawyers for the SEIU’s “project” Fair Share Pittsburgh were in attendance.

42. Judge Wettick began the oral argument with a question: “Now, does UPMC have employees? Because I’ve been told in discovery [in unrelated litigation] they don’t.” Exhibit D, *City v. UPMC*, GD-13-005115, 10/21/14 Tr., p. 3.

43. Counsel for UPMC responded and confirmed Judge Wettick’s understanding, explaining that the UPMC subsidiaries, not UPMC, had employees. *Id.* at pp. 3-4.

44. On behalf of the City, Strassburger responded by stating that the City has “always been willing” to “amend the Complaint to name” the UPMC-subsidary hospitals as defendants. *Id.* at pp. 4-5.

45. Following the argument of counsel, Judge Wettick directed the City to file an Amended Complaint to address this question within seven (7) days. *Id.* at pp. 10-11.

46. In the words of Judge Wettick, “if UPMC has no employees, there is nothing more for me to do.” *Id.* at p. 10.

47. Immediately thereafter, Strassburger worked with the SEIU-backed lawyers at Caplin & Drysdale to prepare a Second Amended Complaint, increasing the number of allegations from 18 paragraphs to 69 paragraphs. *See* Exhibit A, Entry Nos. 808, 820, 822, 823, 834.

48. The City did not amend its Complaint to add the UPMC subsidiaries, which are the entities that had payroll, as defendants. This, of course, would have undercut the SEIU’S “corporate campaign” against UPMC, which was designed to degrade the system as a whole. Rather, in the Second Amended Complaint, filed on October 28, 2013, the City alleged that “[i]n substance, UPMC and its nominally-IPPC subsidiaries are properly viewed as a single employing enterprise to every employee in the UPMC health system, making UPMC a statutory employer of those employees for payroll tax purposes.” *City v. UPMC*, GD 13-005115, Second Amended Complaint (Doc. 17).

49. Indeed, the City’s Second Amended Complaint changed its first prayer for relief from a request for “a declaratory judgment that UPMC is not an IPPC exempt from the payment of The City’s Payroll Tax” to a request for “a declaratory judgment that UPMC is an ‘employer’ of all employees of all the subsidiaries, affiliates and other entities which it controls.” *Id.*

50. On November 11, 2013, UPMC filed Preliminary Objections to the City’s Second Amended Complaint contending, *inter alia*, that the City had not and could not allege that UPMC, the parent holding company and sole named defendant in the lawsuit, had employees or

a payroll expense associated with employees that the City could tax. *City v. UPMC*, GD 13-005115, Preliminary Objections to Second Amended Complaint (Doc. 18).

51. In the City's Brief in Opposition to UPMC's Preliminary Objections, filed December 6, 2013, following consultation with Caplin & Drysdale, the City contended that UPMC should be viewed as the "employer" of all employees of its subsidiaries, expressly arguing, among other things, that UPMC was a "single employer" for the purposes of the National Labor Relations Act ("NLRA"). See Exhibit A, Entry Nos. 915-916; *City v. UPMC*, GD 13-005115, Brief in Opposition to Preliminary Objections to Second Amended Complaint.

52. That same day, on December 6, 2013, Counsel for the General Counsel contacted UPMC's and UPMC Presbyterian Shadyside's attorneys and informed them that the NLRB Consolidated Complaint would be amended to insert single employer allegations.

53. Oral argument on UPMC's Preliminary Objections to the City's Second Amended Complaint was scheduled to occur before Judge Wettick on January 8, 2014. On December 30, 2013, argument was rescheduled for January 15, 2014, and was subsequently rescheduled to occur on February 11, 2014.

54. On January 9, 2014, the NLRB Consolidated Complaint was amended for a second time. This second amendment was less than a month before the case was set for a hearing, and introduced single-employer allegations into the Consolidated Complaint. When pressed for an explanation for why single-employer allegations were being introduced into the case at such a late date, the NLRB had no legitimate rationale. (Doc. 1-11).

55. On January 14, 2014, the NLRB served subpoenas B-720563 and B-720565.

56. On January 16, 2014, just after the inexplicable addition of single-employer allegations in the labor proceeding, the SEIU served its subpoena seeking documents concerning the alleged single-employer status of UPMC and UPMC Presbyterian Shadyside.

57. The return date for the January 14th NLRB-issued subpoenas and the January 16th SEIU-issued subpoenas was February 3, 2014.

58. On February 7, 2014, the City of Pittsburgh, with the consent of UPMC, requested a two-month stay of the Tax-Exempt Litigation proceeding, resulting in the postponement of oral argument on UPMC's Preliminary Objections from February 11, 2014 to April 16, 2014.

59. Oral argument on UPMC's Preliminary Objections to the Second Amended Complaint was held on April 16, 2014.

60. Following oral argument, Judge Wettick entered an Opinion and Order on June 25, 2014 that granted UPMC's Preliminary Objections and dismissed the City's Second Amended Complaint with prejudice.

B. Efforts to Shield the Involvement of SEIU-Funded Attorneys

61. As set forth above, the documentary evidence that supports this Motion for Reconsideration was first received by UPMC on August 29, 2014.

62. From July 18, 2013 through August 29, 2014, nearly 15 months, the City fought to keep the identities and involvement of the SEIU-funded attorneys a secret.

63. Specifically, on June 11, 2013, UPMC submitted a request to the City under the Right to Know Law, 65 P.S. § 67.101, requesting the Strassburger billing records showing charges from Strassburger and payment from the City relating to the litigation against UPMC. UPMC submitted an additional request on November 18, 2013, seeking any and all Strassburger billing records from June 2012 through November 15, 2013.

64. Beginning July 18, 2013, the City provided heavily redacted copies of the billing records. The City redacted from the billing records “entries reflecting meetings with third party persons or entities” regarding UPMC, claiming that this information was protected by the attorney-client privilege and work product doctrine.

65. These redactions also included communications with “attorneys” in the time period immediately following UPMC’s June 11, 2013 Right to Know Law Request. *See* Exhibit A, Entry Nos. 354, 356.

66. UPMC challenged these designations for over a year in legal proceedings before the Pennsylvania Office of Open Records and the Court of Common Pleas of Allegheny County. *See UPMC v. City*, Allegheny County Court of Common Pleas, GD-13-021251 (O’Brien, J.); *City v. UPMC*, Allegheny County Court of Common Pleas, SA-14-000550 (O’Brien, J.).

67. Only after Judge Wettick dismissed the City’s lawsuit against UPMC did the City agree to disclose the names of these third parties – names we now know to be SEIU-funded attorneys – to UPMC.

C. New Evidence Confirms the Improper Purpose Behind the Subpoena

68. As set forth above, new evidence obtained by UPMC in the form of Strassburger billing records establishes that the SEIU, through at least three proxies, was heavily involved with and supporting the City in the Tax-Exempt Litigation:

69. *First*, according to the billing records, the City’s law firm consulted with the SEIU’s Director of Health Policy in connection with the Tax-Exempt Litigation. Exhibit A, Entry Nos. 147 and 149; Exhibit B, SEIU 2013 Annual Report, p. 16.

70. *Second*, the billing records document that the City’s law firm regularly consulted with SEIU’s counsel for the organizing campaign, Caplin & Drysdale, in connection with the Tax-Exempt Litigation. This includes communications regarding the “status and substance of

amended complaint” in that litigation. *See* Exhibit A, Entry Nos. 47, 92, 104, 116, 117, 129, 131, 139, 163, 197, 791, 820, 823, 834, 916; Exhibit B, SEIU 2013 Annual Report, p. 84.

71. **Third**, the billing records show that the City’s law firm regularly sought advice from the law firm of an SEIU affiliate in connection with the Tax-Exempt Litigation. Exhibit A, Entry Nos. 346, 418, 438, 480, 483, 484, 486, 498, 500, 587, 712, 720, 723, 724, 734, 741, 851, 855, 856, 918.

ARGUMENT

72. In its Memorandum Opinion (Doc. 28), this Court noted that the legal standard controlling the Board’s request for enforcement required the agency to demonstrate that “1) its investigation has a legitimate purpose, 2) the inquiry is relevant to that purpose, 3) the agency does not already possess the information requested, 4) the agency has complied with relevant administrative requirements, and 5) the demand is not unreasonably broad or burdensome.” Doc. 28 at 8 (internal citations and quotations omitted).

