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Re: APP Update: Understanding Legal Considerations

Dear Mr. Zech and Ms. Lindsay:

Our Firm represents the Minnesota Nurses Association (MNA) in connection with the Essentia negotiations. MNA asked that I write to you regarding an update sent to the Advanced Practice Providers by Dr. Skorupa and Dr. Schultz.

It is clear from the communication that Essentia has made the choice to refuse to bargain with MNA. Essentia knows that such a position is not tenable; and, therefore, must invent a justification for refusing to sit down and bargain with its providers.

As you know, Essentia had a full and fair opportunity to challenge the bargaining unit before a neutral third-party. The company lost. An NLRB Regional Director determined that the law did not support Essentia's argument, and certified MNA as the exclusive bargaining representative. The fact that Essentia has decided to pursue a frivolous appeal of the NLRB's certification does not justify its refusal to bargain with MNA.

In fact, contrary to Essentia's communication to providers, nothing in the case law prohibits Essentia from "bargaining without completely waiving its legal right to continue its appeal of this decision." The parties can agree to negotiate, without either side waiving any rights. As the NLRB explained in previous cases, a company can choose to act "responsibly toward the Union by agreeing to negotiate conditionally even though it was contesting the Union's certification, which it had the legal right to do." *Deutsche Psot Global Mail*, 2002 NLRB LEXIS 153, *24).

Here, it appears that Essentia does not want to act responsibly toward providers and their Union and negotiate conditionally. Essentia can choose to behave irresponsibly, or it can choose to behave responsibly. This is entirely Essentia's choice and has nothing to do with the "legal review process."

Essentia's choice has consequences – one being that it is unlikely a decision will be rendered any time soon because the NLRB is not fully functioning due to a lack of quorum and cannot rule on Essentia's appeal until another NLRB member is appointed. Given this, I trust you can see why many view Essentia's choice to refuse to bargain as a delay tactic rather than a sincere effort to resolve a question of law.

Simply put, nothing prevents Essentia from bargaining with MNA *now*. Indeed, as the NLRB has put it, this would be the responsible thing to do. We hope that Essentia will act responsibly rather than continue to make excuses to justify their irresponsible choices.

Sincerely,



Bruce A. Harland

BAH:not

cc: MNA Negotiation Team

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