Regency Grande Nursing and Rehabilitation Center *and* SEIU 1199 New Jersey Health Care Union and Local 300s, Production Services and Sales District Council, United Food and Commercial Workers International Union. Cases 22–CA–28331, 22–CA–28384, 22–RC–12889, and 22–RC–12895

September 3, 2009

DECISION, ORDER, AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

On February 13, 2009, Administrative Law Judge Michael A. Rosas issued the attached decision. The Respondent filed exceptions and a supporting brief. SEIU 1199 New Jersey Health Care Union (Local 1199) filed an opposition to the Respondent's exceptions, and the General Counsel filed an answering brief.

The National Labor Relations Board[1] has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings,[2] findings,[3] and conclusions, and to adopt the recommended Order, as modified.[4]

1. In adopting the judge's findings that the Respondent violated Section 8(a)(1) on March 4, 2008,[5] when Housekeeping Director Martin Reyes interrogated employee Manuela Figueroa and created the impression of surveillance,[6] and on April 10, when Reyes interrogated employee Valeria Madeina as to how she had voted in the election, we do not rely on the judge's statement that "[g]iven the history of the Respondent's preference for Local 300S as its employees' collective-bargaining representative, both of . . . (Reyes' unlawful) statements could reasonably be seen as hostile toward anyone engaging in activity on behalf of Local 1199." It was not the Respondent's mere preference for Local 300S, but its unlawful conduct in support of that preference, that supports these 8(a)(1) findings.[7] Thus, in an earlier proceeding, *Regency Grande Nursing & Rehabilitation Center,* 347 NLRB 1143 (2006), enfd. 265 Fed. Appx. 74 (3d Cir. 2008), the Respondent was found to have violated Section 8(a)(3), (2), and (1) by recognizing Local 300S and entering into a collective-bargaining agreement containing union-security and dues-checkoff provisions when Local 300S did not represent a majority of the unit employees.

2. We also adopt the judge's finding that, under *Wright Line*,[8] the Respondent violated Section 8(a)(3) by dis-

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed 77 U.S.L.W. 3670 (U.S. May 22, 2009) (No. 08–1457); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), rehearing denied No. 08–1878 (May 20, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petitions for rehearing denied Nos. 08–1162, 08–1214 (July 1, 2009).

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] No exceptions were filed to the judge's recommendation to overrule the challenge to the ballot of Miguel Nochebueno and to sustain the Respondent's first objection regarding a void ballot (but find that this objection did not warrant setting aside the election). We therefore adopt these findings pro forma.

We correct the judge's statement that he had sustained the challenges to all but five nondeterminative ballots. Including Aida Basualto's ballot, the judge sustained the challenges to all but six nondeterminative ballots. This inadvertent error does not affect our decision.

[4] Although evidence was introduced at the hearing that the Respondent reinstated Basualto more than 4 months after her discharge, the judge made no finding as to her reinstatement. The Order and notice have been modified to require the Respondent to reinstate Basualto to the same or equivalent position and make her whole "to the extent it has not done so."

We further modify the Order and notice to include cease-and-desist provisions to correspond to the judge's finding that the Respondent violated Sec. 8(a) (1) by creating the impression of surveillance. The judge inadvertently omitted these provisions.

[5] All dates are in 2008, unless otherwise stated.

[6] As found by the judge, Reyes observed Figueroa, Aida Basualto, and other employees talking with Local 1199 organizer, Rhina Molina, before the group continued their discussion at Basualto's nearby house. The next day, Reyes asked Figueroa why she had gone to Basualto's house. In agreeing that this question violated Sec. 8(a)(1), we find that the judge properly inferred that Reyes knew that Molina was a Local 1199 organizer based on Molina's near constant presence at the facility from February 23 until after the April 10 election.

[7] An employer, of course, may lawfully prefer one union over another as long it does not engage in coercive conduct in doing so. Cf. *Flamingo Hilton-Laughlin*, 324 NLRB 72 fn. 1 (1997) (although acknowledging that an employer may noncoecively favor one union over another in a multiunion election, the Board majority found that the respondent employer's conduct was unlawfully coercive), enfd. as modified 148 F.3d 1166 (D.C. Cir. 1998).

[8] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). To establish a violation under *Wright Line*, the General Counsel bears the burden of showing that union animus was a motivating or substantial factor for the adverse employment action. As applied by the judge, the elements commonly required to

charging employee Aida Basualto for her activity in support of Local 1199. However, we find it unnecessary, in finding that the Respondent evinced animus toward Local 1199, to rely on comments in support of Local 300S by the Respondent's administrator, Joseph Olszewski, to employees the day before the election. As the Respondent accurately asserts, this evidence was introduced into the record after the unfair labor practice portion of the hearing had concluded and the Respondent's counsel had voluntarily left the proceeding. Moreover, as noted above, an employer may lawfully prefer one union over another as long as it does so in a noncoercive manner. In any event, because other evidence amply demonstrates the Respondent's animus against Local 1199,[9] it is unnecessary to rely on Olszewski's comments to prove this element of the General Counsel's prima facie case.

Also with regard to this 8(a)(3) violation, we note that the judge incorrectly found that Olszewski had a critical conversation with the Respondent's owner, David Gross, *prior to* Gross discharging Basualto on election day. In this conversation, Olszewski told Gross that other employees (Kathy Rohde and Michelle Meikle) were responsible for the conduct (posting an election notice) for which Gross was discharging Basualto. Although this conversation occurred *after* Gross had discharged Basualto, this does not affect our adoption of the judge's 8(a)(3) finding for the following reasons: first, the judge correctly found that Olszewski had alerted Gross, in the days before the election, that Rohde and Meikle had reposted the notice multiple times (without discipline). Second, after the termination, Gross continued to hold Basualto responsible for posting the flyer even after Olszewski told him that Miekle and Rohde were responsible.

ORDER[10]

The National Labor Relations Board adopts the recommended Order of the administrative law judge, as modified below, and orders that the Respondent, Regency Grande Nursing and Rehabilitation Center, Dover, New Jersey, its officers, agents, successors, and assigns shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(c) and reletter the subsequent paragraph.

"(c) Creating the impression in employees that their union activities are under surveillance."

2. Substitute the following for paragraph 2(a).

"(a) Within 14 days from the date of the Board's Order, to the extent it has not done so, offer Aida Basualto full reinstatement to her former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed."

3. Substitute the attached notice for that of the administrative law judge.

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support such a showing are union or protected concerted activity by the employee, employer knowledge of that activity, and union animus on the part of the employer. See, e.g., *Desert Springs Hospital Medical Center,* 352 NLRB 112 fn. 2 (2008); *Consolidated Bus Transit*, 350 NLRB 1064, 1065 (2007), enfd. _F.3d_, 2009 WL 2526487 (2d Cir. Aug. 20, 2009). Member Schaumber notes that the Board and the circuit courts of appeal have variously described the evidentiary elements of the General Counsel's initial burden of proof under *Wright Line*, sometimes adding as an independent fourth element the necessity for there to be a causal nexus between the union animus and the adverse employment action. See, e.g., *American Gardens Management Co.,* 338 NLRB 644, 645 (2002). As stated in *Shearer's Foods*, 340 NLRB 1093, 1094 fn. 4 (2003), since *Wright Line* is a causation standard, Member Schaumber agrees with this addition to the formulation. In this case, he finds a causal nexus between the Respondent's animus against Local 1199 and its discharge of Basualto.

[9] This evidence includes Reyes' interrogation of employees on March 4 and April 10, and his creation of the impression of surveillance on March 4, and the Respondent's unlawful activity found in *Regency Grande Nursing & Rehabilitation Center,* supra. Moreoever, unlike the judge, we find it was not the Respondent's mere "historical favoritism of Local 300S," but its prior unlawful conduct in support of Local 300S that demonstrates the Respondent's animus against Local 1199. *Virginia Electric Power Co.,* 260 NLRB 408, 414 (1982) (distinguishing employer's noncoercive preference for one union over another from antiunion animus). Cf. *Flamingo Hilton-Laughlin*, supra at 72 fn. 1.