73. Reasonable inferences to be drawn from the timeline of events and the City’s law firm’s billing records include the following:

74. The SEIU was heavily involved with the City’s lawyers in framing and prosecuting the City’s attack on UPMC’s tax-exempt status.

75. When the SEIU and the City were stymied from obtaining discovery in the Tax-Exempt Litigation due to the status of the proceedings, the SEIU pressured the NLRB into adding single employer allegations into the underlying labor proceeding.

76. The SEIU, aware that the Tax-Exempt Litigation was going nowhere and was likely to be (and in fact was) dismissed without evidence that UPMC was a factual or legal employer, improperly used subpoenas obtained in the labor proceeding to attempt to obtain records for use in the Tax-Exempt Litigation.

77. Indeed, as this Court stated, “review of the three (3) Subpoena Duces Tecum demonstrates that (a) there is a minimal or no relationship between the Subpoenas and the underlying unfair labor practice charges; and (b) the unfair labor practices are being used, under the guise of the ‘single employer’ rubric, to attempt to legitimize a massive document request.” (Doc. 28 at 8).

78. The new evidence explains why the unfair labor practices are being used to legitimize the NLRB’s and SEIU’s massive document requests: the SEIU was attempting to use the labor proceeding as a vehicle to obtain discovery, documents, and a legal ruling to support the Tax-Exempt Litigation.

79. The SEIU’s efforts to use an administrative action (and subpoenas issued in that action) as a fishing expedition to obtain discovery for collateral litigation is a perversion of the administrative process and an illegitimate purpose for the subpoena’s issuance.

80. In the event the Court finds the record insufficient to determine the true purpose of the subpoena, Respondent requests an opportunity, having established good cause herein, to obtain additional evidence through discovery.

81. Because newly-discovered evidence strongly suggests that the administrative subpoena was not issued for a proper purpose, Respondent respectfully asks the Court to reconsider its Memorandum Opinion (Doc. 27) and related Order (Doc. 28).

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
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Dated: September 29, 2014

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

)	
NATIONAL LABOR RELATIONS BOARD,)	
)	
Applicant,	)	Nos. 2:14-mc-00109-AJS
	)	2:14-mc-00110-AJS
v.	)	2:14-mc-00111-AJS
)	
UPMC PRESBYTERIAN SHADYSIDE)	
and UPMC,)	
)	
Respondents.)	
)	

**RESPONSE OF SEIU HEALTHCARE PENNSYLVANIA, CTW, CLC
IN OPPOSITION TO RESPONDENTS’ MOTION FOR RECONSIDERATION**

This brief is filed by SEIU Healthcare Pennsylvania, CTW, CLC (“SEIU Healthcare PA”), in response to the Court’s order of September 30, 2014, directing the National Labor Relations Board (“NLRB” and “the Board”) and “SEIU” to respond to the Motion for Reconsideration filed by Respondents UPMC and UPMC Presbyterian Shadyside (collectively, “UPMC”) in this summary proceeding brought by the NLRB to enforce three subpoenas *duces tecum* issued by it in an unfair labor practice proceeding pending before the agency. SEIU Healthcare PA is a labor organization that represents employees in the healthcare sector in this State, and it is affiliated at the national level with the Service Employees International Union (“SEIU”).

SEIU Healthcare PA is not a party to this litigation, but maintains an interest in it because it is the charging party in the underlying unfair labor practice proceeding (*i.e.*, it filed the unfair

labor practice charges that resulted in the NLRB complaint alleging that UPMC was a single employer) and because one of the three NLRB-issued subpoenas that the Board seeks to enforce was issued by the agency at SEIU Healthcare PA's request. Accordingly, counsel for SEIU Healthcare PA entered her appearance as an "interested party" in Nos. 14-109 and 14-110 (through which the Board seeks enforcement of subpoenas issued by its attorneys) and as the relator in No. 14-111 (through which it seeks enforcement of the subpoena requested by SEIU Healthcare PA).

SEIU Healthcare PA files this Response specifically because of the Court's order, but in doing so does not submit to the Court's jurisdiction over parties to this litigation.

SUMMARY OF ARGUMENT

UPMC's motion for reconsideration should be denied for three separate and independent reasons.

First, a motion to reconsider a judgment must, under established case law, be predicated on grounds that the moving party could not have raised prior to the judgment; and UPMC's argument that SEIU and the City of Pittsburgh engaged in a conspiracy to promote what UPMC asserts was a baseless state-court payroll-tax lawsuit against UPMC is an argument that UPMC not only could have made prior to the judgment here, but in fact *did* make in a separate proceeding that it initiated and voluntarily terminated prior to the judgment here. In particular, UPMC made the argument in a federal lawsuit that UPMC brought in 2013 and dismissed earlier this year. While UPMC may have misgivings that it did not also try out its conspiracy argument earlier in *this* litigation, such misgivings do not constitute grounds for reconsideration.

Second, the allegedly “new” evidence that UPMC touts in support of its conspiracy theory does not remotely support the inference that UPMC asks the Court to draw from that evidence – namely, that SEIU Healthcare PA sought the subpoena here for an improper purpose.

And last but certainly not least, UPMC’s broadside is directed at SEIU and therefore is completely beside the point, because the relevant question in an administrative subpoena enforcement proceeding like this one is whether the *agency* acted solely for an improper purpose in issuing the subpoena. It is *not* whether the *private party* that originally sought the subpoena may have had ulterior motives. And here, UPMC’s evidence does not come close to raising an inference that the *NLRB*, which evaluated and narrowed the union’s requested subpoena through the agency’s established procedures before seeking to enforce the subpoena, has acted for improper purposes.

PROCEDURAL BACKGROUND

This is a summary proceeding in which an administrative agency, the NLRB, through its General Counsel, sought enforcement of three document subpoenas issued by it in connection with an unfair labor practice proceeding against UPMC that is currently pending before the Board. Two of the subpoenas were issued by the General Counsel’s attorneys, while the third was issued by the agency at the request of the charging party, SEIU Healthcare PA, pursuant to § 11(a) of the National Labor Relations Act (“NLRA”), 29 U.S.C. § 161(1). UPMC filed petitions to revoke the three subpoenas, which after hearing and extensive argument, the Board, through an Administrative Law Judge, granted in part and denied in part. *See* Doc. 1 Ex. F (No. 14-111). Following UPMC’s refusal to comply with the remaining portions of the subpoenas, the Board brought this enforcement action under NLRA § 11(2), 29 U.S.C. § 161(2). UPMC filed a response in opposition to the Board’s enforcement application. On September 2, 2014, the Court

granted the NLRB's applications for enforcement of the subpoenas, but stayed implementation of its order pending a potential appeal. Rather than appeal, UPMC filed the instant motion for reconsideration of the Court's September 2 order.

Two separate legal proceedings are also relevant to the issues raised by UPMC's motion. First, on March 20, 2013, the City of Pittsburgh filed a civil action against UPMC in the Allegheny County Court of Common Pleas, seeking a declaration that UPMC was not exempt from the City's payroll tax. *City of Pittsburgh v. UPMC*, No. GD 13-005115. At the time it filed the lawsuit, the City released a legal opinion provided by its counsel at Strassburger McKenna Gutnick & Gefsky with respect to the propriety of UPMC's tax-exempt status. Shortly thereafter, on April 19, 2013, UPMC responded by filing a lawsuit in this Court against the City and its Mayor, claiming that the City's tax-status lawsuit was a sham proceeding without any merit and that it and related actions by the City constituted a violation of UPMC's civil rights. *UPMC v. City of Pittsburgh et al.*, No. 2:13-cv-00563-JFC (W.D. Pa.). On June 6, 2013, UPMC amended its complaint in the federal action to add as a defendant an organization known as Fair Share Pittsburgh Action Fund ("Fair Share Pittsburgh"), which – as UPMC's Amended Complaint alleged – is an entity affiliated with SEIU Healthcare PA. The Amended Complaint asserted, in its Count IV, that Fair Share Pittsburgh had engaged in a conspiracy with the City in connection with the filing of the City's state court tax-status lawsuit against UPMC. Both the payroll-tax case and the civil-rights case have been dismissed, the former on June 25, 2014, and the latter on July 20, 2014.

ARGUMENT

Citing "newly discovered evidence," UPMC asks the Court to reconsider its Order enforcing the subpoenas issued by the NLRB. UPMC's Motion for Reconsideration must be

denied, both because it improperly presents arguments that could have been asserted in the earlier briefing, and because the evidence on which UPMC relies falls far short of establishing that the NLRB issued the subpoenas for an improper purpose. For the same reasons, moreover, UPMC has not demonstrated the extraordinary circumstances under which discovery is appropriate in a summary enforcement proceeding such as this one.

