



## **I. PROCEDURAL HISTORY**

Employer Otterbein Monclova, LLC (“Employer” or “Otterbein Monclova”) operates an elder care “Avalon” neighborhood of five houses serving approximately 50 elders, located at 5069 Otterbein Way, Monclova, Ohio, 43542 (the elder care site will be referred to as the “Avalon”). On April 2, 2010, United Food and Commercial Workers Union, Local 75 (“Union” or “UFCW”) filed a Certification of Representative Petition (“RC Petition”) seeking an election for employees in the following classifications: “all full time and regular part time elder assistants and housekeeping at the 5069 Otterbein Way Facility.”

In addition to the Elder Assistants (“EAs”) and the Housekeeper (“HK”) who were both already petitioned for inclusion in the unit, Otterbein Monclova petitioned the Regional Director to include the following non-managerial job classifications: six licensed practical nurses (“LPNs”), two registered nurses (“RNs”) who work in the capacity of an LPN, a quality of life coordinator (“QOL”), a housing coordinator (“HC”), a business office coordinator (“BOC”), and two diet technicians (“Diet Techs”).

After a pre-election hearing, the Regional Director issued a Decision and Direction of Election (“Regional Director Decision”) on May 13, 2010. The Regional Director concluded that the petitioned-for unit of EAs and HK was appropriate, but should include one additional position—the Business Office Coordinator.

On May 26, 2010, the Employer filed a Request for Review of the Regional Director’s Decision. On June 9, 2010, the Board issued its Order (“Board Order”), finding that the Employer’s Request for Review raised a substantial issue with respect to the exclusion of the QOL from the unit. However, the Board declined to decide the matter, withholding the issue using the Board’s challenge

procedure until the election. Therefore, the Board Order granted the QOL to vote in the election subject to challenge. All other aspects of the Employer's Request for Review were denied.

On June 11, 2010, the NLRB conducted an election at Otterbein of Monclova. The votes were: 23 in favor of the union and 20 opposed to the union, with two non-determinative, challenged ballots that were not counted. One of the challenged ballots was the QOL.

## **II. BASIS AND ARGUMENT FOR MOTION FOR RECONSIDERATION**

### **A. Summary of Reasons Supporting Reconsideration of the Decision by the Board**

The Employer respectfully submits this Motion for Reconsideration and seeks to have the Board reverse and remand the case for further proceedings. The following issues were not adequately addressed at the Regional Director level, and were not addressed at all in the Board Order.

- This case involves a new model of elder care, called the "Avalon," which is fundamentally different than an institutional nursing home.
- Board precedent has not specifically addressed the Avalon model of elder care in the context of an RC Petition and community of interest factors.
- The Avalon model of elder care impacts community of interest.
- Instead of following the Board's *Park Manor* case-by-case, pragmatic analysis of multiple community interest factors, the Decision presumes in error that the Avalon model is the equivalent of "institutional nursing home" for community of interest purposes and ignores a variety of community of interest factors. In effect, the Decision reverts to a "one size fits all" analysis for elder care entities and community of interest, an analysis disavowed by Board precedent. The Board should review this Decision because elder care has moved and continues to move in the direction of de-institutionalization of elders. The Decision does not acknowledge contemporary, newer models of de-institutionalized elder care. For that reason,

the Decision is based on a flawed policy assumption which is detrimental to progress in caring for elders.

- The Decision erred in failing to consider the issue of non-proliferation of units in health care, the potential fragmentation of terms and conditions of employment through a potentially non-represented small residual of non-represented employees, and the substantial likelihood of resulting negative impact on the integration of elder care in an Avalon model.
- The foregoing reasons raise substantial questions of law and policy as well as substantial errors of fact that prejudicially affect the Employer's rights.

The Employer requests that the Board review the record and the Employer's Request for Review, and reconsider the issues presented therein.

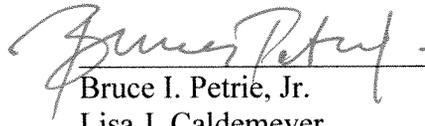
**B. The Quality of Life Coordinator**

The Board Order found that the Employer's Request for Review raised a substantial issue solely with respect to the exclusion of the QOL from the petitioned-for unit. Otterbein at Monclova agrees that the QOL shares a community of interest with the bargaining unit and should be included as part of the unit upon reconsideration, along with the other classifications that the Employer sought to include in the unit.

**III. CONCLUSION**

The overwhelming evidence in the record, in the Employer's Post-Hearing Brief, and in the Employer's Request for Review, demonstrates that the Avalon model is a new, unique concept that should be considered on a case-by-case basis in the community of interest analysis. Accordingly, the Employer respectfully requests that the Motion for Reconsideration be granted.

Respectfully submitted,

  
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Bruce I. Petrie, Jr.

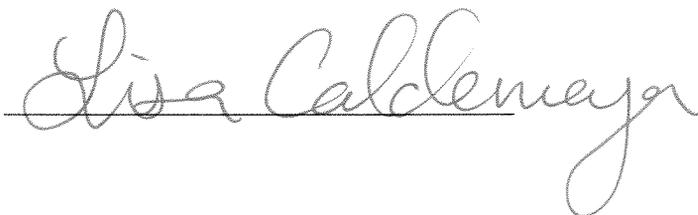
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Employer's Motion for Reconsideration was served upon the following parties by certified mail and by email on this 22nd day of June 2010.

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A handwritten signature in cursive script, reading "Lisa Calderon", is written over a horizontal line.

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