

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21**

WINDSOR ANAHEIM HEALTHCARE, LTD.,
d/b/a WINDSOR GARDENS CONVALESCENT
CENTER OF ANAHEIM

Employer

and

Case 21-RC-071722

SEIU – SERVICE EMPLOYEES
INTERNATIONAL UNION, CTW, CLC

Petitioner

DECISION AND DIRECTION OF ELECTION

On January 3, 2012, the SEIU – Service Employees International Union, CTW, CLC, herein called the Petitioner, filed a petition seeking an election in a bargaining unit consisting of certain employees of Windsor Anaheim Healthcare, Ltd., d/b/a/ Windsor Gardens Convalescent Center of Anaheim, herein called the Employer.¹ Specifically, the Union seeks a unit including: All full-time, regular part-time, and on-call Certified Nursing Assistants (CNAs), Restorative Nursing Assistants (RNAs), Dietary Aides, Cooks, Activities Assistants, Social Services Assistants, Medical Records Assistants, Central Supplies, Maintenance, Janitors, Housekeeping, and Laundry workers employed by the Employer at its facility located at 3415 West Ball Road, Anaheim, California; excluding all supervisory staff as defined by the Act, including confidential employees, professional employees, guards, managers and supervisors, LVNs and RNs.

¹ The correct name of the Employer appears as stipulated to at the hearing.

The Employer contends that the petitioned-for unit is not an appropriate one because it does not include its 23 Licensed Vocational Nurses (LVNs), Receptionists, Assistant MDS Coordinators, and two Business Office Coordinators. According to the Employer, these classifications share a community of interest with the employees in the petitioned-for unit and therefore should be included. The Petitioner responds that the Employer has failed to demonstrate that the employees it seeks to include in the petitioned-for unit share an “overwhelming community of interest” that would compel the Board to find that the only appropriate unit would have to include them.

On January 12, 2012, a hearing in this matter was held before a hearing officer of the National Labor Relations Board, herein called the Board. Pursuant to the provisions of Section 3(b) of the National Labor Relations Act (herein called the act), the Board has delegated its authority in this proceeding to the undersigned.

I. The Issues

The sole issue to be determined herein is whether the Employer has met its burden under *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (Aug. 26, 2011) of demonstrating that the employees excluded from the petitioned-for unit share an overwhelming community of interest with the included employees so as to compel a finding that any appropriate unit must include them.

II. Summary and Conclusion

Based upon the record, the post-hearing briefs filed by the parties, and the evidence as a whole, I find that the petitioned-for unit is an appropriate unit within the meaning of the Act:

All full-time, regular party-time and on-call Certified Nursing Assistants, Restorative Nursing Assistants, Dietary Aides, Cooks, Activities Assistants, Social Services Assistants, Medical Records Assistants, Central Supplies, Maintenance, Janitors, Housekeeping, and Laundry workers employed by the Employer at its facility located at 3415 West Ball Road, Anaheim, California; excluding all supervisory staff as defined in the Act, confidential employees, professional employees, guards, managers and supervisors as defined in the Act, Licensed Vocational Nurses, Registered Nurses, Receptionists, Assistant MDS Coordinators, and Business Office Coordinators.²

An election shall be directed in the described unit.³

III. The Facts

A. The Employer's Operation

The Employer operates a skilled nursing facility for the elderly located in Anaheim, California, the only facility involved herein.⁴ The integrated operation devoted to patient care is headed by an Administrator to whom other department directors report, including Activities Director, Business Development Director, Business Office Manger, Dietary Services Director, Director of Nursing, Director of Staff Development, Housekeeping/Laundry Supervisor, Maintenance Director, MDS Coordinator, Medical Records Director, and Social Services Director. Reporting to each of these directors and managers are employees within and without the petitioned-for unit, hereinafter referred to as the staff. There is no collective bargaining history at this facility.