I. UPMC CANNOT ASSERT A NEW ARGUMENT ON A MOTION FOR RECONSIDERATION THAT IT COULD HAVE MADE IN OPPOSING NLRB'S MOTION TO ENFORCE THE SUBPOENAS

UPMC asks the Court to reconsider its order granting enforcement of the NLRB-issued subpoenas, asserting that in the short time since the Court's order was issued on September 2, 2014, UPMC discovered evidence establishing a "conspiracy hatched between the SEIU, Fair Share Pittsburgh and the City of Pittsburgh." Motion at 10-11. UPMC claims that those parties and their attorneys consulted with each other in connection with the lawsuits brought by and against UPMC with regard to its tax-exempt status. And, according to UPMC's alleged conspiracy theory, SEIU Healthcare PA and the NLRB sought their administrative subpoenas in January 2014 to bolster the City's then-pending state-court payroll-tax lawsuit against UPMC – a lawsuit that UPMC contends SEIU Healthcare PA had an interest in seeing succeed.¹

Although UPMC does not specify the rule under which it seeks reconsideration, this Court has noted that "motions to reconsider are treated as motions to alter or amend a judgment under Rule 59(e) or motions for relief from judgments or orders under Rule 60(b)." *Lewicki v. Washington Cnty.*, No. 10-cv-0547, 2010 WL 2720795, at *1 (W.D. Pa. July 8, 2010) (Schwab, J.). These rules, however, "may not be used ... to raise arguments or present evidence that could have been raised prior to the entry of judgment." *Exxon Shipping Co. v. Baker*, 554 U.S. 471,

¹ Of course, it is obvious, but worthy of note, to emphasize here that the NLRB had nothing to do with the tax litigation.

485 n.5 (2008); *accord Lewicki*, 2010 WL 2720795, at *1 (“[A] motion for reconsideration may not be used as a vehicle to assert new arguments that could have been but were not previously presented to the court.”); *White v. James*, No. 07-cv-120, 2007 WL 1258114, at *1 (W.D. Pa. Apr. 30, 2007) (Schwab, J.) (“A motion for reconsideration ... should not be used ‘to put forward additional arguments which [the movant] could have made but neglected to make before judgment.’”) (quoting *Dodge v. Susquehanna Univ.*, 796 F. Supp. 829, 830 (M.D. Pa. 1992)).

UPMC’s motion for reconsideration must be denied for this reason alone, as the asserted factual bases upon which UPMC predicated the existence of the alleged conspiracy between the City of Pittsburgh and various organizations related to SEIU Healthcare PA were nothing new to UPMC. Nor was it new to UPMC that SEIU Healthcare PA had an interest, at the time the Board and SEIU Healthcare PA served the three subpoenas at issue, in seeing the City’s state-court lawsuit succeed.

In fact, UPMC’s alleged conspiracy was the subject of one count of the federal lawsuit that UPMC brought in this Court against these entities nearly a year and a half ago. In its amended complaint in that lawsuit, filed against the City of Pittsburgh and Fair Share Pittsburgh on June 6, 2013, UPMC alleged that Fair Share Pittsburgh (which it accurately described as a “related entity” to SEIU Healthcare PA) conspired with the City, *inter alia*, to draft and publish a letter from the City’s attorneys concerning the propriety of UPMC’s nonprofit status, and to coordinate with the City on the payroll-tax lawsuit the City brought against UPMC in state court – a lawsuit that UPMC alleged was a “sham” that deprived UPMC of its civil rights. *See UPMC v. City of Pittsburgh, et al.*, No. 2:13-cv-00563-JFC (W.D. Pa.), Doc. 18 (Amended Complaint), ¶¶ 135-36, 166-69, 221-22, 236-37. These are the very same “conspiratorial” acts that UPMC claims it “just discovered” through review of the Strassburger billing records.

Thus, if UPMC indeed believed that the alleged conspiracy between the City and SEIU-affiliated entities somehow rendered the NLRB subpoenas unenforceable because they were issued for an improper purpose, it was incumbent upon UPMC to timely raise that argument in its opposition to the NLRB's application to enforce the subpoenas. It did not do so, instead arguing only that (a) the burden of complying was disproportionate to the remedies sought; (b) UPMC was not a proper party to the NLRB proceeding in which the subpoenas were issued; (c) the subject matter of the subpoenas was not relevant to the issues in the unfair labor practice proceeding; and (d) UPMC was not an "employer" within the meaning of the NLRA. *See* Response in Opposition to Application for an Order Enforcing Subpoena (No. 14-111, Doc. 15), at 6-13.² UPMC's brief contained no mention whatsoever of its alleged conspiracy, nor did it reference SEIU, Fair Share Pittsburgh, any of the other alleged conspirators, or the City's payroll-tax litigation.³

Having failed in its opening brief to advance any argument that the alleged conspiracy demonstrated the improper purpose of the NLRB subpoenas, UPMC cannot now be heard, by

² UPMC filed substantially identical briefs in the other two subpoena enforcement cases, Nos. 14-109 and 14-110.

³ It is notable that the Board had pressed a single-employer theory against UPMC in an earlier unfair-labor-practice proceeding, which was commenced *before* the City filed the payroll-tax lawsuit. *See* <http://www.nlr.gov/case/06-CA-081896> (docketing the Board's Complaint in that proceeding on December 13, 2012). This squarely refutes UPMC's implication that the question of UPMC's single-employer status only became a concern of the Board after the City had filed its payroll-tax lawsuit against UPMC. More importantly for present purposes, this is further confirmation that any argument relating to the timing of when the Board decided to pursue its single-employer allegations in the matter now under review was one that could have been made in UPMC's original brief to this Court.

way of a motion for reconsideration, to advance this argument that it “could have made but neglected to make before judgment.” *White v. James*, 2007 WL 1258114, at *1.⁴

II. THE “NEWLY DISCOVERED EVIDENCE” DOES NOT SUPPORT UPMC’S CONTENTION THAT THE NLRB SUBPOENAS WERE ISSUED FOR AN IMPROPER PURPOSE

“[T]he burden on a party seeking to dodge compliance with administrative subpoenas such as these ‘is not a meager one.’” *NLRB v. Frazier*, 966 F.2d 812, 819 (3d Cir. 1992) (quoting *NLRB v. Interstate Dress Carriers, Inc.*, 610 F.2d 99, 112 (3d Cir.1979)). Indeed, “[s]uch a party must come forward with facts suggesting that the subpoena is intended *solely* to serve purposes outside the purview of the jurisdiction of the issuing agency.” *Id.* (emphasis added). UPMC has not come close satisfying its burden that “the *agency’s* purpose in issuing the subpoena” was illegitimate. *Interstate Dress Carriers*, 610 F.2d at 112 (emphasis added). Indeed, if it is far-fetched for UPMC to argue that existence of the alleged conspiracy is “newly discovered,” its characterizations of the supporting “evidence” submitted are little short of preposterous. What

⁴ Nor can UPMC reasonably assert that it could not have advanced its conspiracy argument in opposing the NLRB’s motion to enforce because it had no evidence to support the argument until it received the Strassburger firm’s billing records on August 29, 2014. Nine months before it wrote its brief in opposition to the NLRB’s subpoena enforcement motion, UPMC believed it had sufficient evidence to allege that “Fair Share Pittsburgh acted in a coordinated effort with the Mayor ... to carry out an unlawful attack on UPMC by engaging i[n] a publicity campaign designed to damage UPMC ... and used in coordination with the filing of the baseless lawsuit filed by the City and the malicious publication of [a legal opinion from the City’s attorneys].” *UPMC v. City of Pittsburgh, et al.*, No. 2:13-cv-00563-JFC, Doc. 43 (Brief in Response to Motions to Abstain and to Dismiss), at 42; *see also* Doc. 18 (Amended Complaint), ¶¶ 166-69, 236-37. Any subsequent assertion that UPMC lacked evidence of the conspiracy prior to August 2014 would amount to an admission that its complaint and brief in the federal lawsuit that it brought against the City and Fair Share Pittsburgh were filed in violation of Rule 11. And the allegation of improper motive that UPMC has made for the first time in its motion to reconsider – that SEIU Healthcare PA sought the NLRB subpoenas in order to bolster the City’s state-court lawsuit against UPMC – is also an allegation that could have been made with equal credibility (or, rather, lack thereof) when UPMC filed its earlier brief in this case.

are no more than routine contacts and coordination between parties with common litigation interests are portrayed as sinister elements of a conspiracy.

