

## ALJ Decision Summary

### *UPMC and UPMC Presbyterian Shadyside, v. SEIU Healthcare Pennsylvania, Case No. 06-CA-102465 et al. (N.L.R.B. Div. of Judges) (“UPMC II”)*

Last Friday, Nov. 14, 2014, NLRB Administrative Law Judge Mark Carissimi issued his decision in the case of *UPMC and UPMC Presbyterian Shadyside, v. SEIU Healthcare Pennsylvania, Case No. 06-CA-102465 et al.* (N.L.R.B. Div. of Judges) (“*UPMC II*”). This case, which stems from a Consolidated Complaint listing approximately 50 labor law charges against UPMC and its facility, UPMC Presbyterian Shadyside, was adjudicated during a 5-week trial that took place between February and April of this year.

In his 123-page decision, Judge Carissimi finds that UPMC Presbyterian Shadyside repeatedly violated federal labor law and “engaged in such egregious and widespread misconduct so as to demonstrate a general disregard for employees’ statutory rights.” *UPMC II* Dec. at 116.

Because the hospital’s actions were so “egregious” and “widespread,” the administrative law judge issued a broad order against UPMC Presbyterian Shadyside to cease and desist from engaging in the practices described above or “in any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section of the [NLR] Act.” *UPMC II* Dec. at 118.

The administrative law judge also ordered UPMC Presbyterian Shadyside to take affirmative action to, within 14 days:

- 1) **Offer full reinstatement to Ronald Oakes, Finley Littlejohn, Jim Staus, and Al Turner, and make them whole by paying them lost earnings with interest and compensation for any adverse tax consequences of such lump sum back pay award;**
- 2) Make Leslie Poston whole by paying her lost earnings with interest and compensation for any adverse tax consequences of such lump sum back pay award;
- 3) Remove from its files any reference to unlawful discipline against pro-union workers, including:
  - a. Oakes, Littlejohn, Staus and Turner’s discharges;
  - b. Staus’ unmerited PIP;
  - c. Poston’s suspension; and
  - d. Lewis, Penn, and Turner’s final written warnings.

The judge’s order is to be posted at UPMC Presbyterian Shadyside for 60 days, and read aloud to the hospital’s convened non-clinical service employees.

Among the numerous labor law violations found against UPMC Presbyterian Shadyside are:

- Surveillance of union activities;
- Coercively interrogating employees about their union activity;
- Threatening employees with discipline for refusing to participate in unlawful interrogation;
- Impliedly threatening an employee with a poor evaluation for supporting the union;
- Denying nonemployee organizers access to the UPMC Presbyterian Shadyside cafeteria by causing the police to remove them while permitting other visitors and guests of hospital personnel to use the cafeteria;
- Photographing an employee engaged in union activity;
- Disparately enforcing its solicitation policy with regard to union buttons, flyers, lanyards, tag pulls, and other insignia;

- Dominating the ESS employee council – a labor organization established and unlawfully supported by UPMC Presbyterian Shadyside which dealt with hospital management concerning workers’ terms and conditions of employment;
- Disciplining workers for their pro-union activities, including suspending Leslie Poston and issuing Final Written Warnings to Chaney Lewis, Felicia Penn, and Al Turner;
- Placing known union supporter Jim Staus in an unmerited Performance Improvement Plan (PIP);
- Discharging known union supporters Ronald Oakes, Finley Littlejohn, Jim Staus, and Al Turner.

The issue whether UPMC is liable as a single employer for its facility’s, UPMC Presbyterian Shadyside’s, labor law violations was previously bifurcated from this trial and decision, and remains before the administrative law judge for resolution. At the moment UPMC is refusing to comply with the judge’s order to produce documents regarding single employer liability pursuant to subpoena, and the NLRB has sought enforcement of such subpoenas in the federal courts. The District Court for the Western District of Pennsylvania granted enforcement, but it is expected that UPMC will appeal to the Third Circuit Court of Appeals.

This is not the first time UPMC has faced allegations of workers’ rights violations. There is currently another NLRB complaint (“*UPMC III*”) and several additional labor charges pending against UPMC and a number of its facilities, and in 2013 UPMC chose to settle a complaint listing over 80 alleged violations of federal labor law (“*UPMC I*”). The 2013 settlement provided for the reinstatement of workers, back pay, expunging disciplinary records, and training managers on respect for workers’ rights. Ronald Oakes was one of the discharged and reinstated workers in the *UPMC I* case. His second discriminatory discharge - which occurred less than a month after being reinstated under the 2013 settlement - is now rectified and corrected by the judge’s decision in *UPMC II*.

The workers and union hope for immediate compliance with the administrative law judge’s order, but further delay could result if UPMC files exceptions to this decision with the full National labor Relations Board.