

NOT INCLUDED IN
BOUND VOLUMES

LPH
Richmond, VA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

CONSULATE HEALTH CARE d/b/a ASHLAND
NURSING & REHABILITATION CENTER

Employer

and

Case 5-RC-16580

UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION, LOCAL 400

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held November 3, 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 31 for and 28 against the Petitioner, with 1 challenged ballot, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs,¹ has adopted the administrative law judge's findings and recommendations to the extent set forth below, and finds that a certification of representative should be issued.

In adopting the judge's recommendation to overrule the objections, we emphasize that the Employer has failed to prove that any objectionable conduct

¹ The Employer has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

occurred during the critical period or that the alleged racially inflammatory conduct which occurred at a relatively remote time prior to that period had such a significant impact on the election as would warrant setting it aside.²

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for United Food and Commercial Workers International Union, Local 400, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All regular full-time and part-time CNAs, restorative aides, activity aides, and maintenance employees; Excluding all RNs, PRNs, dietary employees, office clerical employees, confidential employees, and guards and supervisors as defined in the Act.

Dated, Washington, D.C., May 31, 2011.

Wilma B. Liebman, Chairman

Mark Gaston Pearce, Member

Brian E. Hayes, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

² Member Pearce would additionally find that even if the statements at issue had a significant impact on the election and could be attributed to the Union or its agents, they would not warrant setting the election aside under *Sewell* because the statements were protests against alleged race-based mistreatment and unfair working conditions. See *Coca-Cola Bottling Co.*, 273 NLRB 444, 445 (1984) (finding that regardless of the truth of the statements involved, “[t]he question of whether employees have been unfairly treated, for whatever reason, is always a legitimate topic of discussion in a union campaign”).

In the particular circumstances of this case, Chairman Liebman finds it unnecessary to also rely on the additional finding described by Member Pearce.