The evidence in question consists of billing records from the City's attorneys at the Strassburger law firm over a period of nine months in 2013. What these records show is that during this period the Strassburger attorneys had (i) a handful of telephone calls and e-mail exchanges with attorneys at the firm of Caplin & Drysdale, a Washington, DC tax firm retained by SEIU (the parent affiliate of SEIU Healthcare PA, which is not involved in the NLRB litigation or this enforcement proceeding); (ii) regular telephone and e-mail exchanges, *after UPMC added Fair Share Pittsburgh as a defendant in its federal court lawsuit against the City*, with Leon Dayan, an attorney who represented Fair Share Pittsburgh in that federal lawsuit; and (iii) one telephone and e-mail exchange with SEIU's health policy director.

Most of these billing entries do not identify the substance of the telephone or e-mail conversations; those that do typically identify the communications as dealing with ongoing litigation – in large part, at least, the civil-rights lawsuit brought by UPMC against the City and Fair Share Pittsburgh in which the two firms represented co-defendants. For example, Mr. Dayan had multiple exchanges with the Strassburger attorneys during July 2013 about a “J.D.A.” – presumably referring to a Joint Defense Agreement – as well as litigation issues generally. *See* Motion Exh. A, at 024A; *see also, e.g., id.* at 040A (exchanges with Mr. Dayan regarding oral argument on Motion to Abstain or Dismiss in civil-rights case).

These conversations should hardly be surprising. The Strassburger attorneys and Mr. Dayan at that time represented co-defendants in which UPMC named the City and Fair Share Pittsburgh as defendants. Under these circumstances, it is to be expected that the attorneys for these defendant parties would have consulted and attempted to coordinate the litigation defense

of their respective clients. It is hard to imagine that any competent attorney would have done otherwise.

Even beyond these attorneys' consultations with respect to UPMC's civil-rights lawsuit, it is surely no secret that SEIU and SEIU Healthcare PA were acutely interested in the City's litigation involving UPMC's tax status; in fact, SEIU Healthcare PA's Fair Share Pittsburgh project was established to address this issue. Consequently, it is not surprising that SEIU, its affiliates, and their attorneys spoke periodically with the City's attorneys who were handling this litigation.⁵

Yet the unremarkable fact that such conversations about these lawsuits occurred is all that UPMC's "newly discovered evidence" shows. UPMC's central contention that the "new evidence" it has presented "confirms the improper purpose behind the [SEIU's] subpoena," Motion at 15 (section heading), is built purely on speculation derived from facts that are completely innocuous. This contention does not withstand even minimal scrutiny.

The heart of UPMC's reconsideration submission is the attempt to draw what it describes as "reasonable inferences" from the Strassburger billing records. Motion at 16 (¶¶ 73-76). But the inferences UPMC offers are far from "reasonable"; they do not come close to proving UPMC's assertions that the NLRB subpoenas are a product of the agency's improper motive and are based entirely on conjectural and speculative extrapolation. We address these inferences in turn.

⁵ And the interest of SEIU and its affiliates in the success of the City's lawsuit against UPMC was only heightened when, in June 2013, UPMC added Fair Share Pittsburgh as a defendant in its federal lawsuit against the City on the theory that the state-court payroll-tax lawsuit was a "sham" action. Because the basic foundation underlying UPMC's lawsuit would necessarily collapse if the City prevailed in its challenge to UPMC's tax status, SEIU and its affiliates at that point had an even more direct interest in the success of the City's lawsuit – and even more reason to discuss that lawsuit with the City's attorneys.

- UPMC first infers that “[t]he SEIU was heavily involved with the City’s lawyers in framing and prosecuting the City’s attack on UPMC’s tax-exempt status.” *Id.*, ¶ 74. Even assuming that this is a reasonable inference to be drawn from the billing records, it has no relevance to the issue before the Court. SEIU surely is free to exercise its First Amendment right to petition government officials with respect to policy it would like them to pursue, and the fact that it may have done so with respect to UPMC’s tax-exempt status cannot be the basis for this Court refusing to enforce the NLRB subpoenas at issue.

- The same is true with regard to UPMC’s next inference: that “the SEIU pressured the NLRB into adding single employer allegations into the underlying labor proceeding.” *Id.*, ¶ 75. Indeed, SEIU Healthcare PA *filed* the charges with the NLRB that named UPMC as a respondent, which ultimately resulted in the Complaint issued by the NLRB’s General Counsel against UPMC. But the fact that SEIU Healthcare PA urged the Board to name UPMC in its Complaint is hardly nefarious, as it is wholly appropriate and expected for the charging party to an NLRB proceeding to urge the Board to vigorously prosecute the case in one manner or another.

- The next inference is that “SEIU ... improperly used subpoenas obtained in the labor proceeding to attempt to obtain records for use in the Tax-Exempt Litigation.” *Id.*, ¶ 76. This assertion is utterly unfounded and based entirely on UPMC’s bald speculation. There is *nothing* in the Strassburger firm’s billing records showing various contacts between attorneys that even remotely supports this conjecture.

In short, the evidence UPMC has adduced does not even come close to supporting the proposition that SEIU Healthcare PA requested the subject subpoena for an improper purpose – much less to establish that the subpoena’s “sole” purpose is improper – which it must if this

Court is to deny enforcement of all three subpoenas (including the two subpoenas issued by the Board itself). *Frazier, supra*, 966 F.2d at 819.

But even more to the point, UPMC has not attempted to attribute *SEIU's* alleged improper purpose in requesting the subpoenas to the *NLRB*, which issued the subpoenas and which now seeks their enforcement. It is, after all, “the legitimacy of the *agency's* purpose in issuing the subpoena” that is relevant to the question of its propriety. *Interstate Dress Carriers, supra*, 610 F.2d at 112 (emphasis added). Thus, whatever *SEIU Healthcare PA's* reason for requesting the subpoena, that reason could not, in any event, be attributed to the *NLRB*.

In short, not only does UPMC's “new” evidence fail to “reveal[] that [the *SEIU's*] true purpose in the subpoena... was to advance collateral litigation,” Motion at 1, but *a fortiori* it says nothing at all about the only issue that actually matters, which is the legitimacy of the *NLRB's* purpose in issuing the subpoenas and in seeking their enforcement.

III. UPMC'S EVIDENCE FALLS FAR SHORT OF DEMONSTRATING THE “EXTRAORDINARY CIRCUMSTANCES” UNDER WHICH DISCOVERY IS APPROPRIATE IN SUMMARY ENFORCEMENT PROCEEDINGS

Nor, for the same reasons just discussed, do the Strassburger billing records support UPMC's alternative request, articulated only in passing, that it be given the opportunity “to obtain additional evidence through discovery.” Motion at 17 (¶ 80).

It is well established that discovery or evidentiary hearing procedures “are inappropriate in summary enforcement proceedings except in ‘extraordinary circumstances.’” *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1091 (D.C. Cir. 1992); *see also United States v. Markwood*, 48 F.3d 969, 983 (6th Cir. 1995) (noting that “[t]he Circuits appear to agree that the summary nature of enforcement proceedings must be preserved by limiting discovery” and specifically holding that discovery in an administrative subpoena enforcement proceeding is permitted “only

after the party subject to the subpoena makes a preliminary and substantial demonstration of abuse of the court's process" (quotation omitted)). Thus, as the Third Circuit has explained, a party seeking discovery in such a proceeding "must come forward with facts suggesting that the subpoena is intended solely to serve purposes outside the purview of the jurisdiction of the issuing agency." *Interstate Dress Carriers, supra*, 610 F.2d at 112. As we have shown above, UPMC has utterly failed to do so.

The Third Circuit made clear in *Interstate Dress Carriers*, moreover, that the parallel existence of some other proceeding for which the subpoenaed records might be relevant does not suffice to meet that burden: "[T]he mere fact that a criminal investigation is underway simultaneous to the agency's subpoena motion does not, without more, demonstrate that the subpoena was intended to serve that impermissible purpose." *Id.*; see also *Markwood, supra*, 48 F.3d at 981-82 (rejecting respondent's request for discovery even though the respondent claimed that the subpoena at issue was for the purpose of obtaining evidence for use in a specific collateral proceeding). Rather, the party seeking discovery must present factual evidence that "put[s] in issue the good faith of the agency seeking enforcement." *Id.* And the court made clear that discovery was not to be permitted if the moving party did not meet these threshold evidentiary requirements:

If the party seeking to quash the subpoena does not satisfy these threshold requirements, a district court should, in a § 11(2) enforcement case, act summarily. Otherwise the enforcement proceeding may become a means for thwarting the expeditious discharge of the agency's responsibilities.