[10] We agree with the judge that a broad remedial order is warranted because the Respondent has engaged in persistent attempts, by varying methods, to interfere with its employees' protected rights. See generally *NLRB v. Express Publishing Co.,* 312 U.S. 426, 436–438 (1941). Cf. *Postal Service,* 345 NLRB 409, 413 (2005) (Member Schaumber dissenting), enf. denied in pertinent part 477 F.3d 263 (5th Cir. 2007), citing *NLRB v. Union Nacional de Trabajadores*, 540 F.2d 1, 11 (1st Cir. 1976). Thus, in the earlier proceeding, *Regency Grande Nursing & Rehabilitation Cente*r, supra, the Respondent unlawfully recognized Local 300S when it did not represent a majority of the employees, fraudulently concealed that recognition from the employees for over 7 months, and, when Local 1199 began organizing its employees, unlawfully entered into a collective-bargaining agreement with Local 300S, containing a union-security clause. Almost immediately after the Third Circuit Court of Appeals enforced that Board Order, the Respondent renewed its unlawful conduct in support of Local 300S and against Local 1199; only the means changed. Thus, after both unions filed election petitions, the Respondent unlawfully interrogated employees about their support of Local 1199, created the impression that their activities in support of 1199 were under surveillance, and terminated former Local 300S supporter Basualto because of her activities in support of Local 1199. By this continued course of unlawful conduct, the Respondent has demonstrated both a general disregard for fundamental statutory rights, i.e., the right of employees to select their own representatives, and the likelihood of future and varying efforts to frustrate those rights. See *Pan American Grain Co., Inc*., 346 NLRB 193 fn. 4 (2005). Cf. *Postal Service*, supra (Member Schaumber dissenting). We observe that, while the Respondent may have reinstated employee Basualto, there is neither a finding that the reinstatement was to her former position, nor evidence that she received remedial backpay.

CERTIFICATION OF REPRESENTATIVE[11]

IT IS CERTIFIED that a majority of the valid ballots have been cast for SEIU 1199 New Jersey Health Care Union, and that it is the exclusive collective-bargaining representative of the employees defined in the Stipulated Election Agreement:

> All full-time and regular part time licensed practical nurses, certified nursing assistants, housekeeping employees, dietary employees, cooks, laundry aides, recreational aides, nurses aides, and maintenance employees working at the Employer's 65 North Sussex Street, Dover, New Jersey facility EXCLUDING registered nurses, all other professional employees, guards and supervisors as defined in the Act.

Dated, Washington, D.C. September 3, 2009

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting the Service Employees International Union, Local 1199, New Jersey Health Care Union or any other union.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT create the impression that your union activities are under surveillance.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, to the extent we have not done so, offer Aida Basualto full reinstatement to her former job, or, if that the job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Aida Basualto whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of Aida Basualto, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

REGENCY GRANDE NURSING AND REHABILITATION CENTER

Bernard Mintz, Esq., for the General Counsel.
Morris Tuchman, Esq., of New York, New York, for the Respondent.
William Massey, Esq. (Gladstein, Reif & Meginniss LLP), of New York, New York, for Local 1199.
Bruce Cooper, Esq. (Pitta & Dreier LLP), of New York, New York, for Local 300S.

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Dover, New Jersey, on September 25–26, 29, and October 6, 2008.[1] Petitions to conduct a representation election among employees of Regency Grande Nursing and Rehabilitation Center (the Respondent) were filed by Service Employees International Union, Local 1199, New Jersey Health Care Union (Local 1199) in Case 22–RC–12889 on February 26, and by

[11] A secret ballot election was conducted on April 10, pursuant to a Stipulated Election Agreement. The original tally was 28 for Local 300S, 53 for Local 1199, 1 against either union, with 1 void and 43 challenged ballots, a determinative number. The parties stipulated that the challenges to four ballots should be overruled and the challenges to eight other ballots should be sustained. The judge resolved the remaining 31 challenges. As noted above, we uphold the judge's ruling sustaining the challenges to all but six of the challenged ballots, a nondeterminative number, and his finding that it was unnecessary to count these ballots. Although the judge further ordered that the representation proceeding "be severed and remanded to the Regional Director to issue the appropriate certification," we find that a remand is unnecessary. Under Sec. 102.69 of the Board's Rules, the Board has authority to issue such a certification. Accordingly, we shall issue a certification of representative. See *Hanson Material Service Corp.*, 353 NLRB No. 10 fn. 7 (2008) (certification of results); *Talmadge Park, Inc.*, 351 NLRB 1241 fn. 4 (2007) (certification of representative).

[1] All dates are in 2008 unless otherwise indicated.

Local 300S, Production Services and Sales District Council, United Food and Commercial Workers International Union (Local 300S) in Case 22–RC–12895 on March 3. Unfair labor practices charges were filed in Case 22–CA–28331 on April 22, and in Case 22–CA–28384 on May 29, against the Respondent. An order consolidating Cases 22–CA–28331 and 22–CA–28384 issued June 30. The complaint alleges the Respondent: (1) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by interrogating employees on March 4 and April 10, and creating an impression among employees on March 4 that their activities were under surveillance; and (2) violated Section 8(a)(3) and (1) of the Act by terminating employee Aida Basualto on April 10. On July 3, the Regional Director issued a report on challenged ballots and objections and ordered that Cases 22–RC–12889, 22–RC–12895, 22–CA–28331, and 22–CA–28384 all be consolidated for trial. On July 7, the Respondent filed an answer to the unfair practice charges, admitting the jurisdictional allegations, but denying the unfair labor practice charges.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent, Local 1199, and Local 300S, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New Jersey corporation, is engaged in the business of operating a nursing home and rehabilitation center at its facility in Dover, New Jersey (the Dover facility), where it annually derives gross revenues in excess of $100,000 and purchases and receives goods and services valued in excess of $5000 directly from suppliers located outside the State of New Jersey. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Respondent's Dover facility is one of four nursing home and rehabilitation facilities owned and operated by David Gross in New Jersey.[2] Gross manages the four facilities from his business office in Lakewood, New Jersey, which is located approximately 85 miles from Dover. The Dover facility includes the following departments of relevance to this controversy: nursing, housekeeping, maintenance, dietary and recreation. Aida Basualto was a housekeeping aide on the first shift (7 a.m. to 3 p.m.).[3]

The Respondent's work force, as it developed during early March, is a central issue in this case. During the period of January 1 to March 31, 2008, the Respondent hired 61 employees and had 172 employees on its payroll. Forty of those 61 employees were hired during the period of March 1 to 5, 2008, while 21 were hired at various other times during the quarter. By comparison, during the first quarter of 2006, the Respondent hired 10 employees and employed a total of 126 persons. More recently, during the first quarter of 2007, the Respondent hired 22 employees and had 135 employees on its payroll.[4]

B. The Previous Litigation

On February 19, 2004, Local 1199 filed unfair labor practice charges alleging, inter alia, that the Respondent, notwithstanding the fact that Local 300S had not obtained authorization cards from the majority of the bargaining unit, entered into a collective-bargaining agreement with Local 300S that: (1) recognized that labor union as the exclusive collective-bargaining representative for its employees and (2) contained a union-security clause.

On August 5, 2005, Judge Steven Davis concluded that the Respondent violated Section 8(a)(1), (2), and (3) of the Act by recognizing Local 300S as the exclusive collective-bargaining representative of its employees, and by entering into, maintaining, and enforcing a collective-bargaining agreement containing union-security and dues-checkoff provisions with Local 300S on January 8, 2004, covering its employees in the following unit, at a time when Local 300S did not represent a majority of the employees in such unit. The Respondent was ordered to cease and desist from recognizing Local 300S as the exclusive collective-bargaining representative of the Dover facility's employees and entering into, maintaining, or enforcing a collective-bargaining agreement containing union-security and dues-checkoff provisions with Local 300S, unless and until such time as Local 300S shall have been certified by the Board to represent a majority of employees in the appropriate bargaining unit. The Respondent was also ordered to cease and desist, in any like or related manner, from interfering, restraining, or coercing employees in the exercise of their Section 7 rights. See *Regency Grande Nursing & Rehabilitation Center*, 347 NLRB 1143 (2006).

[2] The General Counsel requests at p. 16 of his brief that I take administrative notice of the fact that Gross has been discredited as a witness in prior unfair labor practice proceedings before Judges Steven Davis and Mindy Landow. See *Regency Grande Nursing & Rehabilitation Center*, 347 NLRB 1143, 1153 (2006), enfd. 265 Fed. Appx. 74, 2008 WL 449782 (3d Cir. 2008), and *Regency Heritage Nursing & Rehabilitation Center*, Case 22–CA–27992 (JD–NY–40–08). There is precedence for such an approach, as indicated by Judge Miller in *CWI of Maryland, Inc.*, 321 NLRB 698 fn. 10 (1996). Judge Miller's statement was superfluous, however, to his credibility analysis based on the record and the testimony before him. In any event, I disagree with such an approach. Although prior conclusions of law regarding the Respondent's unfair labor practices are appropriate for my consideration with respect to a potential remedy, I have given no weight to prior findings regarding Gross' credibility in making such a determination in this case.

[3] Although there was testimony as to Basualto's tenure, seniority and insignificant disciplinary record, I do not recite it here, as it ultimately bears no relevance to the adverse action taken by the Respondent. (Tr. 95–97.)

