

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 24**

METRO SANTURCE, INC., D/B/A
HOSPITAL METRO PAVIA SANTURCE,

Employer¹

and

WILFREDO SANTIAGO, AN INDIVIDUAL

Petitioner

and

UNIDAD LABORAL DE ENFERMERAS(OS) Y
EMPLEADOS DE LA SALUD

Intervenor/Union

Case 24-RD-528

DECISION AND DIRECTION OF ELECTION

Upon a Petition² duly filed under Section 9 (c) of the National Labor Relations Act, as amended, herein the Act, a hearing was held on February 24, 2011, before a hearing officer of the National Labor Relations Board, herein the Board, to determine whether a question concerning representation exists, and if so, to determine an appropriate unit for collective bargaining. Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its

¹ The Employer purchased the predecessor employer in August 2006, hired a majority of the unit employees and recognized the Union as the unit employees' collective bargaining representative. Although the parties have been negotiating an initial collective bargaining agreement, and have agreed on various provisions including the description of the unit, so far no final agreement on a contract has been reached.

² The Petition was amended on December 14, 2009 to conform to the unit description in the Certification issued in 24-RC-8487.

authority in this proceeding to the undersigned³.

I. The Procedural issue:

1. Postponement of Hearing:

At the February 24, 2011 hearing, the Union through its Attorney made a postponement request which was denied by the Hearing Officer based on the prior history of postponements in this matter. Thus, the record reveals that the initial Petition was filed on December 12, 2009 and was scheduled for hearing on December 16. A postponement of the December 16 hearing was granted based on the Union's filing of Case 24-CA-11415 on December 15. Thereafter the hearing was rescheduled for June 1, 2010 and was once again postponed based on the filing of Case 24-CA-11527 by the Union on May 21, 2010. The hearing was next scheduled for hearing on February 16, 2011 and was postponed on February 15 because of the Union attorney's unavailability due to illness. As a result, all parties including the Union's attorney agreed to open the hearing on February 24, 2011. On that date before the hearing started the Union's attorney requested another postponement because he suddenly did not feel well, complaining generally about stomach problems and nausea. He stated that he could not represent his client under those circumstances. The Union did not have any other representative at the hearing other than its attorney.

³ Upon the entire record in this proceeding the undersigned finds:

- a. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer, a Puerto Rico corporation, operates a Hospital in Santurce, Puerto Rico. During the past calendar year, the Employer earned in excess of \$250,000 in revenues from the performance of its services and it purchased directly from entities located outside the Commonwealth of Puerto Rico goods or services valued in excess of \$50,000.
- c. The Employer is engaged in commerce within the meaning of the Act.
- d. The Union is a labor organization within the meaning of the Act.
- e. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of section 9 (c) (1) and section 2 (8) and (7) of the Act.

A review of the record reveals that the Union had not raised any issue in this matter prior to the February 24 hearing. It was further shown that in an off the record discussion, the Union's attorney stated for the first time that the certified unit was inappropriate and that the Union would be seeking clarification of the unit by dividing it into two separate units reflecting a division between the maintenance and the dietary employees. The Union filed 24-UC-266 on February 24, 2011 and the Petition was dismissed on March 24, 2011 based on the Union's failure to show a sufficient basis to process such a Petition. In view of the foregoing, particularly noting the priority accorded to cases that raise questions concerning representation and the Union's failure to show that there was a viable issue in connection with the Petition herein, the Hearing Officer's ruling denying the Union's postponement request, is affirmed.

II. The Unit

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and part-time dietary employees and maintenance employees, including electricians, plumbers, masonry employees, cabinetmakers, handymen and refrigeration technicians employed by the Employer at its facility in Santurce, Puerto Rico.

EXCLUDED: All other employees, guards and supervisors as defined in the Act⁴.

There are approximately 23 employees in the Unit.

III. Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Unidad Laboral de Enfermeras (os) y Empleados de la Salud (ULEES). The date, time and place of the election will be

⁴ The record disclosed that the parties have tentatively agreed as part of their negotiations for an initial collective bargaining agreement to change the description of the unit from that contained in the Certification. As previously noted there has been no final agreement reached on a contract. In these circumstances the description of the unit herein is co-extensive with the Certification in Case 24-RC-8487. W.T. Grant Co., 179 NLRB 670 (1969).

specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361

(1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **April 8, 2011**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by filing through the Agency's website, www.nlrb.gov,⁵ by mail, or by facsimile transmission at (787) 766-5478. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

⁵ To file the eligibility list electronically, go to the Agency's website at www.nlrb.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. .

IV. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **April 15, 2011**. The request may be filed electronically through the Agency's website, www.nlr.gov,⁶ but may not be filed by facsimile.

Dated at San Juan, Puerto Rico this 1st day of April, 2011.



A handwritten signature in cursive script that reads "Marta M. Figueroa".

Marta M. Figueroa
Regional Director, Region 24
National Labor Relations Board
La Torre de Plaza, Suite 1002
525 F.D. Roosevelt Avenue
San Juan, Puerto Rico 00918-1002
website: www.nlr.gov

⁶ To file the request for review electronically, go to www.nlr.gov and select **File Case Documents**, enter the NLRB Case Number and follow the detailed instructions.