



Reversal of NLRB Decision

Results

08.25.2021

Burr Partners Ron Flowers and Matt Scully successfully represented Ridgewood Health Care Center, Inc. (Ridgewood) before the U.S. Court of Appeals for the 11th Circuit, which ruled there was no evidence of discrimination against union workers in the provider's hiring practices after a change of ownership in 2008. After briefing and oral argument, at which Ramey represented Ridgewood, a three-judge panel of the Court unanimously sided with Ridgewood and rejected a previous ruling by the National Labor Relations Board (NLRB).

"We are grateful to the 11th Circuit panel for their careful consideration and the opportunity to correct the record for our client in this important matter," Ramey said. "We know challenges to the NLRB and its terrific team of attorneys are historically difficult, which makes this decision on appeal an even clearer vindication of Ridgewood and its management."

In the appeal, *Ridgewood Health Care Center, Inc. vs. National Labor Relations Board*, Ridgewood challenged the NLRB ruling that it committed unfair labor practices when making hiring decisions that involved unionized workers after a change of ownership. Beginning in 2002, Ridgewood Health Care Center operated under a lease agreement with Preferred Health Holdings II, LLC (Preferred) managing operations in the facility, including hiring, managing staff, and negotiating with the employees' union, United Steelworkers. Ridgewood was purchased in 2008 by Joette Kelley Brown, and Preferred's lease was terminated, along with its employees, in 2013 as Ridgewood Services was formed to manage the facility. Ultimately, 49 Preferred employees were among the 101 employees who reported for work when Ridgewood re-opened, and while that slight minority led to the initial lawsuit of discrimination against

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the unionized workforce, the 11th Circuit panel observed:

- Of the 83 Preferred employees terminated, 65 applied and were interviewed for rehire;
- Employment was offered to 53 of the 64 Preferred applicants, and two declined the offer;
- Four Preferred employees were not offered employment because of a “no-rehire” policy held by Brown due to their termination from Ridgeview, another facility owned by Brown; and,
- None of the interviewees who were questioned about union membership were refused employment.

In its petition for review of the NLRB order, Ridgewood raised three challenges:

- Ridgewood did not coercively interrogate Preferred applicants during job interviews;
- The NLRB’s discriminatory hiring finding is not supported by substantial evidence; and,
- Ridgewood Services was not a Burns successor to the and was not obligated to recognize and bargain with the union or respond to union’s information request – a reference to precedent established in the U.S. Supreme Court’s 1972 *NLRB v. Burns Security*.

In its opinion, the panel said, “We agree with Ridgewood on each point.” The panel was comprised of Judges Elizabeth L. Branch, Kevin C. Newsom, and R. Stan Baker.