

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD<sup>1</sup>  
REGION 20

COMMUNITY CLINIC OF MAUI, INC.,  
d/b/a MALAMA I KE OLA HEALTH CENTER

Employer

and

Case 37-RC-4234

INTERNATIONAL LONGSHORE AND  
WAREHOUSE UNION, LOCAL 142, AFL-CIO

Petitioner

SUPPLEMENTAL DECISION AND ORDER

On April 13,<sup>2</sup> the Acting Regional Director issued a *Decision and Direction of Election* (Decision) in which she found, inter alia, that the individuals whom the Employer classifies as lead medical assistants (LMAs) are not supervisors within the meaning of Section 2(11) of the Act. Accordingly, the Acting Regional Director directed their inclusion in the non-professional unit as employees eligible to vote in the election that she directed in this proceeding.

Subsequently, the Employer filed with the Board a Request for Review of the Decision, which the Board denied on May 11.<sup>3</sup> The election was held in this proceeding on May 13 among employees in two voting groups over the course of three polling sessions. Because the Board agent who conducted the election had not yet received the Board's denial of the Request for Review when polls first opened, she allowed LMAs who voted during the first polling session to do so

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<sup>1</sup> Also referred to as the Board.

<sup>2</sup> All dates refer to 2011.

<sup>3</sup> Due to communication problems, the Board's denial did not reach Subregion 37 until May 13.

under challenge. In spite of receipt of the Board's denial before polls closed, for the sake of consistency, LMAs who voted during the subsequent session also did so under challenge. In sum, eleven LMAs cast challenged ballots during the election. Two other employees whom the Employer had discharged prior to the election also voted subject to the Employer's challenge to their eligibility.<sup>4</sup>

The *Tally of Ballots* (Tally) for Voting Group B<sup>5</sup> served upon the parties shows the following results, with challenged ballots sufficient in number to affect the outcome of the election:

Approximate number of eligible voters.....	49
Void ballots.....	0
Votes cast for Petitioner.....	16
Votes cast against participating labor organization.....	20
Valid votes counted.....	36
Challenged ballots.....	13
Valid votes counted plus challenged ballots.....	49

Because the Board denied the Employer's Request for Review of the Decision, LMAs are employees who were eligible to vote in the election.<sup>6</sup> Therefore, I overrule the challenges to the votes that they cast. I hereby order that the ballots cast by the 11 LMAs be opened and counted forthwith, and that a revised Tally issue that incorporates their votes with the ballots counted previously.

The revised Tally may show that the two remaining challenged ballots are determinative. In that event, disclosing them could establish whether Petitioner

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<sup>4</sup> Petitioner filed unfair labor practice charges docketed as 37-CA-8309 and 37-CA-8318 alleging that the discharge of employees, including two who cast challenged ballots, violated Section 8(a)(3) of the Act. The investigation into those matters continues.

<sup>5</sup> A majority of the voters in voting group A did not favor inclusion in voting group B or representation by Petitioner, so those votes have no bearing on this Supplemental Decision.

<sup>6</sup> See Section 11338.7 of *NLRB Casehandling Manual, Part Two, Representation Proceedings*. The Employer presented no evidence that any changes that affected LMAs' status as employees eligible to vote had occurred between the time of the pre-election hearing in this matter and the election.

has secured a majority of the votes cast regardless of the ultimate conclusion regarding the two alleged discriminatees' eligibility. Accordingly, unless investigation into the above-noted charges has been completed and yielded a determination by the Regional Director that the discharges of the two alleged discriminatees did not violate the Act, I hereby order that their votes be opened and evaluated.<sup>7</sup> Following issuance of the revised Tally and, if warranted, examination of the remaining two challenged ballots, the Regional Director will take appropriate action regarding the respective Objections that the parties timely filed in this matter.<sup>8</sup>

**DATED** at San Francisco, California, this 3<sup>rd</sup> day of June 2011.<sup>9</sup>

*/s/ Tim Peck*

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Tim Peck, Acting Regional Director  
National Labor Relations Board, Region 20  
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<sup>7</sup> The two discharged employees have waived their right to guard the secrecy of their votes and requested that their ballots be opened and counted pursuant to Section 11361.4 of *Casehandling Manual*, supra.

<sup>8</sup> Section 11360.3 of *Casehandling Manual*, supra, contemplates bifurcation of the processing of determinative challenged ballots and objections.

<sup>9</sup> Under the provisions of Section 102.69(c)(4) of the Board's Rules and Regulations, any party may file a Request for Review with the Board in Washington, D.C. within 14 days. The Request for Review thus must be received by the Board by June 17, 2011. The request may be filed electronically through the Agency's web site, [www.nlr.gov](http://www.nlr.gov), but may not be filed by facsimile. To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov), select *File Case Documents*, enter the NLRB case number, and follow the detailed instructions. Under the provisions of Section 102.69(g)(3) of the Board's Rules and Regulations, documentary evidence, including declarations, which a party has timely submitted to the Regional Director in support of its challenges and which is not included in the Supplemental Decision, is not part of the record before the Board unless appended to the Request for Review or opposition thereto which the party files with the Board. Failure to append copies of the evidence timely submitted to the Regional Director and not included in the Supplemental Decision shall preclude the party from relying on that evidence in any subsequent related unfair labor practice proceeding.