



725 North Street
Pittsfield, MA 01201
(413) 447-2000

April 3, 2018

Dear Colleagues:

As you may have heard in recent days, the Regional Director of the National Labor Relations Board in Boston has decided that three unfair labor practice charges brought against the Berkshire Medical Center by the Massachusetts Nurses Association may move forward to a full hearing on the facts and law. The Regional Director's action to allow the allegations to go forward to a hearing is a preliminary step in a process that may take as long as two or three years to fully resolve.

Although somewhat disappointed, we were not surprised by this development because, it is quite common for union unfair labor practice charges to reach this stage. Without being allowed to go to hearing, the union's claims would simply have been dismissed. The hospital now looks forward to presenting its full case to an administrative law judge and, perhaps, ultimately to the National Labor Relations Board itself and a federal Court of Appeals.

Berkshire Medical Center is confident in its position on each of the three charges.

One charge largely relates to the hospital's refusal to require the BHS Health Plan to turn over to the union detailed demographic and claims information about every one of the approximately 6000 employees and family members who participate in the plan. Although the hospital turned over volumes of information about the health plan, the hospital strongly believes that detailed information about how plan participants use their health insurance coverage was irrelevant to whatever analysis of the plan the registered nurses wanted to undertake. Far more importantly, the hospital and BHS Health Plan respect the privacy of all plan participants and felt compelled by that commitment—and federal and state privacy laws—to resist the MNA's apparent view that participant privacy interests were less important than whatever the union's interests were. The BHS Health Plan and the hospital never turned over the detailed participant information and, it turned out, the nurses' union was able to conduct whatever analysis it wanted without that information. Nonetheless, the apparent charge that the hospital had no right to protect plan participant information from examination by the union will move to a formal hearing.

Another charge appears to be chiefly based upon a caution to the registered nurses sent in July 2017 by now retired Vice President of Human Resources Arthur Milano that a strike might interrupt hospital contribution to their health insurance coverage. Before the strike, however, the hospital arranged to continue its contributions during the strike and told the nurses that there would, if fact, be no interruption. Nevertheless, the legality of Mr. Milano's earlier warning to

the nurses of the possibility of a gap in their health insurance coverage will now be subject of formal litigation.

The final charge appears to be based upon the fact that Berkshire Medical Center did not turn over to the union a copy of the contract between the hospital and the temporary nursing service agency that provided the replacement nurses during the work stoppage. The contract between the hospital and the agency contains a provision that prohibits the hospital from sharing the contract or contract terms with anyone without the agency's express written consent. The agency initially did not consent to the hospital's sharing the contract at all, although it later agreed that certain terms of the contract could be shared with an investigator from the National Labor Relations Board. The question of whether the hospital should somehow have turned over the agency contract to the union despite the contract term prohibiting it from doing so will now also be considered by an administrative law judge.

Reluctantly, Berkshire Medical Center must now invest the necessary costs to defend its position on these matters. These allegations become yet another example of the enormous diversion of scarce hospital resources and attention into this effort by the nurses' union to force the hospital to improve upon what is already a generous package of wages, benefits and working conditions.

Despite this regrettable new chapter, we remain hopeful that our registered nurses will eventually decide that the offer before them is worth accepting and will be now willing to turn the page on this difficult time.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. Rogers", with a long horizontal flourish extending to the right.

John F. Rogers
Vice President & General Counsel