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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JONATHAN B. KREISBERG, Regional Director of Region
34 of the National Labor Relations Board, for and on behalf
of the **NATIONAL LABOR RELATIONS BOARD**

Petitioner

vs.

**HEALTHBRIDGE MANAGEMENT, LLC; 107 OSBORNE
STREET OPERATING COMPANY II, LLC D/B/A
DANBURY HCC; 710 LONG RIDGE ROAD OPERATING
COMPANY II, LLC D/B/A LONG RIDGE OF STAMFORD;
240 CHURCH STREET OPERATING COMPANY II, LLC
D/B/A NEWINGTON HEALTH CARE CENTER; 1 BURR
ROAD OPERATING COMPANY II, LLC D/B/A WESTPORT
HEALTH CARE CENTER; 245 ORANGE AVENUE
OPERATING COMPANY II, LLC D/B/A WEST RIVER
HEALTH CARE CENTER; 341 JORDAN LANE
OPERATING COMPANY II, LLC D/B/A WETHERSFIELD
HEALTH CARE CENTER**

Respondent

CIVIL NO.

Dated: September 7, 2012

**PETITIONER'S MEMORANDUM OF LAW REGARDING THE
STATUTORY SCHEME PURSUANT TO WHICH RELIEF IS SOUGHT**

I. INTRODUCTION

This proceeding is before the Court on a petition filed by the Regional Director of Region 34 of the National Labor Relations Board, herein called the Board, pursuant to Section 10(j) of the National Labor Relations Act, as amended, [29 U.S.C. Section 160(j)], herein called the Act, for an injunction pending the final disposition of the matters involved herein pending before the Board on a Order Further Consolidating Cases, Third Amended Consolidated Complaint and Notice of Hearing (herein called the Complaint) issued by the General Counsel of the Board alleging that HealthBridge Management, LLC, (Respondent HealthBridge); Care Realty, LLC (Respondent Care Realty); 107 Osborne Street Operating Company II, LLC d/b/a Danbury Health Care Center (Respondent Danbury); 710 Long Ridge Road Operating Company II, LLC, d/b/a Long Ridge of Stamford, (Respondent Long Ridge); 240 Church Street Operating Company II, LLC d/b/a Newington Health Care Center (Respondent Newington); 245 Orange Avenue Operating Company II, LLC d/b/a West River Health Care Center (Respondent West River); 1 Burr Road Operating Company II, LLC d/b/a Westport Health Care Center (Respondent Westport); and 341 Jordan Lane Operating Company II, LLC d/b/a Wethersfield Health Care Center (Respondent Wethersfield) (collectively, Respondents) violated Sections 8(a)(1)(3) and (5) [29 U.S.C. Section 158(a)(1)(3) and (5)] of the Act.

The petition herein was filed after the issuance of the Complaint pursuant to Section 10(b) [29 U.S.C. Sec. 160(b)] of the Act. It is predicated on the Petitioner's conclusion that there is reasonable cause to believe that the Respondent engaged in, and is engaging in, unfair labor practices alleged in the Complaint, and that an interim order requiring the Respondent to cease and desist from engaging in conduct violative of Sections 8(a)(1)(3) and (5) of the Act and to take certain affirmative actions to prevent nullification of the purposes of the Act.

II. THE STATUTORY SCHEME PURSUANT TO WHICH INJUNCTIVE RELIEF IS SOUGHT: THE APPLICABLE STANDARDS

Section 10(j) of the Act,¹ authorizes United States district courts to grant temporary injunctions pending the Board's resolution of unfair labor practice proceedings. This provision reflects Congressional recognition that, because the Board's administrative proceedings often are protracted, in many instances, absent interim relief, a Respondent could accomplish its unlawful objective before being placed under any legal restraint, and it could thereby render a final Board order ineffectual. See Kaynard v. Palby Lingerie, Inc., 625 F.2d 1047, 1055 (2d Cir. 1980) and Seeler v. The Trading Port, Inc., 517 F.2d 33, 38 (2d Cir. 1975), citing S. Rep. No. 105, 80th Cong., 1st Sess., at pp. 8, 27 (1947), reprinted at I Legislative History of the Labor Management Relations Act of 1947, 414, 433 (Government Printing Office 1985). Thus, Section 10(j) was intended to prevent the potential frustration or nullification of the Board's remedial authority caused by the passage of time inherent in Board administrative litigation. See, e.g., Seeler v. The Trading Port, Inc., 517 F.2d at 37-38.

To resolve a 10(j) petition, a district court in the Second Circuit considers only two issues: whether there is "reasonable cause to believe" that a Respondent has violated the Act and whether temporary injunctive relief is "just and proper." See, e.g., Kaynard v. MMIC, Inc., 734 F.2d 950, 953 (2d Cir. 1984) and the cases cited therein; Hoffman v. Polycast Technology, Division of Uniroyal Technology Corp., 79 F.3d 331 (2d Cir. 1996); Hoffman v. Inn Credible Caterers, Ltd., 247 F.3d 360, 365 (2d Cir. 2001);

¹ Section 10(j) [29 U.S.C. Section 160(j)] provides:

The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any United States district court, within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

Kreisberg ex rel. N.L.R.B v. Stamford Plaza Hotel & Conference Center, L.P., ---
F.Supp. ---, 2012 WL 996609, D. Conn. March 22, 2012 (NO. 3:12CV104 MRK).