[4] The Employee Ledgers for the first quarter of the 3 years in question contain payroll information for a larger total of employees, but that discrepancy is attributable to resignations and terminations. As such, the 2006 ledger contains payroll sheets for 137 employees, the 2007 sheets cover 145 employees and 2008 sheets denote 175 employees on the payroll at one point or another during the quarter. (Local 1199 Exh. 15A–15C.)

Basualto supported Local 300S during the 2003 campaign and, along with Kathy Rohde, served as a Local 300S' shop steward in the housekeeping department until sometime in 2007.[5] Basualto also served on Local 300S' negotiating committee for renewal of the collective-bargaining agreement, but resigned from that committee prior to the conclusion of negotiations on December 15, 2006.[6] Three employees signed the agreement on behalf of the Local 300S negotiating committee: Kathy Rohde, Zahira Sadick, and Francisco Castro.

While the parties awaited a final decision regarding Local 300S' representation status, Basualto's loyalty toward that labor organization waned. In May and July 2007, Basualto, along with other employees, met with Rhina Molina, Local 1199's senior organizer at local restaurants. In addition to issues relating to terms and conditions of employment, they discussed the unfair labor practice case involving the Respondent and Local 300S, and the benefits of being represented by Local 1199 instead of Local 300S. In addition, some of the employees signed union authorization cards favoring Local 1199.[7]

After the Board's order was enforced, Locals 1199 and 300S began to actively solicit employees at the facility. Kathy Rohde, a certified nursing assistant who had been Local 300S' shop steward, distributed authorization cards on behalf of Local 300S to employees beginning February 22. She solicited Basualto in the Dover facility in February 2008 about signing a card, but Basualto was noncommittal.[8] Meanwhile, Local 1199 organizers, including Molina, started coming regularly to the Respondent's facility on or about February 23, met with and distributed cards to employees. Molina and other Local 1199 organizers would speak to employees in different locations just outside the entrances to the Dover facility. She would park either in front of or near the main entrance and would meet there with Basualto nearly every day.[9] Molina continued to solicit authorization cards for several weeks after the election petition was filed.[10]

Basualto signed an authorization card on behalf of Local 1199 on or about February 26 and became one of several employees who distributed authorization cards on behalf of Local 1199.[11] While the cards were distributed in areas visible to the surveillance cameras, Basualto did so in a discreet manner during her lunchbreak and at other times in the basement and first and second floors of the facility in order to avoid being seen by supervisors.[12] Basualto only gave out cards to the housekeeping, maintenance, kitchen, and activities departments. She had no access to the larger nursing department. She returned approximately 20 cards to Molina or other Local 1199 organizers. At Molina's request, Basualto spoke on numerous occasions with certain employees on behalf of Local 1199 during breaks and lunchtime in the dining room.[13] Basualto's organizing activity was not observed by supervisors on any of the facility's security cameras.[14] When asked by Gross as to which union she would support, Basualto said she wanted to keep a low profile during the campaign.[15]

C. The Respondent's Hiring Frenzy After the Enforcement Order Issued

On February 26, 6 days after the Board's Order was enforced by the Court of Appeals, Local 1199 filed a petition for a representation election involving "all full time and regular part-time nonprofessional employees at the Employer's facility."[16] Local 300S filed a similar petition on March 3.[17] A stipulation agreement was executed by the parties and approved by the Regional

[5] Gross' vague assertion that he was unaware that Basualto was no longer on the Local 300S negotiating committee was not credible, given his amount of involvement in labor relations at the Dover facility. As such, I adopted Basualto's contention that she dropped off the Local 300S negotiating committee prior to completion of negotiations in December 2007. (Tr. 148–149, 225, 245.) See also, *Regency Grande*, supra.

[6] Basualto was not a signatory to the renewal agreement, but her inconsistent testimony lends credence to testimony by Gross and Rohde that she discussed employee grievances with Gross. (GC Exh. 9; Tr. 22–23, 32, 36–37, 125–126, 136, 145, 147–148, 196, 245, 264, 268–269, 271–272.)

[7] The testimony by Basualto and Molina regarding these activities was not disputed. (Tr. 50–55, 76–77, 102–103.)

[8] Rohde's testimony was fairly consistent with that of Basualto. (Tr. 30–32, 35–37.)

[9] Gross disputed Molina's testimony that she parked there because there were painted "zebra" lines in that area, which meant that parking was prohibited. However, it was clear that Gross did not have personal knowledge as to whether Molina actually parked in that location and, as such, I adopted Molina's credible testimony in this regard. (Tr. 58, 75, 198, 206, 209.)

[10] I found Molina's assertion, that she continued to line up support by obtaining signed cards, credible and consistent with the preponderance of other credible testimony in the record regarding union activity during the period after the petition was signed and the election. (Tr. 60, 73–74.) The Respondent challenged Molina's credibility regarding the facts and circumstances surrounding the discharge of Maria Carraon, another employee who supported Local 1199. However, Molina's involvement in or awareness of the circumstances of Carraon's discharge after the election had no bearing on Basualto's discharge before the election since, as discussed, infra, I do not credit Gross' alleged rationale for terminating Basualto before she could vote. (Tr. 90, 186–191, 261; R. Exh. 2–3.)

[11] Basualto testified that she signed the card on February 26, while Molina testified that she signed it at a July 16 meeting. As Molina's recollection of dates was somewhat sketchy, I adopted Basualto's version. (Tr. 54–55, 61, 105–107.)

[12] Basualto and Moncaleano conceded that they never saw any supervisors observe them engage in such activity. (Tr. 125, 141, 169.)

[13] Although the Respondent challenged the extent of Basualto's outreach to other employees, it is undisputed that she engaged in protected concerted activity during the campaign period. The credible evidence established that Basualto obtained at least 20 signed authorization cards on behalf of Local 1199. (Tr. 55–62, 67–68, 70, 104–105, 136–138.)

[14] There is no doubt that the Respondent, a nursing home, has security cameras throughout the facility, including some or all of the areas in which Basualto engaged in solicitation on behalf of Local 1199. By her account, however, she was discreet when she spoke with other employees about signing cards on behalf of Local 1199 and there was no testimony or other evidence that supervisors observed her union activities via security cameras or that her activities were recorded and later reviewed by supervisors. (Tr. 61, 105–107, 135.)

[15] Since Gross' testimony about his inquiry as to Basualto's union preference constituted an admission against interest, I find it more credible than Basualto's denial that she had such a conversation with him. (Tr. 196–197, 226–227, 245–246, 265–268.)

[16] GC Exh. 2.

[17] GC Exh. 3.

Director on March 26, 2008, setting the date for a secret-ballot election on April 10. The appropriate collective-bargaining unit was defined as:

> All full-time and regular part time licensed practical nurses, certified nursing assistants, housekeeping employees, dietary employees, cooks, laundry aides, recreational aides, nurses aides, and maintenance employees working at the Employer's 65 North Sussex Street, Dover, New Jersey facility EXCLUDING registered nurses, all other professional employees, guards and supervisors as defined in the Act.[18]

The Respondent, meanwhile, engaged in a hiring frenzy. During the first week of March 2008, the Respondent hired approximately 40 employees. However, only five were utilized on a full-time basis: Julibell Balisi, Bernadette Deguiai, Antero Isip, Miguel Nochebuena, and Baldwin Sarmiento. The remaining 35 were utilized on a part-time basis. A portion of that group consisted of 12 individuals who resided in or around Lakewood and also worked at the Respondent's Lakewood business office.[19] The Respondent placed them on its Dover facility's payroll in the newly created positions of unit assistant/nursing assistant and social service assistant/nursing assistant.[20] These employees began spending an average of 1 day per week at the Dover facility, but spent the rest of the week working at the Lakewood business office: Brocha Feder, Sarah Freedman, Tzippy Fromovitz, Chaya Goldrab, Chaya Horowitz, Rachel Mansbach, Leah Pomerantz, Jacqueline Blatt, Raizy Neiman, Zissi Obstfeld, Chaya Schiff, and Miriam Tress.[21]

The remaining 23 newly hired part-time individuals were spread out over four departments. Ernesto Bravo, Itzhak Dahan, Jeffrey Gomez, Victor Reyes, and Eduardo Sanchez were designed as housekeeping department employees. Maryleth Brescia, Ashley Casale, Blanca Ibarra, Jennifer Ibarra, Yulie Lepar, Aliza Schwab, Joseph Sibug, and Carlito St. Maria were designated as recreation department employees. Victor Arriaga, Miguel Gomez, Luis Martinez, Francisco Perez, Jorge Reyes, Miguel Reyes, Manual Rojas, Omar Valdez, and Roman Zavala were designated as maintenance department employees. Finally, Valente Lopez was designated as a dietary department employee.[22]

Five of the newly hired employees were relatives of Martin Reyes, the housekeeping director: Victor Reyes, who also worked at another of the Respondent's facilities, and Miguel Reyes (brothers); Miguel Nochebuena[23] and Jorge Reyes (nephews); and Manuel Rojas (cousin). In addition, Roman Zavala is a close friend of Martin Reyes and listed him as the only reference on his employment application.[24]

The employment applications filled out by the 30 challenged employees and the 6 other newly hired part timers indicate that their hiring was rushed in order to augment existing staff and be included in the bargaining unit. Many of these employees submitted incomplete information on the employment application, such as the date or position sought and failed to sign or date other legally required personnel forms and policies.[25]

During the period of March 1 through April 19, the 35 newly hired part timers worked an average of 5.7 hours per week. By comparison, the 45 previously hired part timers worked an average of 20.8 hours per week during the period of January 1 to March 31.[26] In addition to the low number of hours worked by the newly hired part-time employees, many of their names did not appear on their designated department's work schedules generated and kept in the regular course of the business of their designated departments. Nor did these employees perform work in their designated departments as reflected in the Respondent's payroll records. Specifically, the nursing department's daily sign-in sheets from April 7 through July 10, omitted the names of the 12 persons hired for the newly created positions of unit, nursing, or social service assistants.[27] The housekeeping work schedules for March and April 2008 did not list the names of that department's five newest employees.[28] The March 2008

[18] GC Exh. 4.