Interstate Dress Carriers, supra, 610 F.2d at 112.

For the foregoing reasons, the Court was correct in acting summarily in the first place on the NLRB's motion to enforce the subpoenas. UPMC has offered nothing in its reconsideration motion that should change that result.

CONCLUSION

The Motion for Reconsideration should be denied.

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NATIONAL LABOR RELATIONS BOARD,)	
)	
Applicant,	)	Case No. 2:14-mc-00109
v.)	
)	
UPMC PRESBYTERIAN SHADYSIDE,)	
)	
Respondent.)	
-----)	
NATIONAL LABOR RELATIONS BOARD,)	
)	
Applicant,	)	Case No. 2:14-mc-00110
v.)	
)	
UPMC,)	
)	
Respondent.)	
-----)	
NATIONAL LABOR RELATIONS BOARD,)	
)	
Applicant,	)	Case No. 2:14-mc-00111
v.)	
)	
UPMC,)	
)	
Respondent.)	

**NATIONAL LABOR RELATIONS BOARD'S OPPOSITION TO
RESPONDENTS' MOTIONS FOR RECONSIDERATION**

Applicant National Labor Relations Board ("the Board") submits this Opposition to the Motions for Reconsideration filed by UPMC ("UPMC") and UPMC Presbyterian

Shadyside (“Presbyterian”) (collectively “Respondents”). As set forth below, nothing in Respondents’ motions justify this Court’s reversal of its decision to enforce the subpoenas.

INTRODUCTION

The Board applied for enforcement of three subpoenas duces tecum (Doc. 1 in each case¹) issued to Respondents for the purpose of resolving alleged unfair labor practices under the National Labor Relations Act (“the Act”), 29 U.S.C. Sec. 151, *et seq.*, including, in particular, whether UPMC and Presbyterian constitute a “single employer” under the Act. On August 22, 2014, this Court issued an opinion and order granting the Board’s application for enforcement of its subpoenas (Docs. 24, 25), which it amended on September 2, 2014 (Docs. 26-28). UPMC and Presbyterian have now moved this Court for reconsideration of its decision based on newly-discovered evidence purportedly showing the Union abused the Board’s administrative subpoena process (Doc. 29).

Respondents’ motions for reconsideration should be denied. This Court correctly granted enforcement because the subpoenaed information is relevant to the Board’s authorized inquiry. Abuse of the Board’s administrative processes is not a question for a district court’s consideration in a summary enforcement proceeding. Rather, the relevant question is whether the court’s processes would be abused if the subpoena were to be enforced. Respondents have presented no facts suggesting that the Board is abusing the Court’s processes, or has issued subpoenas or instituted enforcement

¹ Herein, references to docket numbers are to the docket in Case No. 14-mc-00109 (*NLRB v. UPMC Presbyterian*). The documents filed in the three different dockets are virtually identical.

proceedings to serve a purpose outside the purview of its jurisdiction. Nor would any discovery be appropriate to further Respondents' arguments here. Accordingly, Respondents' motions for reconsideration and requests for discovery should be denied.

FACTUAL BACKGROUND

The allegation that Respondents are a single employer was presented to the Board well before the charges underlying the current subpoena enforcement dispute, and prior to the civil action brought by the City of Pittsburgh which is the basis for Respondents' motions. On May 25, 2012, SEIU Healthcare Pennsylvania, CTW, CLC (the "Union") filed a charge with the Board's Regional Office in Pittsburgh, Pennsylvania, alleging that "UPMC and its Subsidiary Hospitals" engaged in numerous unfair labor practices in violation of the Act (Exhibit A, p. 31).² The Union amended this charge on June 21, 2012, specifically alleging that UPMC and several hospitals, including Presbyterian, were a single employer for purposes of the Act (Exhibit A, p. 33). In August and September 2012, the Union filed four additional unfair labor practice charges alleging that UPMC and several hospitals, including Presbyterian, were a single employer for purposes of the Act.³

On December 13, 2012, the Regional Director for Region 6 of the Board issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, alleging numerous violations of Section 8(a)(1) and (3) of the Act, 29 U.S.C. §158(a)(1) and (3),

² The charge was filed in NLRB Case No. 06-CA-081896. This is a case that preceded the administrative proceeding that precipitated the instant subpoena enforcement matters.

³ On August 2, 2012, the Union filed a charge in NLRB Case No. 06-CA-086542 (Exhibit A, p. 42). On September 25, 2012 the Union filed charges in NLRB Case Nos. 06-CA-090063, 06-CA-090133, and 06-CA-090144 (Exhibit A, pp. 47, 52, and 57).

and further alleging UPMC and Presbyterian were a single employer (Exhibit A). Prior to the hearing before an administrative law judge, Respondents, the Union, and the Board entered into a settlement agreement resolving most of the charges and unfair labor practice allegations contained in that complaint. As part of the settlement, an agreement was reached to forego litigating the single employer allegation. On February 11, 2013, the Regional Director for Region 6 of the Board amended the complaint to withdraw the settled allegations, including the single employer allegation. Therefore, the hearing before an administrative law judge in that case, and the administrative law judge's resulting decision, did not address whether UPMC and its subsidiaries were a single employer for purposes of the Act. See *UPMC and Its Subsidiaries UPMC Presbyterian Shadyside and Magee-Womens Hospital of UPMC, Single Employer*, 198 L.R.R.M. (BNA) ¶ 1051, 2013 WL 1741981 (NLRB Div. of Judges Apr. 19, 2013).⁴

Subsequently, according to Respondents, on March 20, 2013, the City of Pittsburgh (the "City") commenced a civil action against UPMC challenging its tax-exempt status as an Institution of Purely Public Charity (Doc. 29, ¶ 21). The Board has not been involved with and has no particular knowledge of the City's civil action.

In April 2013, the Union filed 22 administrative charges with the Board's Regional Office in Pittsburgh, Pennsylvania, alleging, *inter alia*, that UPMC and Presbyterian were a single employer which engaged in numerous unfair labor practices.⁵ On

⁴ The administrative law judge's decision is now on appeal before the Board. See Sec. 102.46 of the Board's Rules and Regulations (providing for the filing of "exceptions" to the administrative law judge's decision with the Board), 29 C.F.R. §102.46.

⁵ On September 27, 2013, the Union filed amendments to the 22 charges, *inter alia*, withdrawing the allegation that Respondents were a single employer. On December 18, 2013, the Union again amended the charges, this time re-alleging that Respondents were a single employer.

September 30, 2013, following an administrative investigation, the Regional Director for Region 6 of the Board issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing. That complaint alleged numerous violations of Section 8(a)(1), (3) and (4) of the Act, 29 U.S.C. §158(a)(1), (3) and (4). While that administrative complaint did not allege that UPMC and Presbyterian constitute a single employer, on January 9, 2014, the Regional Director issued a Second Order Further Consolidating Cases and Amended Consolidated Complaint (the "Complaint") alleging UPMC and Presbyterian are a single employer for purposes of the Act (Doc. 1-3). In answering the Complaint, UPMC and Presbyterian denied all allegations relating to their status as a single employer. A hearing before an administrative law judge commenced on February 12, 2014.

On about January 14, 2014, the General Counsel for the Board served upon Presbyterian subpoena duces tecum B-720565 (14-mc-00109: Doc. 1-4), and served upon UPMC subpoena duces tecum B-720563 (14-mc-00110: Doc. 1-4), directing each of their "Custodian of Records" to produce documents at the hearing to aid the General Counsel in the prosecution of the Complaint. Pursuant to a request from the Union, subpoena duces tecum B-720504 was also issued (14-mc-00111: Doc. 1-3), and the Union served the subpoena upon UPMC for the purpose of aiding the Union during the hearing on the Complaint.⁶ The three subpoenas seek information relating to, among other things, the business relationship between UPMC and Presbyterian for resolving the "single employer" issue alleged in the Complaint.

⁶ Under Section 11(1) of the Act, "any party" to Board proceedings may apply for a subpoena for witnesses or the production of evidence, and the Board "shall . . . forthwith issue" the subpoena requested. 29 U.S.C. §161(1).

