Under NLRB procedure, in order to have a hearing and allow both parties to present their case, the NLRB must issue a "Complaint". While that sounds like a dire step, it isn't. It's just how the process begins in an Administrative case.

**What this does NOT mean: It does not mean JCMC did anything wrong. They didn't.** The case law supporting the hospital was handed down by the Supreme Court, and the US Circuit Courts of Appeal, including the powerful DC Circuit, sitting one step below the Supreme Court. The Hospital now has the opportunity to present that case to an Administrative Law Judge, call witnesses, and win most of this case at an early stage.

**It does NOT mean the union is coming back.**

The NLRB did not even ask for a injunction ordering the union back. They know the case is weak.

Meanwhile, **the union is out** and employees can get the **non union pay raises** with the rest of the non union staff. And **you do not have to pay the union** millions of your hard earned money in dues!

**What can employees do?** The National Right to Work Foundation in Washington has been advising employee representatives, including the petitioner who filed the decertification last July.

They are a non-profit group in Washington that only represents employees, and protects their rights against over-reach by unions (and the NLRB) around the country, and they have won several high profile cases before the US Supreme Court and Circuit Courts upholding the rights of employees against unions (and the NLRB). The helped employees win the VW election that the union had rigged in Tennessee recently! www.nrtw.org

**READ THE HOSPITAL'S ANSWER TO THE COMPLAINT AND THEIR MOTION TO STRIKE THE WEAKEST PARTS OF THE COMPLAINT!**

Excerpts:

**THE BARGAINING UNIT WAS NEVER APPROPRIATE BECAUSE IT INCLUDED PROFESSIONALS!**

*Paramedics, Respiratory Therapists and Physical Therapists are [NOT appropriately in the bargaining unit since they are Professionals under NLRB authority and never afforded a Sonatone election to choose inclusion in a unit including non-professionals, and [They] exercise supervisory authority over other bargaining unit members who are non licensed, thus making the unit inappropriate.*

**THE HOSPITAL STOPPED TAKING DUES OUT BECAUSE THE CLAUSE WAS ILLEGAL… AND WHEN THE UNION AGREED TO A PROPER CARD, THE HOSPITAL SENT IT OUT AND ONLY TWO PEOPLE VOLUNTEERED TO PAY.**

*The Hospital stopped taking 2% of employees' pay in dues because the contract had expired, and with it the unenforceable illegal maintenance of membership clause, and the dues check off provision requiring social security numbers be provided to the union in derogation of law; …AND the union asked the hospital to <u>not</u> collect dues until it agreed to a new dues check off clause, and <u>once it did</u>, in July, those cards were distributed according to the express desire of the parties.*

**THE HOSPITAL AND THE UNION WERE AT IMPASSE – BUT THEN RETURNED TO THE TABLE AND REACHED AN AGREEMENT AND THOSE TERMS WERE IMPLEMENTED IN JULY…**

*[The hospital and union] reached a good faith impasse under the terms of the Erie Brush case (attached), but moreover… then returned to the bargaining table, reached agreement on material terms that were previous articles of impasse, including wages, union security, seniority and others, and implemented those agreed upon terms in July 2013;*

**THE UNION CAN'T FILE A CHARGE NOW ABOUT THAT BECAUSE THE STATUTE OF LIMITATIONS RAN OUT, AND BECAUSE THEY AGREED TO THE TERMS DESPITE STOPPING THE RATIFICATION VOTE.**

*[The July agreement] mooted the earlier implementation – replacing implemented terms from February with Agreed terms in July. The union has since said on several occasions, in writing and on the official transcript of the Board of Freeholders (attached under separate cover) that they accept those terms… The Board's own statute of limitations (6 months, Sec 10052.2, Case Handling Manual) ran on that implementation in January of 2014, with no amendment of the union's charges, and no new charge.*

**THE NLRB ACCEPTED THE WAY THE SECRET BALLOT VOTE WAS CONDUCTED SO THE ONLY ISSUE THEY WANT TO HEAR IS WHY THE HOSPITAL DOUBTED THE UNION'S MAJORITY STATUS BEFORE THE VOTE… THE COURTS SAY THE HOSPITAL'S DOUBT WAS WELL FOUNDED!**

*The only assertion regarding the secret ballot election made by the Board is that it was conducted "without good faith doubt of Local 2254's majority status." That assertion runs contrary to the weight of the law, and existing precedent.*

*… a petition signed by 40% of the employees IS sufficient to create good faith doubt, as is lack of dues payers, anectdotal remarks, and other indicia. Johns-Manville Sales Corp. v. NLRB*, 906 F.2d 1428 (10th Cir. 1990). *Thomas Industries, Inc. v. NLRB*, 687 F.2d 863, 867-68 (6th Cir. 1982), and the aforementioned *Allentown Mack 118 S.Ct. 818, 820 (1998).*

*Note: In Johns-Manville, the employer relied on… the signatures of 211 employees on a decertification petition (approximately 40% of the unit)… The Johns-Manville Court found that the NLRB should have assessed "the combined effect of these factors" (and others) and noted that "**it strains reason to ignore the increasingly convincing inference which arises when all of these factors are simultaneously present**." (Emphasis added) Id. at 1434, 1434 n. 14.*

**THE LAW IS CLEAR: THE HOSPITAL WAS ENTITLED TO RELY ON THE DROP IN DUES PAYING MEMBERS AS THE BASUS OF ITS DOUBT AS TO THE UNION'S MAJORITY STATUS.**

Of the 570 recipients of the form, **only two employees, less than one percent (1%) of the bargaining unit, authorized checkoff and supported "authorizing the Union…to represent [them]."**
Case Law: "A "low number of dues checkoff authorizations . . .may be considered when assessing majority support for a union." *Furniture Rentors of America, Inc., v. NLRB*, 36 F.3d 1240, 1245 (3d Cir. 1994), *followed by Horizon House v. NLRB*, 57 Fed. Appx. 110 (3d Cir. 2003).

*Thomas Industries v. NLRB*, 687 F.2d at 867-68; see also *NLRB v. Albany Steel, Inc.*, 17 F.3d 564, 570 (2nd Cir. 1994); *NLRB v. North American Manufacturing Co.,* 563 F.2d 894, 898 (8th Cir. 1977); *NLRB v H.P. Wasson & Co.,* 422 F.2d 558 (7th Cir. 1970).

In *Thomas Industries*, a checkoff authorization drop of 32% was considered as a factor pointing to the loss of majority status of the union therein. Comparatively at JCMC, even after approved check-off cards were mailed to the bargaining unit members, less than 1% of the bargaining unit chose to sign them

**THE TWO DISCHARGED EMPLOYEES WERE FIRED FOR GOOD CAUSE… HAVING NOTHING TO DO WITH THE UNION:**

*LYNETTE BROWN: failure to enter doctors orders resulting in patients not receiving prescribed treatments is not currently construed as "protected concerted activities,"*

*ELVIN: abandoning your job for hours while you run a football pool and interfere with care in an ICU room is not "protected concerted activity" within the meaning of the Act.*

*Post script: Elvin has been offered a return to work with a loss of pay for the past 4 months and is on final warning. Lynette has not returned.*

PROVING: SHOP STEWARDS HAVE TO FOLLOW THE RULES LIKE EVERYONE ELSE!