[19] The Respondent offered no explanation as to why these employees would travel such a distance from their homes in order to work at the Dover facility 1 day a week. (Local 1199 Exhs. 3A–3B.)

[20] The Respondent's payroll records for 2006 through February 2008 did not list any employees in these positions. (Local 1199 Exhs. 14, 15A–15C.) Nor was there any mention of such positions in any prior collective-bargaining agreement or by the Respondent when transmitting union dues. (GC Exh. 9; Local 1199 Exhs. 7, 8A.)

[21] While these business office-based employees would have been, in accordance with the Respondent's practice, designated on the payroll of one of the four nursing facilities, they had not been previously placed on the Regency Grande payroll. (Tr. 466–472; Local 1199 Exhs. 3A–3B, 5, 17.)

[22] Local 1199 Exhs. 19EE, 19FF, 20CC.

[23] Nochebuena is the only new full-time employee whose ballot was challenged. However, it is undisputed that he performed bargaining unit work as a housekeeper during the period at issue. (Tr. 336, 352, 389.)

[24] Although Reyes' relationship to six of the newly hired employees was not refuted, their hiring circumstances could just as easily be attributed to nepotism as it could to packing a bargaining unit. (Tr. 337, 415; Local 1199 Exhs. 18Y–AA and 19JJ.)

[25] The Respondent failed to introduce any evidence to demonstrate that such shoddy hiring records were typical of its personnel records. (Local 1199 Exh. 18A, B, D, E, F, G, H, I, J, K, M, N, O, P, Q, R, S, T, W, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ.

[26] The payroll records indicate that the Respondent's full-time employees historically have worked an average of 35–40 hours per week, while part-timers have averaged 19–20 hours of work per week. Accordingly, I agree with Local 1199's contention, at p. 6 of its brief, that employees who averaged 35 or more hours of total compensation per week were full-time, while those with less than 35 hours per week should be considered part-time employees. Local 1199 Exhs. 15C at 13, 20–21, 30, 41, 53, 60–61, 68–70, 78, 80–81, 88, 92, 96, 98, 121, 127, 129–130, 137, 144, 156, 158, 163, 172, 175; Local 1199 Exhs. 19 at A, B, T, V, X, DD, EE, FF, HH.

[27] I did not give any weight to testimony that these employees all dressed in black skirts and long-sleeved light blouses, as there was no evidence of a dress code for working at the facility. Also, the fact that these employees, as "unit assistants," were seen watching videos or sitting at times in a conference room is less relevant than the credible and unrefuted testimony of Carlos Balbuena, Lino Navarro, Basualto, and Norma Harvey, and corroborated by the daily sign-in sheets, that they never performed work in the nursing or social service areas. (Tr. 319–322, 341–342, 381–385, 423–429; Local 1199 Exhs. 15C at 53, 60–61, 68, 78, 96, 19B, T, V, DD, HH.)

[28] The unrefuted and credible testimony of housekeeping employees Aida Basualto, Nestor Pavez, and Javier Arias that none of these employees performed housekeeping work was corroborated by their de-

recreation department schedule omitted any reference to that department's eight newly hired employees.[29] The nine designated maintenance department employees did not perform work in that department.[30] Lastly, the newly hired dietary employee did no work in the dietary department.[31]

D. March 4 Interrogation and Surveillance

Basualto maintained a low profile regarding her preferences regarding a labor representative for bargaining unit employees until March 2008.[32] On or about March 3, however, Basualto and four other housekeeping employees, Manuela Figueroa, Adela Moncaleano, Marcello Baubuena, and Elvira Garcia, met Molina to discuss the union campaign on the sidewalk near the rear exit of the Dover facility. During the discussion, one of the employees handed Molina an authorization card. At that point, Basualto invited everyone to her home to continue the conversation. Everyone in the group, except for Garcia, accepted Basualto's offer and they went there to continue the conversation for an additional 20–25 minutes.[33]

Basualto's home and driveway, which are located only two buildings away from the Dover facility, cannot be directly viewed from inside the Dover facility. However, the group discussion was observed by two of the Respondent's supervisors, Kathy Snyder, the kitchen director, and Martin Reyes. Basualto spotted Snyder looking at the group through the facility's dining room windows.[34] The encounter outside of the facility was also observed by Martin Reyes, the Respondent's housekeeping director, who asked Figueroa the next day in the Dover facility basement area why she had gone to Basualto's home. Figueroa responded with a question as to why he was asking. Reyes did not respond and left. Moncaleano was present during this conversation.[35]

Also on March 4, Joseph Olszewski, the Respondent's administrator, held the first of two March meetings that he had with housekeeping employees to discuss "Health Insurance, Benefits and Union." There were eight or nine people at the first meeting. Maria Torres, the facility's receptionist, translated into Spanish and English. During the meeting, Basualto complained about Reyes' questioning of Figueroa earlier that day. The minutes kept of the meeting reflected Basualto's complaint, but did not mention her by name:

> An employee brought up that her Supervisor told her coworkers not to go to her house to meet with members from Union 1199 (she offered her house due to weather condition). Mr. Olszewski stated that anyone after hours can do what they want on his/her own time and it is not of any Dept Head business. If anyone has anyone has any problems regarding this please let Administrator know.

The minutes also reflect that Olszewski told employees that he had not yet met with Gross and "[did] not know what benefits are still in place as there is no contract at this time."[36] After the meeting, Olszewski discussed the matters raised at the meeting, including Basualto's comments, with Gross.[37]

Olszewski met again with housekeeping staff in or around mid-March. Torres again acted as a Spanish translator. About the same number of people attended. This time, however, Reyes was also present. Olszewski assured the employees they had a right to support whichever union they wished. He also reported that he spoke with Gross, who told him that employees would continue to receive the same benefits that they had received when Local 300S had represented them. Basualto then spoke up and asked, "If Mr. Gross was such a good man and giving us back all of these benefits, why would we need a union?" At that point, another employee, Nancy Silva, became upset, slammed her hand on the table, and stated in Spanish, "[then] why are you making us sign these cards for the union?" While Silva's comments were not translated by Torres to Olszewski, Reyes, who is fluent in Spanish, did so.[38]

E. Activities by the Parties During the Week of the Election

On April 9, the day before the election, Olszewski met with two dietary aides, including Barbara Hunter, and attempted to convince them that Local 300S' health insurance coverage was superior to the one offered by Local 1199. On the same day, he approached nursing employee Norma Harvey and told her that

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partmental work schedules. (Tr. 336, 351–352, 386–389; Local 1199 Exhs. 9, 15C at 20, 41, 69, 130, 144.)

[29] The unrefuted and credible testimony of recreation employee Ofelia Espina that these eight individuals did not work in the recreation department was corroborated by that department's schedule. (Tr. 413–415; Local 1199 Exhs. 10, 15C at 21, 30, 80–81, 88, 156, and 19EE–19FF.)

[30] The unrefuted and credible testimony of maintenance employee Lino Navarro that these nine individuals did not work in the maintenance department was corroborated by the Respondent's failure to produce work schedules or sign-in sheets documenting their shifts. (Tr. 344–345; Local 1199 Exhs. 15C at 70, 98, 121, 127, 129, 137, 163, 175, and 19A.)

[31] The unrefuted and credible testimony of dietary employees Rita Noel and Barbara Hunter, that they never saw Lopez perform work in their department, is corroborated by the Respondent's failure to produce subpoenaed records showing Lopez on that department's work schedule or sign-in sheet. (Tr. 397–398, 406; Local 1199 Exh. 15C at 92.)

[32] I found Basualto's testimony on this point, as corroborated by Moncaleano, to be quite credible. (Tr. 167–168.)

[33] The credible testimony of Molina and Basualto regarding this event was not refuted. (Tr. 62–65, 107–109, 128, 143.)

[34] Basualto's credible testimony as to Synder's observation of the group discussion was not refuted. (Tr. 108.)

[35] Reyes' seemingly plausible explanation as to his motivation in asking the question—a previously cool relationship between Basualto and Figueroa—was undermined by his hedging response that he could not recall who else, including Molina, was also among the group. Furthermore, given his failure to attribute his source of information to another employee, I find that he derived it from personal observation. (Tr. 161–165, 254–257.)

[36] GC Exh. 10.

[37] I do not credit Olszewski's assertion that he did not tell Gross about Basualto's statements at the meeting, since he spoke to Gross about the meeting and the remarks are contained in the minutes. (GC Exh. 10; Tr. 109–110, 296–300.)

[38] Silva's remarks were not translated from Spanish to English and Reyes denied telling Olszsewski about it. I did not find the denial of Reyes, a supervisor with a stated hostility toward Local 1199, credible, and find that he translated the comment for Olszewski. (Tr. 109–113, 116, 125, 142.)

Local 1199's union dues were higher than those charged by Local 300S.[39]

In addition to supervisory support, Local 300S also enjoyed support from certain employees. Prior to the election, Rohde posted a flyer containing a copy of her pay stub in the Dover facility. Rohde's name, social security number, and department had been crossed out on the pay stub, but the applicable pay period, earnings, rate of pay, hours worked and the applicable deductions were visible. Under the copy of the pay stub were handwritten notations suggesting that Local 300S' dues would be cheaper than those for Local 1199:

> If we have 1199 as our UNION my union dues this pay period would be $1305.62 x $.02 = $26.11, Total for Jan. Feb. and March $9,714.29 x $.02 = $194.28. If we still had 300S my union dues this pay period would be $20.00, Total for Jan, Feb, March $60.00. The more I make the more 1199 will take!!

During the week of the election, Michelle Meikle, at Rohde's request, posted the flyer containing Rohde's pay stub. She also reposted the flyer several times after it was taken down. At one point, Olszewski informed Meikle that she was seen posting the notice and told her to stop doing that. He also disseminated notification to employees in the facility that employee postings, without administrator's permission, were not permitted. At no point, however, were either Rohde or Meikle disciplined by the Respondent for having posted these notices.[40]

During the days leading up to the election, Olszewski told Gross that Rohde and Meikle had been involved in posting the notice and reposting it each time it was taken down. He also informed Gross that Rohde and Meikle were informed of the Respondent's policy prohibiting employees from posting notices in the facility and told not to do it again. Thus, Gross could not reasonably have suspected Basualto of posting the notice. Nor did he request that Olszewski speak with her about it.[41]

F. The Election

Region 22 conducted a secret-ballot election for employees included within the defined bargaining unit on April 10 from 6–8:30 a.m. and from 2:30–4:30 p.m. There was a 3-page *Excelsior* list submitted containing 164 names.[42] Approximately 172 employees were eligible to vote. Nestor Pavez, a second-shift employee, served as Local 1199 election's representative. Throughout the election, Pavez compared the names of voters against a separate 2–3 page list containing the names of individuals whose votes Local 1199 sought to challenge.[43]

Twenty-eight votes were cast for Local 300S, 53 were cast for Local 1199, 4 were cast against participating labor organizations, and 1 ballot was ruled "void," for a total of 85 valid votes. Forty-three ballots were challenged. The total number of votes, including those valid votes counted and the challenged ballots, was 128. The challenges were ruled sufficient in number to affect the results of the election.[44]

Several incidents of note occurred during the morning of the election. The first one involved Carraon, a CNA and well-known Local 1199 supporter, and another employee, Valeria. As they left the facility after voting at 7 a.m., Martin Reyes approached them and asked Valeria which union she voted for. Valeria responded, "The better one." Reyes followed up by asking her, "Is the 300S one the better one?" to which Valeria answered, "Sure."[45]

The second incident involved Basualto. Basualto, who originally agreed to serve as an observer on behalf of Local 1199 during the election, changed her mind and decided not to serve in that capacity.[46] That fact was certainly communicated to Molina on April 9, as she parked her vehicle in Basualto's driveway and slept over during the evening of April 9.[47] In any event, as Basualto arrived to vote, she encountered Gross outside the facility. He told Basualto that, before voting, Olszewski needed to speak with her about something important. Gross then asked Basualto where she lived. Basualto pointed to her house, which was visible from where they were standing. Gross then asked Basualto if she knew anything about a piece

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[39] Olszewski was not called to refute the credible testimony of Hunter and Harvey as to his stated preference for a labor representative. (Tr. 401–403, 421–422.)

[40] Meikle and Olszewski agreed that he learned about her posting the notice and told her to stop. (Tr. 26–27, 29, 32, 38, 42–45, 220, 236, 294; GC Exh. 8(a).)

[41] Gross' testimony regarding the events leading up to the election was similarly inconsistent, vague, and shifting as to whether Olszewski did or did not tell him that Meikle admitted posting the notice. Nor did he explain why Meikle was not disciplined after repeatedly posting the notice after it was taken down in violation of the Respondent's alleged no-posting policy. Moreover, Olszewski never mentioned a belief that Basualto posted the notice and, as such, I find that Gross had no reason to suspect she posted the notice prior to the election. (Tr. 215–216, 222, 231.).

[42] *Excelsior Underwear*, 156 NLRB 1236 (1966); GC Exh. 5.

[43] It was not disputed that the separate sheet maintained by the Local 1199 representative was visible to voters and contained only the names of employees whom Local 1199 sought to challenge. (Local 1199 Exh. 2; Tr. 304–306, 308, 331–333.)

[44] GC Exh. 6.

[45] I base this finding on Carraon's credible testimony, as Reyes was, yet again, vague and hedging in attempting to recall whether he asked any employee as to how they voted that morning. Nor do I credit his attempt to bolster his vague assertion with the fact that the Respondent issued a protocol to supervisors that they not speak to employees about the election. (Tr. 117, 177, 180–184, 254; R. Exh. 2.)

[46] I did not find credible Basualto's vague explanation as to why she changed her mind about serving as an election observer. Although she was supposedly affected by the illness of an unspecified relative in her country of origin, she still came into the facility that day. (Tr. 117.) As such, I agree with the Respondent that this event supports the notion that she was attempting to maintain a low profile at this point. Moreover, notwithstanding the fact that Molina always drove the same vehicle to the facility, there is no credible testimony to indicate that any of the Respondent's supervisors were aware that Molina parked in Basualto's driveway. (Tr. 58.)

[47] I was not persuaded by the Respondent's contention that Molina could not have parked her vehicle in the driveway of Basualto's home simply because only one vehicle could enter at a time and it would have blocked other vehicles from entering the driveway. (Tr. 144.) On the other hand, there was insufficient proof to refute Gross' testimony that he was unaware of the type and model of Molina's vehicle, and the fact that she parked in Basualto's driveway the night before the election. (Tr. 201–202.)

of paper that had been posted in the dining room. Basualto said she knew about the paper that he was referring to, but denied posting it. Gross then accused Basualto of being the one who posted the notice in the dining room and proclaimed, "that's the reason I don't want you at Regency Grande." [48] At no point during this conversation did Gross explain to Basualto why he believed that she posted the notice, even though the information on the pay stub did not pertain to her, nor was there any evidence that Basualto had been a Local 300S supporter at any time during 2008.[49]

Gross' termination of Basualto as she arrived to vote was not premised on a legitimate belief that she posted the notice in the dining room. First, Gross spoke to Olszewski earlier that day and was told that Meikle and Rohde, not Basualto, had been involved in posting the notices in the dining room.[50] Second, while Rohde was on leave during the week of the election, he never considered any of the three other employees on Local 300S' negotiating committee who were around that week.[51] Third, Gross was aware of Basualto's remarks about her activity on behalf of Local 1199 during the March 5 meeting with Olszewski. Fourth, Basualto told Gross, during a March conversation, that she was not supporting a particular union and wanted to maintain a "low profile" during the campaign. Fifth, Gross did not check to see if the pay stub contained Basualto's personal information or was in her handwriting.[52] Lastly, Gross did not have a legitimate belief that Basualto posed a threat to the election process that was already underway.[53]

After being terminated, Basualto entered the building and went to see Olszewski in his office. Pam Alvarez, the director of nursing, was also present. While crying, Basualto informed Olszewski that Gross terminated her for posting the flyer. Olszewski responded he knew what happened and that Gross made a mistake. He assured Basualto that he would speak to Gross, directed her to go home, and she would be compensated for her loss of employment. Basualto complied and went home.[54]

During the afternoon voting session, the 12 newly hired unit assistants for the nursing department arrived in the facility's parking lot. They met there with Gross before entering the facility as a group to vote. At the poll, their votes were challenged by Local 1199's observer. After voting, they spoke with Gross again in the parking lot before leaving. These 12 employees never returned to the facility again after that day.[55]

G. The Regional Director's Report on the Election

The Respondent, Local 1199, and Local 300S all filed timely objections to the election. The Regional Director subsequently conducted a preliminary investigation of the determinative challenged ballots and objections pursuant to Section 102.69 of the Board's Rules and Regulations. On July 3, she reported and found that the determinative challenged ballots and certain objections raised substantial and material factual issues requiring a hearing, as follows:

1. The challenged ballots

There were 43 challenged ballots, 12 of which were challenged by the presiding Board's agent because the names of the individuals did not appear on the voter eligibility list submitted by the Respondent: Christopher Lorenzo, William Escobar, Joseph Sibug, Diosa Oleta, Helen Temple, Rachel Mansbach, Sarah Freedman, Juanita Pasion, Eliseo Alino, Rosaida Ortanez, Rose Marie Vega, and Victor Arriaga.

Local 1199 and Local 300S challenged the ballots of numerous individuals on the ground that they were not employed in the stipulated appropriate collective-bargaining unit. Local 1199 challenged the ballots of 19 individuals: Blatt, Goldgrab, Pomeranz, Obstfeld, Neiman, Schiff, Tress, Feder, Horowitz, Mansbach, Freedman, Fromovitz, Victor Reyes, Miguel Reyes, Carole Gardner, Manuel Rojas, Nochebuena, Filomena Lascano, and Pasion.[56] Local 300S challenged the ballots of five individuals: Luis Martinez, Roman Zavala, Ana Fereira, Carlito St. Maria, and Nidea Bustamante. In addition, both Local 1199 and Local 300S challenged the ballots of nine individuals: Miguel Gomez, Jeffrey Gomez, Jorge Reyes, Ernesto Bravo, Itzhak Dahan, Valente Lopez, Francisco Perez, Eduardo Sanchez,

[48] I was not impressed by the Respondent's attempt to bolster its denial of discriminatory motivation against Basualto by noting that she, unlike Carraon, a known Local 1199 supporter, was discharged prior to the election. Carraon was accused of blocking a security camera, something that is clearly more serious than posting a flyer in an employee dining room. (Tr. 193–195, 201.)

[49] The Respondent's suggestion that Basualto might, in fact, have posted the notice, defies logic, since the information on the flyer conveyed arguments in favor of Local 300S, while Basualto was, at that point, supporting Local 1199. While I did not find Basualto entirely convincing as to the exact timeframe in 2007 when she ceased shop stewarding activities on behalf of Local 300S, no evidence was offered to refute her assertion that she stopped handling grievances on behalf of Local 300S prior to the second agreement between the Respondent and Local 300S in mid-December 2007. (Tr. 118–120, 133–134, 136, 144–148, 196–200, 215–216, 235–236, 294.)

[50] Gross conceded speaking with Olszewski that morning, who informed him that Meikle and Rhode, and not Basualto, had been involved in posting the notice. (Tr. 210–211, 215–218.)

[51] Gross admitted that Rhode or Basualto were not the only employees who previously supported Local 300S. (GC Exh. 6; Tr. 237.)

[52] Since there was enough information visible on the pay stub to indicate that it did not contain Basualto's payroll information, it is even more incredible that Gross would have been more concerned about enforcing a notice posting policy than with the public disclosure of another employer's confidential information. (Tr. 199–200, 212–213, 241–243.)

[53] I was not impressed by the Respondent's contention that Carraon, in contrast to Basualto, was not discharged prior to the election because she was a known Local 1199 supporter and the Respondent wanted to avoid an unlawful discharge claim. If in fact, Gross legitimately believed that Basualto posted the notice as a Local 300S supporter, then the same rationale for avoiding the filing of a charge would have applied and he would have waited until after the election to discharge her. (Tr. 193–195, 199, 200–201, 230.)

[54] Basualto's version of this conversation was not disputed. (Tr. 121–123.)

[55] This finding is based in the credible and unrefuted testimony of Basualto, Carlos Balbuena, Nestor Pavez, Linda Navarrro, Javier Arias, and Barbara Hunter, and further corroborated by the challenged voter list, which indicates that nine of them voted consecutively, while the remaining three were not far behind on the line. (GC Exh. 7; Tr. 324–325, 334–336, 343–344, 350–351, 381, 385, 396–397, 403–405, 410.)

[56] GC Exh. 4.

and Aliza Schwab. Lastly, the Respondent challenged the ballot of Aida Basualto on the ground that she was discharged prior to the election and, therefore, was no longer employed by the Respondent on the date of the election.

2. The objections

Local 1199 objected to the election on the grounds that the Respondent: (1) allegedly employed and included on the *Excelsior* list individuals not eligible to vote; and (2) packed and otherwise manipulated the unit in order to dilute Local 1199's strength and prevent it from winning the election. The Respondent objected on the grounds that: (1) the "void" ballot should be counted for Local 300S; and (2) Local 1199's election observer had an unauthorized election voter list that was visible to workers, who had to wait for clearance by Local 1199 before voting.[57] Local 300S objected on the ground that the Respondent interfered with the election by terminating Basualto.

Legal Analysis and Discussion

1. Unfair labor practices

a. Basualto's discharge on April 10

The complaint alleges that the Respondent discharged Basualto on April 10 because she engaged in protected concerted activity on behalf of Local 1199. The Respondent disputes that and asserts Basualto was discharged because it reasonably believed that she violated its policy prohibiting the posting of flyers by employees.

Section 8(a)(3) provides, in pertinent part, that it is "an unfair labor practice for an employer to discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." Under *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the General Counsel must establish that an employee engaged in protected concerted activity, the employer was aware of that activity, and the activity was a substantial or motivating reason for the employer's action. See also *Naomi Knitting Plant*, 328 NLRB 1279, 1281 (1999). If the General Counsel establishes its prima facie case, the burden of persuasion shifts to the employer to "demonstrate that the same action would have taken place even in the absence of the protected conduct." *Septix Waste, Inc.*, 346 NLRB 494 (2006). Simply presenting a legitimate reason for its actions is not enough. *Donaldson Bros. Ready Mix, Inc.*, 341 NLRB 958, 966 (2004); *T&J Trucking Co.*, 316 NLRB 771, 771 (1995); *GSX Corp. v. NLRB*, 918 F.2d 1351 (8th Cir. 1990).

Basualto engaged in protected concerted activity at various points in 2007 and during the month and a half period prior to the April 10 election. She signed an authorization card in support of Local 1199 on February 23, distributed authorization cards to other employees, and returned them signed to Local 1199 representatives. Basualto also met with Molina, Local 1199's representative, and other employees on March 3 to discuss the campaign just outside the facility and then hosted a continued meeting of the group at her home nearby.

The element of knowledge on the part of the Respondent was also established. There was no proof that Basualto's union-related activity was observed by Gross or other interested supervisors on the facility's surveillance cameras. One would reasonably expect that surveillance cameras in a nursing home are deployed for the protection of its residents and, in fact, are used for that purpose alone. To suggest that surveillance cameras were utilized for other purposes, in the absence of further proof, would be pure speculation. However, it was not disputed that Martin Reyes, the housekeeping director and Basualto's supervisor, observed or at least learned of, Basualto's meeting with Molina and other employees outside the facility and at her home. In addition, Olszewski, the facility administrator, and Martin Reyes heard Basualto complain during a staff meeting about supervisory harassment of employees who engaged in union-related discussions at her home. Such information on the part of these supervisors is appropriately imputed to the Respondent and its actively-involved owner, Gross. *State Plaza, Inc.*, 347 NLRB 755, 756 (2006); See *Dobbs International Services*, 335 NLRB 972, 973 (2001); *Springfield Air Center*, 311 NLRB 1151 (1993).

The Respondent's discriminatory motivation in discharging Basualto can be traced historically to Gross' favoritism of Local 300S as the facility's collective-bargaining unit representative. See *Regency Grande Nursing & Rehabilitation Center,* 347 NLRB 1143*,* 1151. (2006). Olszewski, as the Respondent's agent, reinforced the Respondent's preference for Local 300S by his statements to employees shortly before the representation election. Reyes did the same by his interrogation of employees on March 4 and April 10. More importantly, Gross' rationale for discharging Basualto—because she posted a flyer containing a copy of an employee's pay stub—was contradicted by all of the credible facts. Olszewksi and, thus, Gross knew prior to the election on April 10 that Rohde and/or Miekle, not Basualto, posted the flyer in the facility. Rohde was a known supporter of Local 300S, Gross' preferred union; Miekle was her domestic partner. Rather than investigate the facts, however, Gross chose to confront Basualto outside the facility as she arrived to vote, asked where her house was, and discharged her. His purported rationale was that Basualto, a past supporter of Local 300S, must have posted it. As previously explained, however, there is no credible evidence indicated that Basualto engaged in activities supportive of Local 300S for at least many months. To the contrary, the evidence showed that Gross' supervisory staff knew of Basualto's statements supporting Local 1199. The suspicious timing of Gross' action, coupled with his assertion of a pretextual reason for Basualto's discharge, strongly supports an inference of discriminatory motivation. *State Plaza, Inc.*, supra at 757. Accord: *In re Campbell Electric Co., Inc.*, 340 NLRB 825, 841-842 (2003).