On January 23 and 27, 2014, respectively, UPMC and Presbyterian filed petitions with the administrative law judge seeking revocation of all three subpoenas duces tecum asserting that the subpoena requests were overly broad, unduly burdensome, vague, ambiguous, and harassing. See Sec. 102.66(c) of the Board's Rules and Regulations, 29 C.F.R. § 102.66(c). On February 24, 2014, during the course of the unfair labor practice hearing, the administrative law judge issued an order granting the petitions to revoke in part (Doc. 1-9). In balancing the Board's need for the information, the relevancy of the subpoenaed information, and the burden of production, the administrative law judge found 31 paragraphs overly broad.⁷ With respect to the remaining paragraphs, the judge found the subpoenas proper and denied the petitions to revoke. UPMC and Presbyterian refused to comply with the order from the administrative law judge. They also did not file a request for special permission to appeal to the Board the administrative law judge's decision refusing to revoke the remaining paragraphs. See Sec. 102.26 of the Board's Rules and Regulations, 29 C.F.R. §102.26.

Subsequently, on January 27, 2014, Respondents also filed a motion to dismiss with the Board, requesting that the Board dismiss the amendments to the Complaint reflecting the single employer allegations and that UPMC be dismissed as a party to the unfair labor practice proceeding (Doc. 1-10). The Board denied that motion on February 7, 2014 (Doc. 1-12).

⁷ Specifically, the administrative law judge revoked Paragraph 35 in Subpoena No. B-720565 (Board subpoena to Presbyterian); Paragraph 35 in Subpoena No. B-720563 (Board subpoena to UPMC); and Paragraphs 1-4, 10-11, 17, 19-21, 26-28, 39, 49-53, 57, 60-65, and 67-69 in Subpoena No. B-720504 (Union subpoena to UPMC) (Doc. 1-9, pp. 5-6).

Accordingly, in the absence of compliance with the subpoenas, and the continuing litigation of the single employer allegations in the underlying administrative proceeding, on March 20, 2014, pursuant to Section 11(2) of the Act, 29 U.S.C. §161(2), the Board filed its applications in this Court seeking orders requiring UPMC and Presbyterian to comply with the subpoenas duces tecum as ordered by the administrative law judge. The Board did not seek enforcement of the subpoena paragraphs revoked by the administrative law judge.

On August 22, 2014, this Court issued an order granting the Board's applications for enforcement of the three subpoenas (Docs. 24, 25), which it amended on September 2, 2014 (Docs. 26-28). This Court also stayed its order pending an appeal by Respondents (Doc. 28).

On September 29, 2014, in three separate but substantively identical motions, Respondents moved this Court for reconsideration of its enforcement orders (Doc. 29). Respondents argue that newly-discovered evidence reveals that the Union grossly abused the Board's administrative subpoena process, justifying reconsideration of the Court's decisions. Respondents contend that "the SEIU used the NLRB administrative subpoena process not for a legitimate discovery purpose in the NLRB proceedings, but rather as a part of its corporate campaign and in an ultimately unsuccessful attempt to prevent dismissal of the payroll tax lawsuit against UPMC" (Doc. 29, p. 1).⁸

⁸ Respondents' contumacious refusal to comply with the Board's subpoenas has significantly delayed the Board's administrative processes. The hearing in the underlying proceeding remains open, and four individuals who were alleged to be unlawfully discharged remain unemployed. In addition, several other unfair labor practice charges are being held in abeyance pending resolution of the single employer issue in this case.

ARGUMENT

1. This Court Correctly Found the Subpoenas Met the Requirements for Enforcement

This Court correctly noted that an administrative subpoena should be enforced where (i) the inquiry is for a legitimate and proper purpose, (ii) the inquiry is reasonably relevant to that purpose, and (iii) the demand is not unreasonably broad or burdensome. (Doc. 27, p. 6) (citing *United States v. Powell*, 379 U.S. 48, 57-58 (1964)).⁹ As this standard was met here, the Court correctly enforced the subpoenas.

Section 11 of the Act grants the Board broad subpoena power to examine and copy “any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question.” The Board’s subpoenas here, which were issued in aid of the prosecution of the Complaint, meet this low threshold. As this Court recognized, the information need be “reasonably relevant” to the inquiry authorized by Congress. See also, *Dole v. Trinity Industries, Inc.*, 904 F.2d 867, 872 (3rd Cir. 1990). Here, as noted, the Complaint alleges that UPMC and Presbyterian constitute a single employer that violated Section 8(a)(1), (3), and (4) of the Act. As UPMC and Presbyterian both have denied single employer status¹⁰, subpoenas seeking to establish those allegations are more than “reasonably” relevant; they are in fact

⁹ This Court also noted from *EEOC v. Kronos Inc.*, 620 F.2d 287 (3rd Cir. 2010), that the agency must not already possess the information, and that it has complied with relevant administrative requirements, neither of which is in dispute here (Doc. 27, p. 6).

¹⁰ See Second Order Further Consolidating Cases and Amended Consolidated Complaint at ¶¶ 2 and 3 (Doc. 1-3) (single employer allegations).

directly on point, and in aid and support of the Board's legitimate purpose of establishing their single employer status in the unfair labor practice litigation.¹¹

Further, the breadth of the subpoenas is consistent with the requirements for establishing single employer status, which is determined, among other things, by a factual examination of the interrelation of operations, common management, centralized control of labor relations, and common ownership or financial control. See *Radio and Television Broadcast Technicians, Local Union 1264 v. Broadcast Service of Mobile, Inc.*, 380 U.S. 255, 256 (1965); *NLRB v. G.H.R. Energy Corp.*, 707 F. 2d 110, 113 (5th

¹¹ In enforcing the Board's subpoenas, this Court observed that the "scope and nature of the requests, coupled with the NLRB's efforts to obtain said documents for, and on behalf of, the SEIU, arguably moves the NLRB from its investigatory function and enforcer of federal labor law, to serving as the litigation arm of the Union . . ." (Doc. 27, at 2-3). It is, however, the Board's responsibility to enforce the Act. In addition, as noted *supra*, n. 6, under Section 11(1) of the Act (29 U.S.C. §161(1)), any party to Board proceedings may apply to the Board for a subpoena, through the Regional Director or the administrative law judge. See Sec. 102.31(a) of the Board's Rules and Regulations, 29 C.F.R. §102.31(a). Where parties refuse to comply with a subpoena, private litigants may not institute enforcement proceedings for Board subpoenas. *Wilmot v. Doyle*, 403 F.2d 811, 814 (9th Cir. 1968). Rather, the Board must make application for enforcement of its subpoenas with the district courts. *NLRB v. Frazier*, 966 F.2d 812, 817 (3rd Cir. 1992). Section 102.31(d) of the Board's Rules and Regulations provides that:

Upon the failure of any person to comply with a subpoena issued upon the request of a private party, the General Counsel shall in the name of the Board but on relation of such private party, institute proceedings in the appropriate district court for the enforcement thereof, unless in the judgment of the Board the enforcement of such subpoena would be inconsistent with law and with the policies of the Act.

The construction of Section 11(2) and Rule 102.31(d) is based on "sound logic" aimed at administrative and judicial efficiency. *Wilmot v. Doyle*, 403 F.2d at 814 ("[i]f private litigants, willy nilly, could petition the district court, the courts might be flooded with such applications, and neither the Board nor the courts would have any control over such filings. Such petitions as here, would be used as delaying tactics"). Accordingly, by issuing a subpoena upon request of the Union and instituting enforcement proceedings upholding the administrative law judge's Order, the Board has acted entirely within and pursuant to lawful requirements.

Cir. 1982); *NLRB v. Al Bryant, Inc.*, 711 F.2d 543, 551 (3rd Cir. 1983) (“the single employer question is primarily factual”). Courts have recognized that determining single employer status requires a broad examination. Thus, “the Board must necessarily undertake a fairly wide-ranging investigation into the day-to-day affairs of the two companies.” *G.H.R. Energy*, 707 F. 2d at 113; see also *F.T.C. v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977) (“[t]here is no doubt that these subpoenas are broad in scope, but the FTC’s inquiry is a comprehensive one -- and must be so to serve its purposes”). Accordingly, while this Court expressed concern about the breadth of the subpoenas, it nevertheless appropriately enforced the Board’s and the Union’s subpoenas as they seek documents that pertain to the business relationship between UPMC and Presbyterian. See *G.H.R. Energy*, 707 F.2d at 113 (rejecting overly broad defense to subpoena enforcement where respondents “put their entire business relationship into question by denying that they constitute a ‘single employer’ for purposes of the Act”).