² The parties stipulated to the exclusion of the admissions coordinator Dayana Guatlo, and the payroll specialist Cristina Cacerez as confidential employees.

³ The parties further stipulated that the on-call employees shall vote in accordance with the eligibility formula established by the Board in *Davison-Paxon Co.*, 185 NLRB 21 (1970)

⁴ The parties stipulated at the hearing that the Employer is engaged in commerce within the meaning of the Act, and subject to the jurisdiction of the Board as a health-care institution. The parties further stipulated that the Employer, a California corporation, is engaged in the business of health-care services for seniors, and that, during the past 12 months, a representative period, he Employer derived gross revenues in excess of \$250,000 from the operation of its skilled nursing facility, and purchased and received goods valued in excess of \$5,000, which goods were shipped directly to the Employer's Anaheim, California facility from points located outside the state of California.

It is undisputed that the staff members all are subject to the same Employee Handbook, which is distributed to each staff member at his or her initial orientation conducted by the Director of Staff Development. The benefits described therein apply to all otherwise eligible staff members. All staff members are paid according to the same schedule on the 10th and 25th of each month. All staff members are subject to a 90-day probationary period from date of hire, and receive regular annual evaluations thereafter. The same Identification Badge is required to be worn by all employees at the facility, including the staff members. All staff members share one common breakroom/lunchroom, and all have access to the same employee parking lot, albeit without guarantee of an available spot.

B. Classifications of Employees

1. *Licensed Vocational Nurses (LVNs)*

The Employer employs about 23 LVNs at this facility, who comprise a portion of the clinical staff providing direct care to the Employer's residents and who report to the Director of Nursing Services.⁵ The LVNs primarily work in the centralized nursing station that provides for full view of the hallways containing the residents' rooms, as well as in residents' rooms providing medications and care. There are three staggered 8-hour shifts of LVNs from 7:00 a.m. to 3:30 p.m., 3:00 p.m. to 11:30 p.m., and 11:00 p.m. to 7:30 p.m. The overlapping shifts are designed to allow the LVNs to complete their respective "shift reports" to the incoming shift regarding the status of

⁵ The witnesses alternately referred to the residents as patients. Since this is primarily a long-term nursing facility, they will be referred to herein as residents.

the residents. These shift reports and routine charting, or documentation of tasks performed for each resident, occur at the nursing station. The LVNs, like the CNAs, work four days on and two consecutive days off. Both the LVNs and CNAs log in by palm scan at the nurses' station.

In addition to daily charting duties, the LVNs also perform "med pass," which consists of the preparation of prescribed medications from a cart and its distribution and administration to the residents. This is performed on a regular basis at 9:00 a.m., 1:00 p.m., 5:00 p.m., and 9:00 p.m. and in between as needed, with each med pass taking about 2 hours.

With regard to training, LVNs must possess a high school diploma or GED, and must then acquire an additional 1000 hours of classroom training, including biology, physiology, medication, and patient care, plus 1000 clinical hours – a process that can take between one and two years. Thereafter, they are specifically licensed to provide such services as administration of medication, starting and/or maintaining intravenous lines (IV's), and performing wound care.

The LVNs are supervised and monitored by the Registered Nurses⁶, and the LVNs in turn monitor and oversee the work of the CNAs, RNAs, and the Control Supply Clerk. Each LVN can be responsible for as many as 27-33 residents on any given day.

2. *Certified Nursing Assistants (CNAs)*

The CNAs, as part of the clinical staff, also report to the Director of Nursing Services, and each is assigned to care for particular residents, generally between

⁶ The Employer employs two Registered Nurses, or RN's, one day shift and one evening shift, who also serve as charge nurses. The RN's are not at issue in the instant case, and no party asserts that they should be included in any appropriate unit.

8 and 12 each day. The CNAs work three shifts of 7 ½ hours from 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m. , Unlike the LVNs, their shifts do not overlap since they do not give shift or status reports to this incoming shift. Like the LVNS, they work 4 days on and 2 consecutive days off.