A. The "Reasonable Cause" Standard

In determining whether there is reasonable cause to believe that the Act has been violated, the district court may not decide the merits of the case. See Kaynard v. Mego Corp., 633 F.2d 1026, 1032-1033 (2d Cir. 1980). Rather, the court's role is limited to determining whether there is "reasonable cause to believe that a Board decision finding an unfair labor practice will be enforced by a Court of Appeals." Kaynard v. Mego Corp., 633 F.2d at 1033, quoting McLeod v. Business Machine and Office Appliance Mechanics Conference Board, 300 F.2d 237, 242 n. 17 (2d Cir. 1962); Kreisberg ex rel. N.L.R.B v. Stamford Plaza Hotel & Conference Center, L.P., supra; Hoffman v. Hartford Hospital, 149 LRRM 2248, 2249 (D.Conn. 1995). The district court should not resolve contested factual issues; the Regional Director's version of the facts "should be given the benefit of the doubt" (Seeler v. The Trading Port, Inc., 517 F.2d at 37) and, together with the inferences therefrom, "should be sustained if within the range of rationality" (Kaynard v. Mego Corp., 633 F.2d at 1031). The district court also should not attempt to resolve issues of credibility of witnesses. Kaynard v. Palby Lingerie, Inc., 625 F.2d at 1051-1052, n. 5. See also Gottfried v. Frankel, 818 F.2d 485, 493, 494 (6th Cir. 1987) (district court is not permitted to resolve conflicts in the evidence; Respondent's attack on credibility of Board's witnesses merely establishes conflict in evidence); Fuchs v. Jet Spray Corp., 560 F. Supp. 1147, 1150-1151 n. 2 (D. Mass. 1983), affd. per curiam 725 F.2d 664 (1st Cir. 1983).

Similarly, on questions of law, the district court "should be hospitable to the views of the [Regional Director], however novel." Kaynard v. Mego Corp., 633 F.2d at 1031, quoting Danielson v. Joint Board of Coat, Suit and Allied Garment Workers' Union, I.L.G.W.U., 494 F.2d 1230, 1245 (2d Cir. 1974). The Regional Director's legal position should be sustained "unless the [district] court is convinced that it is wrong." Hoffman v.

Hartford Hospital, supra, 149 LRRM at 2250; Kaynard v. Palby Lingerie, Inc., 625 F.2d at 1051. Accord: Silverman v. Major League Baseball Players Relations Comm., Inc., 67 F. 3d 1054, 1059 (2d Cir. 1995) ("appropriate deference must be shown the judgment of the NLRB, and a district court should decline to grant relief only if convinced that the NLRB's legal or factual theories are fatally flawed"); Hoffman v. Inn Credible Caterers, Ltd., supra, 247 F.3d 365. See also Kaynard v. Independent Routemen's Association, 479 F.2d 1070, 1072 (2d Cir. 1973) (district court committed reversible error by not limiting itself to reasonable cause question) (Section 10(l) proceeding).²

B. The "Just and Proper" Standard

The Second Circuit has recognized that Section 10(j) is among those "legislative provisions calling for equitable relief to prevent violations of a statute" and courts should grant interim relief thereunder "in accordance with traditional equity practice, as conditioned by the necessities of public interest which Congress has sought to protect." Morio v. North American Soccer League, 632 F.2d 217, 218 (2d Cir. 1980), quoting Seeler v. The Trading Port, Inc., 517 F.2d at 39-40. In applying these principles, the Second Circuit has concluded that Section 10(j) relief is warranted where serious and pervasive unfair labor practices threaten to render the Board's processes "totally ineffective" by precluding a meaningful final remedy (Kaynard v. Mego Corp., 633 F.2d at 1034, discussing Seeler v. The Trading Port, Inc., 517 F.2d at 37-38); or where interim relief is the only effective means to preserve or restore the status quo as it existed before the onset of the violations (Seeler v. The Trading Port, Inc., 517 F.2d at 38); or where the passage of time might otherwise allow the respondent to accomplish its unlawful objective before being placed under any legal restraint (Kaynard v. Palby Lingerie, Inc., 625 F.2d at 1055). Accord: Hoffman v. Inn Credible Caterers, Ltd., supra,

² Section 10(l) of the Act [29 U.S.C. Section 160(l)] is a companion provision to Section 10(j); it mandates the Board to seek temporary injunctions involving certain enumerated violations, such as secondary boycotts. The legal analysis under the two sections is basically the same. See, e.g., Danielson v. Joint Board, 494 F.2d at 1242.

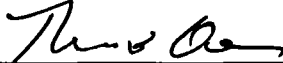
247 F.3d at 368 (Section 10(j) relief is “just and proper when it is necessary to prevent irreparable harm or to preserve the status quo”); Silverman v. Major League Baseball Players Relations Comm., Inc., 880 F. Supp. 246, 255 (S.D.N.Y.), aff’d. 67 F. 3d 1054 (2d Cir. 1995); Hoffman v. Hartford Hospital, supra, 149 LRRM at 2250; Pascarell v. Vibra Screw Inc., 904 F.2d 874, 878-879 (3d Cir. 1990); Fleischut v. Nixon Detroit Diesel, Inc., 859 F.2d 26, 30 (6th Cir. 1988).

III. CONCLUSION

Petitioner has reasonable cause to believe that the evidence to be adduced herein shall demonstrate that the injunctive relief sought is indeed just and proper when examined in light of the legislative and judicial precedent attendant to Section 10(j) of the Act.

Upon the conclusion of the evidentiary submission, petitioner shall seek leave of this court to submit a supplemental memorandum of law demonstrating that the facts underlying the instant petition support the relief sought herein to restore the status quo and prevent the continued irreparable injury to employee statutory rights under the Act.

Dated at Hartford, Connecticut, this 7th day of September, 2012.



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