

Newark Extended Care  
NOT INCLUDED  
IN BOUND VOLUMES

PBH  
Newark, NJ

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NEWARK EXTENDED CARE  
Employer

and

Case 22-RC-13203

1199 SEIU, UNITED HEALTHCARE WORKERS  
EAST, NEW JERSEY REGION  
Petitioner

and

LOCAL 707, H.E.A.R.T.  
Intervenor

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board<sup>1</sup> has considered objections to an election held April 14, 2011, and the attached administrative law judge's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. Group A, consisting of professional employees, voted to be included with Group B, consisting of nonprofessional employees. The tally of ballots shows 130 votes for the Petitioner, 78 votes for the Intervenor, 1 vote against participating labor organizations, and 3 non-determinative challenged ballots.

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<sup>1</sup> Chairman Pearce is recused and did not participate in this matter. In *New Process Steel, L.P. v. NLRB*, 130 S. Ct. 2635 (2010), the Supreme Court left undisturbed the Board's practice of deciding cases with a two-member quorum of a panel when one of the panel members has recused himself. Under the Court's reading of the Act, "the group quorum provision [of Sec. 3(b)] still operates to allow any panel to issue a decision by only two members if one member is disqualified." *New Process Steel*, 130 S. Ct. at 2644; see also *Correctional Medical Services*, 356 NLRB No. 48, slip op. at 1 fn. 1 (2010). The same is true here where one of three Members of the full Board deciding the case is recused.

The Board has reviewed the record in light of the exceptions and briefs and has adopted the judge's findings<sup>2</sup> and his recommendation<sup>3</sup> to issue a Certification of Representative.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for 1199 SEIU, United Healthcare Workers East, New Jersey Region, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full time and regular part-time employees including registered nurses, licensed practical nurses, certified nurses aides, unit secretaries, housekeeping employees, dietary employees, recreation employees, rehabilitation aides, transportation aides, and maintenance employees employed by the Employer at its 65 Jay Street, Newark, New Jersey facility excluding all laundry employees, office clerical employees, managerial employees, guards and supervisors as defined in the Act.

Dated, Washington, D.C., November 28, 2011.

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Craig Becker, Member

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Brian E. Hayes, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

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<sup>2</sup> The judge was sitting as a hearing officer in this representation proceeding. The Intervenor has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule a judge'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.

<sup>3</sup> We decline to pass on the judge's determination that the Employer's security guard was not an agent of the Employer. The judge made a finding of fact, based on an assessment of credibility, that, contrary to the Intervenor's allegation, the security guard did not advocate for SEIU on election day. Thus, we need not determine whether the guard would have been an agent of the Employer if she had engaged in the alleged conduct. Furthermore, the guard's request that Local 707 H.E.A.R.T's president leave the facility lobby was not objectionable under any standard so we need not determine the guard's agency status in relation to that action either.

We agree with the judge's recommendation that the Intervenor failed to prove that staffing coordinator Marie St. Louis favored 1199 SEIU supporters when scheduling work assignments. However, in doing so, we rely only on the lack of evidence in the record showing that any work assignment favored an 1199 SEIU supporter.