The daily duties of the CNA consist of clocking in and checking the daily resident assignments and making rounds. If the CNAs observe any change in a resident or something untoward, they report it to the LVN who oversees that resident. CNAs effectuate the feeding of residents by either taking them to the dining room, where they may assist with the actual feeding, or assisting the residents in their rooms where the kitchen employees have already delivered the tray. In addition, CNAs assist residents to get from and into bed, shower, change, and clean them, and ready them for sleep. CNAs do keep charts that describe the tasks they perform during the day: the LVNs do not assist them with this except on rare occasion to concur or sign off on an observation or comment. Furthermore, most of the CNAs charting is done in the residents room while services are being performed, rather than at the centralized nursing station.

With regard to training, CNAs must display the equivalent of eighth-grade proficiency in mathematics and English, and then complete a minimum of 50 classroom hours plus 100 clinical hours – a program that takes about 30 to 90 days to complete. After taking a state examination administered by the Red Cross, the CNAs receive a certificate, which must then be renewed every two years by doing 48 hours of in-service training provided by the Employer. It is undisputed that CNAs cannot distribute medication, start or monitor IV lines, or provide wound care: these are chores within the

purview of the LVNs who are specifically licensed to perform them. According to largely unrebutted testimony, CNAs cannot be delegated tasks by RNs or LVNs, since delegation by definition of the State Board of Registered Nursing would define delegation as bestowing an individual with not only the assignment of a task but also the ensuing legal responsibility. As a result, CNAs may only be assigned certain tasks for which they have been trained. CNAs are not classified as nurses in the State of California, but only as “nursing assistants” subject to certification.

The work of the CNA is overseen by the respective LVN who is assigned to that unit, as well as by the RN on duty and the Director of Nursing Services. CNAs do not spend much time at the nursing station, given the extent of their duties during the day, and primarily interact with the LVNs when they happen to be in a resident’s room at the same time. Even then, they retain distinct tasks which are not generally fungible: the CNAs cannot administer medication, and the LVNs do not regularly feed, change, or clean residents. Moreover, CNAs do not implement resident care plans or evaluate residents, nor do they schedule tests or arrange for therapeutic or diagnostic services or make rounds with physicians, as these tasks are relegated to the RNs and LVNs.

3. *Restorative Nursing Assistants (RNAs)*

The record does not provide much evidence with regard to the Restorative Nursing Assistants (RNAs), except to the extent that they are CNAs who report to the Director of Nursing Services and who perform rehabilitative work with the residents. The prepared job description provided by the Employer states that the duties of the RNA

are “to provide restorative nursing services that will assist the resident to restore, improve, or maintain bodily functions to the highest degree practicable in accordance with the resident’s assessment, care plan, and as directed by supervisors.”

Apparently, the RNAs perform some charting duties at the central nursing station, as well as in the residents’ rooms. Unlike the LVNs and CNAs, there is only one 8-hour day shift for RNAs which may vary based on the feeding and/or rehabilitation schedule of the residents. It may be assumed that the RNAs receive the same training and certification as the CNAs who are not RNAs, and that their work is likewise overseen by the LVN’s.

4. *Cook and Dietary Aides*

The cook and dietary aids work in the dietary area of the kitchen, and report to the Dietary Services Director. The cook, whose duties are fairly self-explanatory, does not have much interaction with the rest of the staff with the exception of the dietary aides who deliver the food prepared by the cook to the residents’ floor and dining areas. The dietary aide may either leave the food cart in the hallway and the CNAs will then take the food to the resident’s room, or the dietary aid can deliver the tray directly to the room. In this regard, the CNAs and the dietary aides directly interact only if the resident needs a substitute food offering or an unscheduled snack, at which time the CNA can go to the kitchen and talk to the dietary aide.