Since the General Counsel established a prima facie case, the burden of persuasion shifted to the Respondent to prove, by a preponderance of the evidence, that it would have discharged Basualto even in the absence of her union activity. *Monroe Mfg.*, 323 NLRB 24 (1997). To meet its burden of persuasion,

[57] The Regional Director, at p. 6 of her report, found the Respondent's objections based on the alleged failure of voters to vote because the election did not start on time and voter intimidation were not supported by evidence and, thus, failed to raise substantial and material issues affecting the election results.

the Respondent was required to do more than show that it had a legitimate reason for its actions. *Hicks Oils & Hicksgas,* 293 NLRB 84, 85 (1989), enfd. 942 F.2d 1140 (7th Cir. 1991). It did not do so. Even the most cursory type of investigation would have revealed that Basualto did not post the flyer. Furthermore, the Respondent asserted the existence of a policy prohibiting employees from posting flyers without permission, but took no disciplinary action against Miekle even after learning that she repeatedly posted the flyers. Based on the foregoing, I find that the Respondent violated Section 8(a)(3) and (1) by discharging Basualto because she engaged in support of Local 1199.

b. Reyes' interrogation of employees on March 4 and April 10

The complaint also alleged that Martin Reyes, about March 4 and April 10, interrogated employees about their union membership, sympathies, and/or activities and created an impression among its employees on March 4 that their union activities were under surveillance by the Respondent. The Respondent concedes that Reyes made the statements at issue but contends that neither was motivated by antiunion animus against Local 1199.

Under *Rossmore House*, 269 NLRB 1176, 1177 (1984), the Board set forth the test for evaluating whether interrogations violate the Act, namely "whether under all of the circumstances the interrogation reasonably tends to restrain, coerce, or interfere with the rights guaranteed by the Act." Factors considered to be considered in analyzing alleged interrogations were the background, the nature of the information sought, the identity of the questioner, and the place and method of interrogation. In evaluating whether a statement also unlawfully creates an impression of surveillance, the test is "whether the employee would reasonably assume from the statement that their union activities had been placed under surveillance." *Register Guard*, 344 NLRB 1142, 1145 (2005), and *Flexsteel Industries*, 311 NLRB 257 (1993). On the other hand, the Board has held that such a statement would not unlawfully create an impression of surveillance where the supervisor made clear that he learned of the subject's activity from another employee and not as the result of employer surveillance. *Park 'N Fly, Inc.*, 349 NLRB 132, 133 (2007).

Martin Reyes, the housekeeping supervisor, interrogated employees on two occasions. On March 4, he questioned Figueroa, a housekeeping aide, at work as to why she had been in Basualto's home the day before with a union organizer and other employees. He gave no indication that he obtained such information from another employee and, as such, Figueroa would reasonably assume that he obtained it through personal observation. On April 10, as another employee, Valeria, left the facility after voting, Reyes approached and asked her which union she voted for. She responded with a vague answer, but he persisted by asking if she voted for Local 300S and she placated him by saying "sure." There was no evidence that either conversation was of a casual nature.

Given the history of the Respondent's professed preference for Local 300S as its employees' collective-bargaining representative, both of the aforementioned statements could reasonably be seen as hostile towards anyone engaging in activity on behalf of Local 1199. As such, they also amounted to unlawful inquiries as to employees' attitudes about the union. *Pleasant Manor Living* Center, 324 NLRB 368 (1997). In addition, Reyes' questioning of Figueroa on March 4 would have caused her to reasonably assume that her union activities had been placed under surveillance. Under the circumstances, the Respondent engaged in unlawful interrogation and created the impression of surveillance in violation of Section 8(a)(1). See *United Charter Service*, 306 NLRB 150, 151 (1992).

2. The representation election

a. The challenges

The parties stipulated during the hearing that the challenged ballots of the following four individuals were eligible voters and their votes should be counted: Carole Gardner, Filomena Lascano, Juanito Pasion, and Nidea Bustamente. The parties also stipulated that the challenges to the ballots of eight individuals should be sustained, their ballots should remain unopened and not counted: Christopher Lorenzo, William Escobar, Diosa Oleta, Helen Temple, Eliseo Alino, Rosario Ortanez, Rose Marie Vega, and Ana Fereira. In addition, Local 300S withdrew its challenges to the ballots of 12 individuals: Luis Martinez, Roman Zavala, Carlito St. Maria, Miguel Gomez, Jeffrey Gomez, Jorge Reyes, Ernesto Bravo, Itzhak Dahan, Valente Lopez, Francisco Perez, Eduardo Sanchez, and Aliza Schwab.[58]

Challenges remain to the ballots of 31 individuals. The Board agent challenged the ballots of Victor Arriaga and Joseph Sibug on the ground that their names did not appear on the *Excelsior* list. Local 1199 challenged the ballots of 25 individuals on the ground that they were not employed in the stipulated appropriate collective-bargaining unit: Blatt, Goldgrab, Pomeranz, Obstfeld, Neiman, Schiff, Tress, Feder, Horowitz, Mansbach, Freedman, Fromovitz, Victor Reyes, Miguel Reyes, Manuel Rojas, Nochebuena, Miguel Gomez, Jeffrey Gomez, Jorge Reyes, Ernesto Bravo, Itzhak Dahan, Valente Lopez, Francisco Perez, Eduardo Sanchez, and Aliza Schwab. It also asserts a continuation of Local 300S' now withdrawn challenges to the ballots of Luis Martinez, Roman Zavala, and Carlito St. Maria. The Respondent challenged Basualto on the ground that she was discharged prior to the election and, therefore, was not eligible to vote.

Local 1199 contends that the Respondent unlawfully packed the bargaining unit prior to the election. An employer violates Section 8(a)(1) when it hires a substantial number of new employees prior to a representation election for the purpose of diluting the union's strength. *Sam's Club,* 349 NLRB 1007, 1021 (2007), citing *Sonoma and Spa*, 322 NLRB 898 (1977). On the other hand, there would be no violation where the Respondent establishes a legitimate business reason for hiring the new employees. *D & E Electric, Inc.*, 331 NLRB 1037, 1040 (2000).

The unfair labor practice portion of this decision, as well as prior Board decisions, recites the longstanding animus by the Respondent against Local 1199. The personnel records gener-

[58] The Respondent did not object to this stipulation between Locals 300S and 1199. (Tr. 315–316.)

ated by and on behalf of the 30 employees challenged by the Board agent and Local 1199 were substantially incomplete. The new employees' files lacked legally-required personnel forms or were missing significant information and, as such, and were strongly indicative of a sham hiring operation. Except for Nochebuena, who worked full-time, the newly hired part timers worked an average of 5.7 hours per week, well below the average numbers of hours historically worked per week by part timers. Moreover, most of their names did not appear on their designated department's work schedules and they did not perform any meaningful work in their designated departments. Except for Basualto, none of the challenged employees testified. Most significantly, however, the hiring wave came during the month prior to the election and was extremely atypical of the Respondent's historical hiring practices. This was a classic case of unlawfully packing the bargaining unit. See, *Airborne Freight Corp.*, 263 NLRB 1376, 1378 (1982) (employer found to have unlawfully packed unit where "[a]t no time in the previous 3 years of the [facility's] history were so many new employees added to the operations unit in so brief period of time").

Feder, Freedman, Fromovitz, Goldrab, Horowitz, Mansbach, Pomerantz, Blatt, Neiman, Obstfeld, Schiff, and Tress were listed on the payroll in the newly created positions of unit assistant/nursing assistant or social service assistant/nursing assistant. There was no business justification offered as to why the Respondent suddenly created these new positions. These 12 employees were actually regular employees at the Respondent's business office in Lakewood and spent most of their week working there. Nor was an explanation offered as to why these employees suddenly needed to be deployed, the month before the election, for an average of approximately 1 day a week at a location so far from their residences. Credible witnesses testified that none of their names appeared in the nursing daily sign-in sheets and they did no appreciable work in that department. Accordingly, I find that Local 1199's challenge to the ballots of these 12 individuals should be sustained and recommend that their ballots not be counted: Feder, Freedman, Fromovitz, Goldrab, Horowitz, Mansbach, Pomerantz, Blatt, Neiman, Obstfeld, Schiff, and Tress.