In short, since the subpoenaed information is relevant to the Board’s authorized inquiry and necessarily broad for resolving the alleged unfair labor practices alleged against UPMC and Presbyterian, this Court appropriately granted enforcement. Respondent’s motion does not disturb the basis for the Court’s enforcement.

2. Respondents Have Not Shown Any Abuse of the Court’s Judicial Process in Enforcing These Subpoenas

Respondents contend that the Union held improper motives in pursuing the single employer allegation and that its conduct abused the administrative processes of the Board (Doc. 29, p. 1 and ¶¶ 74-78). This argument does not support reconsideration of the Court’s determination to enforce the subpoenas. The Third Circuit has observed that the court’s role in a subpoena enforcement proceeding, where

allegations of abuse of process have been raised, is not to examine the underlying administrative process, for that is for the administrative agency to police¹², but to focus on and determine whether the process is being abused by seeking to judicially enforce the subpoena. *SEC v. Wheeling-Pittsburgh Steel Corp.*, 648 F.2d 118, 125 (3rd Cir. 1981) (“courts must not interfere unduly in the administrative process ... our primary concern is with the integrity of the judicial process”). The district court’s inquiry is limited to a determination that the court’s processes “would or would not be abused by enforcement of the subpoena” *Id.* In considering abuse of process for subpoena enforcement, “[t]he distinction between the abuse of the [agency’s] process and abuse of the court’s process must always be recognized.” *Id.* The ultimate question is whether the court’s processes would be abused if the subpoena were to be enforced. *Id.*; *United States v. LaSalle National Bank*, 437 U.S. 298, 317 (1978); *NLRB v. Frazier*, 966 F.2d 812, 819 (3rd Cir. 1992); *NLRB v. Interstate Dress Carriers, Inc.*, 610 F.2d 99, 112 (3rd Cir. 1979).

¹² When allegations are made that the Board’s processes are being abused, the Board defends the integrity of its administrative process and will, in *its own* proceedings, address such allegations. For example, in *Camelot Terrace*, 357 NLRB No. 161, 2011 WL 7121892 (2011), the Board awarded litigation expenses under the “bad-faith” exception to the American Rule that each party bears its own costs in litigation, where there was extreme bad-faith conduct related to the litigation. The Board there described a litany of bad-faith conduct, including in both the collective bargaining underlying the unfair labor practice proceeding, as well as in the unfair labor practice litigation. *Id.* at **6-9 (e.g., testimony of respondent’s owner and president was “replete with contradictions, inconsistencies, and outright lies under oath.”). In *675 West End Owners Corp.*, 345 NLRB 324, 326, n. 11 (2005), enfd. 304 Fed. Appx. 911 (2d Cir. 2008), the Board awarded litigation costs against a respondent which disobeyed the judge’s instructions that a revoked subpoena should not be served again, and proceeded to issue a subpoena after the close of the hearing. See also, *Lake Holiday Assocs.*, 325 NLRB 469, 469-70 (1998) (finding bad faith in the conduct of the litigation and awarding fees to General Counsel where respondent withdrew from settlement twice and otherwise caused delays in the conduct of the unfair labor practice hearing).

Thus, regardless of what may or may not be the Union's motives, the critical inquiry in this case is the Board's purpose in issuing, and seeking enforcement of, the instant subpoenas. "The *dispositive question* [when considering abuse of judicial process], then, is whether the (agency) is pursuing the authorized purposes in good faith." *Wheeling-Pittsburgh*, 648 F.2d at 132-33 (quoting *LaSalle*, 437 U.S. at 317, n. 19) (emphasis in original). The burden on a party seeking to avoid compliance with a subpoena "is not a meager one." *Frazier*, 966 F.2d at 819 (quoting *Interstate Dress Carriers*, 610 F.2d at 112); *LaSalle*, 437 U.S. at 316 (characterizing the burden as "a heavy one"). The party seeking to evade the subpoena must present "facts suggesting that the subpoena is intended solely to serve purposes outside the purview of the jurisdiction of the issuing agency." *Frazier*, 966 F.2d at 819 (emphasis added); see also *United States v. Garden State Nat. Bank*, 607 F.2d 61, 71 (3rd Cir. 1979) (the opposing party has the burden "to negate the existence of a proper civil purpose"). If this threshold is not satisfied, "a district court should, in a §11(2) enforcement case, act summarily." *Frazier*, 966 F.2d at 819. And, critically, the motives of a third party are largely irrelevant to a subpoena enforcement proceeding. *United States v. Cortese*, 614 F.2d 914, 921 (3rd Cir. 1980) (motivations of third parties should have no bearing on the question of agency good faith); see also *Wheeling-Pittsburgh*, 648 F.2d at 125 (in a subpoena enforcement proceeding, "inquiry to the motivations of third parties and their illicit use of the agency's authority to investigate [would be] misdirected"). The focus for the Court should remain on the government's motive.

Respondents' recitation of the tax-exemption litigation between UPMC and the City provides not a scintilla of evidence that points to and/or suggests involvement by

the Board in that litigation, nor does it show that the Board's administrative subpoenas were issued for the sole purpose of somehow aiding that litigation. Respondents' evidence in this regard shows only that a civil action brought by the City occurred simultaneous with the Board's processing of the Union's unfair labor practice charges pursuant to its statutory mandate. The fact that there are two separate proceedings addressing similar issues is of no consequence for establishing the government's bad faith. See *Interstate Dress Carriers*, 648 F.2d at 112 ("the mere fact that a criminal investigation is underway simultaneous to the agency's subpoena motion does not, without more, demonstrate that the subpoena was intended to serve (an) impermissible purpose"); see also, *United States v. McGovern*, 87 F.R.D. 584, 587-88 (M.D. Pa. 1980) (simultaneous activity by the Nuclear Regulatory Commission and the Justice Department does not establish that NRC's subpoenas were aimed at funneling information to the grand jury). Respondents must show more, and particularly "more than simultaneous activity," to establish that the subpoenas were issued by the Board and sought to be enforced for an improper purpose. *Id.*

Respondents imply the Board's bad faith by asserting that the Union unduly pressured the Board to amend its complaint on January 9, 2014 to include the single employer allegation (Doc. 29, ¶ 75). Respondents suggest that the Board's amendment, and the disputed subpoenas, were aimed at abetting the civil action brought by the City. Respondents' assertions in this regard are wholly speculative, without any evidentiary support, and inconsistent with the history of the single employer issue. As described above, the Board wrestled with the single employer issue long

before the City initiated its investigation and civil action against UPMC.¹³ In May 2012, well in advance of the tax-exemption litigation that commenced in March 2013, the Union filed the first of five unfair labor practice charges raising the single employer issue as to UPMC and Presbyterian. The Board investigated the charges, and on December 13, 2012, issued a complaint alleging Respondents were a single employer. The single employer issue was not resolved by that proceeding, and the issue was subsequently raised again by the Union in the charges leading to the current dispute.

In short, Respondents have not presented evidence either refuting that the subpoenas seeking single employer information are relevant to the single employer allegations at issue in the unfair labor practice proceeding, or suggesting that the Board issued its subpoenas and sought judicial enforcement to serve a purpose outside the purview of the Agency's jurisdiction. In these circumstances, enforcement of these subpoenas would not constitute an abuse of the Court's processes.

Nor should there be any different conclusion with respect to the subpoena issued upon request of the Union. The Court's analysis should not change in this regard. See *Frazier*, 966 F.2d at 814-15 (examining whether Board sought subpoena enforcement for an improper purpose to determine whether to enforce third-party's subpoena). Upon the Union's request, the Board determined that enforcement was not inconsistent with the law and the policies of the Act, and based on the administrative law judge's Order, instituted enforcement proceedings, as required by the Board's regulations. For all of

¹³ According to Respondents' motions, Mayor Ravenstahl initiated his investigation of UPMC's tax-exempt status in January 2013, and the City filed its civil action on March 20, 2013 (Doc. 29, ¶¶ 14 and 21).

the reasons stated above, Respondents have not shown an abuse of the Court's processes in seeking enforcement.