5. *Activity Assistant*

The Activity Assistant reports to the Activities Director and works in the recreation room area or the physical therapy/occupational therapy area. There is only one shift of Activity Assistants, but the hours may vary depending on residents’ needs. This

staff member does not work at the centralized nurses' station but may go the residents' rooms. The record does not provide much evidence as to the actual duties of the Activity Assistant, but the printed job description provided by the Employer notes that this staff person "assists in the planning, implementation, and evaluation of recreational, social, intellectual, emotions, and spiritual programs in accordance with the resident's assessment and care plan."

There is no direct evidence of this staff persons' interaction with other employees in the petitioned-for unit or those whom the Employer asserts should be in the unit, except for the over-arching presumption that the activity assistant is engaged in the care of residents, as are all the staff members to some extent.

6. *Social Services Assistant*

The Social Services Assistant, works in the Social Services office and reports directly to the Social Services Director. According to the prepared job description, this staff person "assists each resident and family in adjusting to placement, illness, and plan of care to attain the highest practicable level of functioning in accordance with current federal and state regulations, and company policies and procedures."

The record describes the level of interaction between the Social Services Assistant and the LVNs and CNAs as merely going to the central nurses station to obtain a resident's chart, going to residents' rooms, or receiving reports from LVNs or CNAs about residents' missing personal items.

7. *Medical Records Assistant*

The Medical Records Assistant reports to the Medical Records Director, and works in the basement of the facility. There is no evidence on the record as to this person's duties, except that the prepared job description provides that the Medical Records Assistant "is responsible for maintaining medical record in accordance with federal and state guidelines, as well as with the company's established policies and procedures." Unrebutted testimony provides that this person may occasionally go to the central nursing station to audit residents' records, but does not generally interact with LVNs or CNAs. The extent of interaction with other petitioned-for classifications is not known.

8. *Central Supply Clerk*

The Central Supply Clerk, who, like the LVNs and CNAs, reports to the Director of Nursing Services, manages the ordering and issuing of supplies, including personal items and over-the-counter (OTC) medications. This staff member interacts regularly with the LVNs, CNAs and RNAs by responding to their requests for resident needs. In this regard, only the LVNs may obtain OTC medications from the Central Supply Clerk. The Central Supply Clerk may also visit residents' rooms to check oxygen supplies, although again, only the LVNs can monitor the oxygen. The Central Supply clerk does not perform any nursing functions.

9. *Maintenance Assistants*

The Maintenance Assistant reports to the Maintenance Director, whose office is also in the basement of the facility. The Assistant, however, works all over the facility as needed, including residents' rooms. The sole instance of interaction with other employees cited in the record is requests for needed repairs by CNAs.

10. *Housekeeper/Janitor*

The Housekeeper/Janitor is a single classification of employees who report directly to the Housekeeping/Laundry supervisor. These staff employees work throughout the facility – in residents' rooms, hallways, and offices. They have little apparently interaction with other staff employees, except on rare occasions when they might report an observable change in a resident's condition to an LVN or CNA.

11. *Laundry*

Like the Housekeepers and janitors, the Laundry Aide also reports to the Housekeeping/Laundry supervisor. They work in the laundry room, and deliver linens in carts to resident areas, where the linens are then accessed by the CNAs. CNAs or even LVNs can visit the laundry room for additional linens not available on the floor.

All of the foregoing classifications, with the exception of the LVNs, are part of the petitioned-for unit. The additional classifications below, along with the LVNs, are those that the Employer contends share an overwhelming community of interest with the petitioned-for employees above and thus should be included in any appropriate unit:

12. Assistant MDS Coordinator

Neither the record nor the prepared job description states what MDS is an acronym for, but the latter states that this staff person “assists MDS coordinator in the development, completion and transmission of the resident assessment in accordance with the state requirements and policies and goals of facility.” The Assistant MDS Coordinator, who is an LVN whose duties are to assess residents and complete data sets regarding that residents’ condition which are then utilized to prepare billing to Medicare and/or Medical works in the Staff Development area of the facility and reports to the MDS Coordinator,. This staff member may work at the central nurses’ station or in residents’ rooms reviewing charts or questioning LVNs and CNAs about residents’ conditions. In this regard, the Assistant MDS Coordinator does interact with the clinical staff, even though there is no involvement in direct resident care.