Similarly, the Respondent did not offer a business justification for the sudden need to hire the remaining employees challenged by the Board agent and/or Local 1199. The credible and unrefuted testimony established that, of the remaining 18 employees, only Nochebuena performed work in his designated department as a housekeeping aide. Notwithstanding the fact that he was related to the housekeeping director, his work appeared legitimate and his vote should be counted. The remaining 17 employees did not, however, appear on departmental work schedules or daily sign-in sheets and performed no work in their designated departments: Ernesto Bravo, Itzhak Dahan, Jeffrey Gomez, Victor Reyes, and Eduardo Sanchez (housekeeping department); Schwab, Sibug, and Carlito St. Maria (recreation department); Arriaga, Miguel Gomez, Luis Martinez, Francisco Perez, Jorge Reyes, Miguel Reyes, Manual Rojas, and Zavala (maintenance department); and Valente Lopez (dietary department). Accordingly, I find that Nichebuena's ballot was not properly challenged and recommend that his ballot be opened and counted if it is determinative of the election results. However, I find that the challenges by the Board agent and Local 1199 should be sustained as to the ballots of the following 17 individuals and recommend that their ballots not be counted: Bravo, Dahan, Gomez, Victor Reyes, Sanchez, Schwab, Sibug, St. Maria, Arriaga, Miguel Gomez, Martinez, Perez, Jorge Reyes, Miguel Reyes, Rojas, Zavala, and Lopez.

Lastly, the Respondent challenged the ballot of Aida Basualto on the ground that she was discharged prior to the election and, therefore, was no longer employed by the Respondent on the date of the election. As previously discussed, the Respondent unlawfully discharged because she engaged in concerted activity protected under the Act. Since her discharge was effectively null and void, Basualto was still an employee and her ballot should be counted.

In summary, I find only the ballots of Gardner, Lascano, Pasion, Bustamente, and Nochebuena should be counted. It is noted, however, that the tally of ballots shows that 28 votes were cast for Local 300S and 53 votes were cast for Local 1199. Since the ballots of these five individuals cannot be determinative of the outcome of the election, I recommend that results remain unchanged and no additional ballots be counted.

b. The objections

The proponent of an election objection has the burden of proving that the conduct complained of had the tendency to interfere with the employees' freedom of choice. *Double J. Services*, 347 NLRB No. 58, slip op. at 1–2 (2006) (not reported in bound volume). That burden is a heavy one because there is a strong presumption that ballots cast under Board rules and supervision reflect the true desires of the electorate. See *Safeway, Inc.*, 338 NLRB 525 (2002), and cases there cited. At the conclusion of the hearing, Local 1199 withdrew its objections on the ground that the stated reasons—packing the voting unit and adding ineligible employees to the *Excelsior* list—were subsumed by its challenges to the ballots of the 30 individuals discussed above. The Respondent and Local 300S, however, litigated their objections.

The Respondent first objection seeks to have a ballot ruled "void" by the Board agent counted in favor of Local 300S. The Board agent's ruling was premised on the ground that the intent of the voter, who marked all three choices on the ballot, was ambiguous. I disagree. The ballot at issue contains consecutive entries in its three designated boxes as follows: 3-0-0. Although marked in an irregular manner, the voter's intent is unambiguously expressed as a preference for Local 300S. See *Daimler-Chrysler Corp.*, 338 NLRB 982 (2003). To rely on strict adherence to form as the indicator of voter intent, when in fact, the voter's preference can be gleaned from the ballot, would ignore the Board's longstanding policy of effectuating voter intent whenever possible. See *Hydro Conduit Corp.*, 260 NLRB 1352 (1982). Accordingly, the Board agent's voiding of that ballot should be overruled. However, while the ballot would be counted as a vote in favor of Local 300S, it cannot be determinative of the outcome and I recommend it not be counted and the Tally of Ballots remained unchanged.

The Respondent's other objection alleges that Pavez, Local 1199's election observer had an unauthorized voter list that was

visible to voters, who had to wait for clearance by Local 1199 before voting. Although visible to employees seeking to vote, the challenge list was limited to the names of those individuals whom Local 1199 intended to challenge and was only used for that purpose. Local 1199's use of a voter challenge list was not improper. See *Mead Southern Wood Products*, 337 NLRB 497, 498 (2002). To the contrary, denying a party to maintain a voter challenge list is tantamount to depriving it of the opportunity to challenge ballots. *Bear Creek Orchards*, 90 NLRB 286, 287 (1950). In this instance, Pavez, a second-shift employee, was faced with the responsibility of determining eligible voters among the 164 names on the *Excelsior* list, many of whom were new or worked on other shifts. More importantly, there was no evidence that Pavez made any marks on the challenge list and attempted to track who voted or did not vote. Accordingly, this objection should be overruled.

Local 300S objected to the election on the ground that the Respondent interfered with the election by terminating Basualto. This objection fails for two reasons. First, the record is devoid of any evidence that Basualto supported Local 300S. To the contrary, as discussed above, Basualto revealed her preference for Local 1199 during the weeks leading to the election and her discharge by Gross on the ground that she was a Local 300S was pretextual. Gross, preferring Local 300S, became aware of Basualto's involvement with Local 1199 and discharged her before she could vote on April 10. Second, Basualto's discharge occurred suddenly and, aside from her going to meet with Olszewski about it, there is no evidence that news of the discharge spread to any other employees before they voted that day. Accordingly, this objection is also overruled.

Based on the foregoing, I conclude that the Respondent's third objection and Local 300S' objection do not have merit and recommend that those objections be overruled in their entirety. Moreover, while I also conclude that the Respondent's first objection has merit and the voided ballot would otherwise be counted in favor of Local 300S, I conclude that it does not constitute conduct that warrants setting aside the election. Accordingly, Cases 22–RC–12889 and 22–RC–12895 are severed from Cases 22–CA–28331 and 22–CA–28384 and are remanded to the Regional Director for Region 22 to process the matter in accordance with this recommended Order and to issue an appropriate certification.

CONCLUSIONS OF LAW

1. Regency Grande Nursing and Rehabilitation Center (the Respondent) is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. SEIU 1199, New Jersey Health Care Union (Local 1199) and Local 300S, Production Services and Sales District Council, United Food and Commercial Workers International Union (Local 300S) are labor organizations within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(3) and (1) of the Act by discharging Aida Basualto on April 10, 2008, because she engaged in support of Local 1199.

4. The Respondent violated Section 8(a)(1) of the Act by: (1) interrogating an employee on March 4, 2008, as to why she met with a union organizer in the home of another employee, further causing that employee to reasonably believe that her activities were under surveillance; and (2) interrogating an employee on April 10, 2008, as to how she voted in a representation election.

5. By engaging in the conduct described above, the Respondent engaged in unfair labor practices affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

6. With the exception of one objection to the April 10, 2008 representation election, involving an improperly voided ballot which, even if counted, would not be determinative of the election and which does not constitute conduct that warrants setting aside the election, all other objections are overruled.

7. The representation election of April 10, 2008, is ruled valid and Cases 22–RC–12889 and 22–RC–12895 are remanded to the Regional Director for Region 22 to process the matter in accordance with this recommended Order and to issue an appropriate certification.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged an employee, it must offer her reinstatement and make her whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Because the Respondent has a proclivity for violating the Act (see, e.g., *Regency Grande Nursing & Rehabilitation Center*, 347 NLRB 1143 (2006), enfd. 265 Fed. Appx. 74, 2008 WL 449782 (3d Cir. 2008), and because of the serious nature of the violations, I find it necessary to issue a broad Order requiring the Respondent to cease and desist from infringing in any other manner on rights guaranteed employees by Section 7 of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[59]

ORDER

The Respondent, Regency Grande Nursing and Rehabilitation Center, Dover, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for supporting the Service Employees International Union, Local 1199, New Jersey Health Care Union or any other union.

(b) Coercively interrogating any employee about union support or union activities.

[59] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer Aida Basualto full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Aida Basualto whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharge and, within 3 days thereafter, notify the employee in writing that this has been done and that the discharge will not be used against her in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Dover, New Jersey, copies of the attached notice marked "Appendix"[60] in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 4, 2008.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

IT IS FURTHER ORDERED that the representation election held on April 10, 2008 is ruled valid and Cases 22–RC–12889 and 22–RC–12895 are remanded to the Regional Director for Region 22 to process the matter in accordance with this recommended decision and to issue an appropriate certification.

Dated, Washington, D.C. February 12, 2009

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT discharge or otherwise discriminate against any of you for supporting the Service Employees International Union, Local 1199, New Jersey Health Care Union or any other union.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Aida Basualto full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Aida Basualto whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of Aida Basualto, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

REGENCY GRANDE NURSING AND REHABILITATION CENTER

[60] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."