

NOT TO BE INCLUDED
IN BOUND VOLUMES

BPH
Chino, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

VERITAS HEALTH SERVICES, INC. d/b/a
CHINO VALLEY MEDICAL CENTER

Employer

and

Case 31-RC-8795

UNITED NURSES ASSOCIATIONS OF
CALIFORNIA/UNION OF HEALTH CARE
PROFESSIONS, NUHHCE, AFSCME, AFL-CIO

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held April 1 and 2, 2010, and the administrative law judge's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 72 votes for and 39 against the Petitioner, with 4 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the judge's findings¹ and recommendations, and finds that a certification of representative should be issued.

¹ The judge was sitting as a hearing officer in this representation proceeding. The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for United Nurses Associations of California/Union of Health Care Professions, NUHHCE,

The Employer challenges several evidentiary rulings made by the judge. After a close review of the record, we are satisfied that the judge's rulings were within her discretion and did not prejudice the Employer in the presentation of its case.

With respect to the objections based on the Petitioner's use of employee photographs in its campaign material, the credited evidence demonstrates that the Petitioner fully explained to employees the purpose of the photographs and how it intended to use them. Additionally, the judge found no evidence that the Petitioner photographed employees without their authorization. In these circumstances, we find that the Petitioner did not improperly take or use the employees' photographs and made no misrepresentations about the photographs, either in conversations with the employees whose pictures appeared in the brochure or in the brochure itself. We thus conclude that the facts of this case do not support setting aside the election under *Randell Warehouse of Arizona*, 347 NLRB 591 (2006), or *Midland National Life Insurance Co.*, 263 NLRB 127 (1982).

We additionally agree with the judge that the prounion supervisory conduct in this case does not warrant overturning the results of the election under *Harborside Healthcare, Inc.*, 343 NLRB 906 (2004). With respect to the conduct of supervisor Cheryl Gilliatt, the judge stated that although "[n]o evidence was adduced that Gilliatt furnished nonsupervisory employees with authorization cards, watched them sign cards, retrieved signed cards, or was informed as to which employees had signed cards," she would assume, for purposes of analysis, that Gilliatt's conduct in urging employees to sign authorization cards constituted "solicitation" within the meaning of *Harborside*. However, the judge thereafter reasoned that Gilliatt's conduct could not have materially affected the outcome of the election because it occurred 6 weeks prior to the election, was not widespread, and, in the weeks just prior to the election, Gilliatt had unambiguously repudiated her prounion opinions and encouraged employees to vote against the Petitioner. As we agree with the judge that Gilliatt mitigated any coercive effect of her prounion conduct, we find it unnecessary to pass on whether the judge properly considered her conduct "solicitation" as that term is used in *Harborside*.

Member Hayes agrees with his colleagues that the prounion supervisory conduct at issue does not warrant setting aside the election. In doing so, he notes the judge's reliance on the Employer's "vigorous antiunion campaign" in finding that Gilliatt's prounion conduct did not materially affect the outcome of the election. Contrary to the judge, Member Hayes holds the view that the mere existence of such a campaign does not mitigate the coercive effect that Gilliatt's prounion activity may have had on employee free choice. In finding the requisite mitigation under *Harborside*, he relies, instead, on the fact that Gilliatt clearly and unequivocally repudiated her union support prior to the election.

AFSCME, AFL-CIO, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time, regular part-time and regular per diem registered nurses employed by the Employer at its 5451 Walnut Avenue, Chino, California facility in the following departments: Emergency Services, Critical Care Services/Intensive Care Unit, Surgery, Post-Anesthesia Care Unit, Outpatient Services, Gastrointestinal Laboratory, Cardiovascular Catheterization Laboratory, Radiology, Telemetry/Direct Observation Unit and Medical/Surgical.

Dated, Washington, D.C., January 25, 2011.

Craig Becker, Member

Mark Gaston Pearce, Member

Brian E. Hayes, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD