

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22

**VOLUNTEERS OF AMERICA GREATER  
NEW YORK, INC.<sup>1</sup>**

Employer

and

**CASE 22-RC-067527**

**DISTRICT 1199J, NUHHCE, AFSCME, AFL-CIO**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

The Employer, Volunteers Of America Greater New York, Inc. operates a residential community released reentry program at its East Orange, New Jersey facility. The Union seeks to represent a bargaining unit of all full-time and regular part-time and per diem case aides, drivers, secretaries, cooks and case managers employed by the Employer at this facility.

The sole issue in dispute in this case is whether the National Labor Relations Board can assert jurisdiction in this matter. The Employer asserts that the Board lacks jurisdiction given that Volunteers of America Greater New York, Inc. functions as a church. Accordingly, the Employer argues that pursuant to the Supreme Court's holding in *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), the Board must decline to

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

assert jurisdiction to prevent a significant infringement to the Employer's First Amendment rights. The Union argues that the petitioned for unit is a social service organization operated by a church and that consequently, the Board has jurisdiction.

I note that the jurisdictional issue in dispute in this case, involving the same Employer, was fully addressed in a July 16, 2010 Decision issued by the Regional Director of Region 2. (Board Exhibit 2). In that Decision, the Employer operated three facilities in Westchester County, New York, one facility serving men recovering from alcoholism, a second facility that provided food and shelter to the homeless and a third facility that served as a residence for substance abusers in recovery and people living with AIDS or other serious health conditions. The Regional Director concluded that the Board has consistently asserted jurisdiction over religiously affiliated institutions that have as their primary purpose social or other commercial functions, rather than the propagation of sectarian values. Accordingly, the Regional Director concluded that the Supreme Court's *Catholic Bishop* Decision does not apply to religiously affiliated social service organizations and ordered elections in the appropriate collective bargaining units. On August 12, 2010, the Board issued an Order in which it denied the Employer's request for review of the Regional Director's Decision and Direction of Election. (Board Exhibit 3). In its Order, the Board noted that "The function involved in this case, providing social services to clients at traditional residencies, is not religious education, and the petitioned-for employees are not teachers. We find that the sensitive issues raised by the Board's assertion of jurisdiction over religiously affiliated educational institutions are not present in this case. See *Salvation Army*, 345 NLRB 550 (2005)." (Footnote 1, Board Exhibit 3).

At the hearing in this case, the Employer introduced four documents into the record: 1) an August 15, 2002 letter from the Internal Revenue Service stating that the

Volunteers of America operates as a church pursuant to IRS guidelines (Employer Exhibit 2a), 2) the Employer's Certificate of Incorporation papers which state that it is incorporated in the State of New York to operate a religious missionary and welfare society (Employer's Exhibit 2b), 3) a one page document titled "Shared Values" which describes the Employer's commitment and mission to the people and communities which it serves (Employer's Exhibit 2c), and 4) a one page document titled "The Cardinal Doctrines" which states that "Commissioned ministers affirm that their personal Christian faith is in harmony with the cardinal doctrines of Volunteers of America." (Employer Exhibit 2d). However, at the hearing, counsel for the Employer acknowledged that all four documents had also been placed into evidence at the Region 2 proceeding. Moreover, at this hearing, the Employer did not present any additional documentation that had not been considered by the Regional Director of Region 2.<sup>2</sup>

It is clear that the Employer introduced this documentation in an attempt to revisit the Board's previous determination in this matter. Given that this documentation has been fully considered by the Board prior to the issuance of its Order, I must conclude that the Employer has failed to present any new factual or legal argument for my consideration. As a consequence, I also conclude that the Board's August 12, 2010 Order must serve as controlling legal authority for my determination to assert jurisdiction and I shall direct an election in the petitioned-for unit as set forth below.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding<sup>3</sup>, the undersigned finds:

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<sup>2</sup> The Employer did not call any witnesses at the hearing.

<sup>3</sup> Briefs filed by the Petitioner and the Employer have been considered. I have also considered Employer Exhibit 1, a November 2, 2011 position statement submitted to the Regional Director prior to commencement of the hearing.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed;
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein;<sup>4</sup>
3. The labor organization involved claims to represent certain employees of the Employer;<sup>5</sup>
4. 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(6) and (7) of the Act;
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act for the reasons described herein:

**All full-time and regular part-time and per diem case aides, drivers, secretaries, cooks and case managers employed by the Employer at its East Orange, New Jersey facility excluding all confidential employees, supervisors and guards as defined by the Act.**

#### **IV. DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote in the

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<sup>4</sup> The Employer, a New York corporation, is engaged in the provision of a residential community released reentry program at its 45 Lenox Avenue, East Orange, New Jersey facility, the only facility involved herein. During the preceding twelve months, the Employer derived gross revenue in excess of \$250,000 and during that same period of time, purchased and received goods and materials at its East Orange facility valued in excess of \$5,000 directly from suppliers located outside the State of New Jersey.

<sup>5</sup> The parties stipulated and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

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 an economic strike who have retained their status as strikers and have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike that 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. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by

**DISTRICT 1199J, NUHHCE, AFSCME AFL-CIO.**

**V. LIST OF VOTERS**

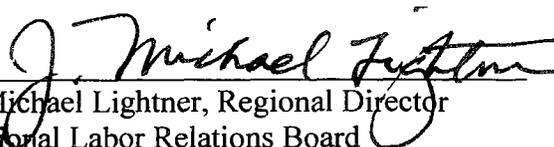
In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters in the unit found appropriate above shall be filed by the Employer with the undersigned, who shall make

the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, Fifth Floor, Newark, New Jersey 07102, on or before **December 5, 2011**. No extension of time to file this list shall be granted except in extraordinary circumstances nor shall the filing of a request for review operate to stay the requirement here imposed.

**VI. 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 14<sup>th</sup> Street, N.W., Washington, D.C. 20570-0001. The Board in Washington must receive this request by **December 12, 2011**. The request may be filed electronically through E-Gov on the agency's website, [www.nlr.gov](http://www.nlr.gov), but may not be filed by facsimile<sup>6</sup>.

Signed at Newark, New Jersey this 28th day of November, 2011.

  
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J. Michael Lightner, Regional Director  
National Labor Relations Board  
Region 22  
20 Washington Place - 5<sup>th</sup> Floor  
Newark, New Jersey 07102

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<sup>6</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the E-Gov tab. Then click on the E-Filing link on the menu and follow the detailed instructions. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, [www.nlr.gov](http://www.nlr.gov).