3. There Is No Basis For Discovery

Respondents have also presented no basis for discovery. In summary subpoena enforcement proceedings, discovery is generally disallowed absent "extraordinary circumstances." *United States v. Markwood*, 48 F.3d 969, 982 (6th Cir. 1995) (citing cases).¹⁴ The Fifth Circuit has noted that a district court has authority to grant pre-subpoena enforcement discovery only "in a truly exceptional case, [as in] a case where the defendant has made a preliminary and substantial demonstration of abuse." *In re EEOC*, 709 F.2d 392, 402 (5th Cir. 1983).¹⁵ Moreover, where a party lacks evidence showing such abuse, the party "is not 'entitled to engage in counter-discovery to find grounds for resisting' a subpoena." *Id.* at 400.¹⁶ The Federal Rules of Civil Procedure specifically authorize the courts to allow a less formal application of the rules, including the rules for discovery, in keeping with the summary nature of the application for enforcement. See Fed.R.Civ.Pro. 81(a)(5).

¹⁴ In fact, most of the Federal Rules of Civil Procedure are inapplicable to proceedings for enforcement of an administrative subpoena. *Id.*

¹⁵ Because EEOC and Board subpoena powers are both derived from 29 U.S.C. §161, court opinions concerning the enforcement of EEOC subpoenas are persuasive in proceedings to enforce Board subpoenas. See *EEOC v. Children's Hosp. Med. Ctr.*, 719 F.2d 1426, 1430 (9th Cir. 1983) (en banc).

¹⁶ Discovery only has been allowed in exceptional circumstances, such as when the subpoenaed party can show that the agency is acting in bad faith or for an improper purpose. See *Resolution Trust Corp. v. Frates*, 61 F.3d 962, 965 (D.C. Cir. 1995); see also *United States v. Aero Mayflower Transit Corp.*, 831 F.2d 1142, 1145 (D.C. Cir. 1987); *EEOC v. St. Regis Paper Co.*, 717 F.2d 1302, 1304 (9th Cir. 1983).

There are no disputed questions of fact that require further consideration by the Court. Respondents use their newly-discovered evidence to seek to establish that the Union was “heavily involved with and supporting the City in Tax-Exempt Litigation” (Doc. 29, ¶ 68). This allegation is not material to this enforcement proceeding, where the requested information is relevant to the Board’s legitimate inquiry in support of its proceeding. See *Glendon Energy Co. v. Borough of Glendon*, 836 F. Supp. 1109, 1123 (E.D. Pa. 1993) (motion for reconsideration denied because newly discovered evidence was not relevant). Even assuming Respondents’ allegation concerning the Union’s motivations to be true, Respondents have failed to meet their burden of establishing the Board has acted in bad faith or for an improper purpose. See *Wheeling-Pittsburgh*, 648 F.2d at 125 (“if the court directed further inquiry to the motivations of third parties and their illicit use of the agency’s authority to investigate, that inquiry was misdirected”). This new evidence does not negate the legitimacy of the Board’s subpoenas, which were issued in good faith pursuant to congressionally-authorized purposes. Accordingly, discovery in this case would be improper and serve only to further delay the Board’s proceedings.

CONCLUSION

This Court properly concluded that the instant subpoenas meet the standards for enforcement. The Board’s subpoenas were issued in good faith pursuant to congressionally-authorized purposes. Respondents’ motion, which attempts to attack the Union’s motives, but provides no link between the Board’s legitimate exercise of its statutory authority and anything remotely suggesting bad faith, are insufficient to show

the Board has acted with an improper purpose. Accordingly, Respondents' motions should be denied.

Respectfully submitted,

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Dated at Pittsburgh, Pennsylvania

This 15th day of October, 2014

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NATIONAL LABOR RELATIONS BOARD,)	
)	
Applicant,	)	Case No. 2:14-mc-00109-AJS
	)	Judge Arthur J. Schwab
v.)	
	)	<i>Filed Electronically</i>
UPMC PRESBYTERIAN SHADYSIDE,)	
)	
Respondent.)	

REPLY BRIEF IN SUPPORT OF UPMC’S MOTION FOR RECONSIDERATION

As noted by Justice Aldisert, writing on behalf of the United States Court of Appeals for the Third Circuit, “federal courts have never lent their enforcement machinery to an executive branch investigative body in the manner of a rubber stamp.” *SEC v. Wheeling-Pittsburgh Steel Corporation*, 648 F.2d 118, 124 (3d Cir. 1981) (quoting *In re Grand Jury Proceedings*, 486 F.2d 85, 90 (3d Cir. 1973)). The new evidence submitted with Respondent’s Motion for Reconsideration, (Doc. 29), demonstrates on a non-frivolous, preliminary basis that the at-issue administrative subpoenas were served for an improper purpose, were an abuse of the administrative process, and, consequently, that their enforcement is an abuse of the judicial process. With this reply, Respondent focuses on the increasingly obvious need for discovery and/or an evidentiary proceeding to further substantiate Respondent’s arguments.

First, many of the cases cited by the NLRB and the SEIU demonstrate that discovery is appropriate in these circumstances. For example, in *Wheeling-Pittsburgh*, the respondent alleged, and the district court agreed, that an SEC subpoena was issued for an improper purpose; namely, a United States Senator was inappropriately pressuring the SEC into issuing the

subpoena. 486 F.2d at 120-123. On appeal, the Third Circuit concluded that the record was not sufficiently developed to establish improper purpose. In so holding, however, the Third Circuit: (a) confirmed that an illegitimate purpose could be established by allegations of improper influence by a third party and concomitant abdication of the agency’s responsibilities to maintain objectivity; and (b) ordered the district court to permit the respondent to take discovery to support its allegations of improper purpose.¹ *Id.* at 129-30.

Here, as in *Wheeling-Pittsburgh*, the evidence submitted by Respondent raises a substantial question of whether the NLRB has abdicated its responsibilities and become the “litigation arm” of the SEIU. Discovery is appropriate to confirm Respondent’s non-frivolous arguments. *See NLRB v. Interstate Dress Carriers, Inc.*, 610 F.2d 99 (3d Cir. 1979) (cited by the NLRB and the SEIU) (noting that if evidence submitted to a district court “made a non-frivolous showing that the Board’s subpoena power was deliberately being resorted to not for the purpose of facilitating the certification of a collective bargaining representative, but rather for the purpose of gathering information for a Justice Department criminal investigation, we would have no difficulty affirming a district court decision deferring enforcement until completion of discovery of and hearing on that abuse of the subpoena power”).

Second, contrary to the NLRB’s and the SEIU’s assertions, district courts have ordered limited discovery and/or an evidentiary proceeding in strikingly similar circumstances. A particularly illustrative case is *EEOC v. Bashas* (“*Bashas I*”), No. 09-0209, 2009 WL 1783437 (D. Ar. June 18, 2009). There, the respondent argued that an EEOC administrative subpoena

¹ The *Wheeling-Pittsburgh* Court limited another case relied upon by the NLRB, *United States v. Cortese*, 614 F.2d 914 (3d Cir. 1980), noting that *Cortese* “did not intend to set forth the only defenses available to a respondent in an administrative subpoena case,” and that *Cortese* left open the ability of a respondent to argue that an agency was motivated by the same animus as a third party. *Wheeling-Pittsburgh*, 648 F.2d at 129.

was issued to (a) funnel information to plaintiffs' counsel in other pending litigation against the respondent; and (b) place pressure on the respondent and further a union's simultaneous effort to unionize the respondent's workforce. To support its abuse-of-process theory, the respondent sought limited discovery from the EEOC, the named plaintiffs in the collateral litigation, as well as on the plaintiffs' counsel. *Id.* at *4.

The district court conducted an evidentiary hearing into the EEOC's motivations. After that hearing, the court concluded that the respondent had presented a non-frivolous, preliminary showing that enforcement of the subpoena would amount to an abuse of the court's process in light of the timing of the EEOC's conduct when viewed in conjunction with the collateral litigation. Therefore, the Court ordered limited discovery. *EEOC v. Bashas* ("Bashas II"), No. 09-0209, 2009 WL 3241763 (D. Ar. Sept. 30, 2009).

Similarly, here, Respondent has made a preliminary showing of abuse and illegitimacy of purpose – specifically, that the subpoenas were issued to advance collateral litigation against Respondent and to further the SEIU's corporate campaign. Discovery is warranted to further substantiate Respondent's arguments. For these reasons, as well as those more fully addressed in Respondent's Motion for Reconsideration, Respondent respectfully asks the Court to reconsider its Memorandum Opinion (Doc. 27) and related Order (Doc. 28), to conduct a hearing on Respondent's Motion, and/or to order limited discovery into the issues raised in Respondent's Motion.

