

**Maple View Manor, Inc. and New England Health Care Employees Union, District 1199, AFL-CIO, Petitioner.** Case 34-RC-1330

September 29, 1995

**ORDER DENYING REVIEW**

BY CHAIRMAN GOULD AND MEMBERS COHEN  
AND TRUESDALE

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Intervenor's<sup>1</sup> request for review of the Regional Director's Supplemental Decision and Certification of Representative (pertinent portions are attached). The request for review is denied as it raises no substantial issues warranting review.<sup>2</sup>

<sup>1</sup>District 6, International Union of Industrial, Service, Transport & Health Employees is the Intervenor.

<sup>2</sup>Review was requested of the Regional Director's finding that the Employer's failure to post the Notices of Election for the required 3 full working days prior to 12:01 a.m. of the day of the election pursuant to Sec. 103.20 of the Board's Rules and Regulations was not objectionable.

APPENDIX

SUPPLEMENTAL DECISION AND  
CERTIFICATION OF REPRESENTATIVE

Pursuant to a Decision and Direction of Election issued by me on May 10, 1995, an election was conducted on June 2, 1995, among the following employees of the Employer:

All full time and regular part time service and maintenance employees employed by the Employer; but excluding all clerical employees, and guards, professional employees, and supervisors as defined in the Act.

The tally of ballots prepared after the election and served upon the parties that day reveals the following results of the election:

Approximate number of eligible voters	80
Void ballots	0
Votes cast for Petitioner	50
Votes cast for Intervenor	16
Votes cast against participating labor organization	1
Valid votes counted	67
Challenged ballots	4
Valid votes counted plus challenged ballots	71

Challenges are not sufficient in number to affect the results of the election.

A majority of the valid votes counted plus challenged ballots has been cast for Petitioner.

On June 8, 1995, the Intervenor filed timely objections to conduct affecting the result of the election, copies of which were served on the Employer and Petitioner. The Intervenor's objections are based solely on the claim that "The Em-

ployer did not post the official notice of election for the required three (3) days pursuant to Section 103.20 of the Board's rules and regulations."

Pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, I have caused to be conducted an investigation of the Intervenor's objection, and, for the reasons noted below, I issue this Supplemental Decision and Certification of Representative.

By letter dated May 19, 1995, I notified the parties that pursuant to the aforementioned Decision and Direction of Election, an election would be conducted in this matter on Friday, June 2, 1995, from 6 to 8 a.m. and from 2 to 4 p.m. The letter, which was accompanied by Notices of Election, stated in relevant part:

Pursuant to Section 103.20 of the Board's Rules and Regulations, the Employer is required to post these Notices of Election at conspicuous places at least three (3) full working days prior to 12:01 a.m. of the day of the election. As noted in prior correspondence, the term "working day" means an entire 24 hour period excluding Saturdays, Sundays, and holidays. *It should also be noted that the Employer is deemed to have received copies of these Notices of Election for posting unless it notified this office at least five (5) working days prior to the commencement of the election that it has not received said copies.* [Emphasis added.]

In order to comply with Section 103.20 the Notices in question were required to be posted by 12:01 a.m. on Tuesday, May 30, 1995. At no time has the Employer notified this office or otherwise claimed that it did not receive the Notices in time to post them as required.

In support of its objection, the Intervenor submitted an affidavit from its vice president stating that, at approximately 10 a.m. on Tuesday, May 30, 1995, he spoke with the Employer's administrator who informed him that the Notices had been posted "just minutes before." Similarly, the Employer's counsel has represented to the Region that the Notices of Election were posted at 10 a.m. on Tuesday, May 30, 1995. The Employer has offered no explanation as to why it did not comply with Section 103.20 of the Board's Rules and Regulations.

Assuming arguendo that the Notices were not posted for the requisite period of time, a literal reading of Section 103.20 would require that the instant election be set aside. See *Club Demonstration Services*, 317 NLRB 349 (1995). However, to apply the Rule in such a manner in cases such as this where more than one union is involved "invites collusion" because it suggests to any employer who favors one of the competing unions<sup>1</sup> that willful objectionable conduct will result in the favored minority union being able to successfully file objections and secure a second election. *Packerland Packing Co.*, 185 NLRB 653, 654 (1970); see also *Axelson Inc.*, 263 NLRB 77 (1982), 251 NLRB 282 (1980); and *Nestle Co.*, 248 NLRB 732, 741 (1980), and cases cited therein. Indeed, where, as here, the Employer was apparently responsible for the nonposting, and thus clearly estopped by Rule 103.20(c) from objecting thereto, such a

<sup>1</sup>Throughout the preelection stages of this case the Employer and the Intervenor were in complete agreement that their contract was a bar to this proceeding.

pernicious result would be even more likely to occur. In these circumstances therefore, to set this election aside based on the Employer's unexplained failure to post the election notices for the proscribed period would permit it to benefit from its own improper conduct, encourage collusion, and serve no substantial interest of the employees.

Accordingly, based upon the above, I find no merit to Intervenor's objection, I overrule it in its entirety, and I issue the following

CERTIFICATION OF REPRESENTATIVE

Pursuant to the authority vested in me by the National Labor Relations Board, **It is certified** that a majority of the valid ballots have been cast for New England Health Care Employees Union, District 1199, AFL-CIO, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full time and regular part time service and maintenance employees employed by the Employer; but ex-

cluding all clerical employees, and guards, professional employees, and supervisors as defined in the Act.

Right to Request Review

Under the provisions of Sections 102.69 and 102.67 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the Board in Washington, D.C. The request for review must be received by the Board in Washington by July 5, 1995.

Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and which are not included in the Supplemental Decision are not part of the record before the Board unless appended to the request for review or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Supplemental Decision shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.