13. Business Office Coordinators

The Business Office Coordinators are two classifications – Business Office Coordinator and Clinical Case Manager – both of whom report to the Business Office Manager. The Business Office Coordinator performs basically accounts receivable duties, and coordinates billing for individual residents or government agencies for care provided, working with the clinical staff and the MDS Coordinator. This staff member may also work with Social Services with regard to managing residents’ personal funds.

The Clinical Case manager also works with the Director of Nursing Services and MDS to coordinate payment of services from HMOs based on their assessment of residents' needs. This staff member also works with Social Services for discharge planning to coordinate the payments for placement or homecare. Both of these classifications work 8-hour shifts from 8:00 a.m. to 5:00 p.m., 5 days a week.

14. Receptionist

The Employer employs two receptionists on two shifts from 8:00 a.m. to 4:00 p.m. and from 4:00 p.m. to 8:00 p.m. who work in the lobby and report to the Business Office Manager. Their basic duties consist of answering telephones, monitoring the front entrance, alphabetizing and filing medical records, sending notices to residents' families on behalf of Social Services, and distributing prepared paychecks to staff members. In this regard, the receptionists do not prepare the payroll or the checks, but make them available for others to pick up.

IV. ANALYSIS

A. The Appropriate Analytical Framework

Recently, in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (Aug. 26, 2011), the Board overruled its previous standard as described in *Park Manor Care Center*, 305 NLRB 872 (1991) for determining units in non-acute healthcare facilities based upon its rules defining appropriate units in acute-care hospitals, in favor of returning to the application of traditional community-of-interest approach.

In addition, the Board in *Specialty Healthcare* reiterated that in cases in which a party contends that a petitioned-for unit containing employees readily identifiable as a group who share a community of interest is nevertheless inappropriate because it does not contain certain employees, the burden is on the party so contending to demonstrate that the excluded employees share an “overwhelming community of interest” with the included employees. *Specialty Healthcare*, 357 NLRB No. 83, slip op. at p.1

B. Application of the Traditional Principles of Unit Determination

Having to no longer follow the *Park Manor* approach, and applying the Board’s traditional approach in cases involving long-term care facilities, I begin, as did the Board in *Specialty Healthcare*, *supra*, with the established construction of the language of the Act that permits the petitioner to describe the unit in which a “substantial number of employees . . . wish to be represented.” *Specialty Healthcare*, 357 NLRB No. 83, slip op. at p.8.

As noted therein, the Board examines the petitioned-for unit first. If that unit is an appropriate unit, the Board proceeds no further. As the Board recently explained, “the Board looks first to the unit sought by the petitioner, and if it is an appropriate unit, the Board’s inquiry ends.” *Specialty Healthcare*, *supra*, at p. 8, citing *Wheeling Island Gaming, Inc.* 355 NLRB No. 127 (2010). Moreover, the Board has historically honored this statutory command cited above by holding that the petitioner’s desire concerning the unit “is always a relevant consideration.” *Mark Oxygen Co.*, 147 NLRB 228, 229 (1964).

However, the Board cannot stop with the observation that the petitioner proposed the unit, but must proceed to determine, based on additional grounds (while still taking into account the petitioner's preference), that that proposed unit is an appropriate unit.

Specialty Healthcare, supra at p. 9.

Unlike *Specialty Healthcare, supra*, the Union herein has not proposed a unit consisting of a set of employees who are clearly definable as a group. Rather, the petitioned-for unit herein includes some, but not all, non-supervisory maintenance and service employees in selected departments. The Employer, like the employer in *Specialty Healthcare, supra*, seeks a wall-to-wall unit of all non-supervisory employees, in addition to the LVNs.

That being said, in making the determination of whether the proposed unit is an appropriate unit, the Board's focus is on whether the employees share a "community of interest" based on the following criteria:

Whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment' and are separately supervised.

United Operations, Inc., 338 NLRB 123, 123 (2002).

1. *The LVNs Should be Excluded from the Unit*

Beginning with the LVNs, I conclude, based on the record and the evidence as a whole, as well as established Board precedent, that the LVNs should not be included in the unit, and should be excluded based upon their distinct functions, training, skills, and education.

Without addressing previous Board findings under *Park Manor, supra*, that LVNs are technical employees who properly belong in another healthcare unit, I find that because of their specialized skills and licensing, LVNs perform significant patient care duties that CNAs are not permitted to perform. These would include administering medications, treating wounds, charting physicians' orders, and having access to OTC medications and supplies. Although the LVNs are part of an integrated operation dedicated to the care of elderly residents, and they have some very limited overlap with the work of the CNAs, the totality of the evidence suggests that the LVNs are more concerned with the residents' medical condition, rather than on the activities of daily living that comprise the CNAs responsibilities. For these reasons, and for the due deference to the petitioned-for unit, I find that the LVNs are properly excluded from the unit.

2. *The Petitioned-For Unit is an Appropriate Unit*

Applying the above traditional community-of-interest approach mandated by the Board in *Specialty Healthcare, supra*, I find, based upon the evidence and the record as a whole, that the petitioned-for unit is an appropriate one.

In this regard, it is clear that the CNAs and the CNAs who are designated RNAs, along with the Central Supply clerk, all share a community of interest based upon common supervision by the Director of Nursing Services, the overlap of their jobs in directly servicing residents' daily needs, their functional integration, and their common training and certification.

With regard to the Dietary Aides, Cooks, Activities Assistants, Social Services Assistants, Medical Records Assistants, Maintenance employees, Janitors, Housekeeping, and Laundry workers, it is clear that they, like the CNAs and RNAs, are all non-professional maintenance employees without specialized skills or advanced licensing. The record is silent as to the extent of their training, if any, and somewhat vague as to their daily duties. Moreover, even though all of these classifications interface with the residents and are part of an integrated operation dedicated to the care of the residents, there is little if any evidence of their having much interface with the CNAs or RNAs. In this regard, they work in different departments and report to different directors than the CNAs and RNAs and than one another.

However, as noted above, the preference of the petitioner is a factor to be given deference. *Specialty Healthcare, supra*, slip op. at p.9. In this regard, the Employer has not contended that any of these classifications are not part of an appropriate unit, and admits that the only issue before the undersigned is whether the exclusion of other employees is proper. All the petitioned-for employees are directly involved in resident care (although not all to the hands-on extent of the CNAs and RNAs) in cooking and providing nourishment, maintaining and cleaning the facility, laundering linens, planning activities, planning social enrichment events, and keeping records. Moreover, all of the foregoing classifications, even though they ostensibly report to different directors, are guided by the LVNs who make dietary and other recommendations for the residents' welfare.

Based on the foregoing, and inasmuch as no party has contended that these employees may not properly be a part of an appropriate unit, I find that the petitioned-for unit is an appropriate one.⁷

3. *The Receptionist, Assistant MDS Coordinator, and the Business Office Coordinator Should Not be Included in the Unit*

The Board in *Specialty Healthcare*, *supra*, slip op. at p.1, places the burden on the Employer to demonstrate that these employees have an “overwhelming community of interest” with those included in the petitioned-for unit such that any appropriate unit must include them.

Specifically, *Specialty Healthcare* reiterates that this test applies where the petitioned-for unit contains employees who are “readily identifiable as a group who have a community of interest,” and in fact the petitioner in *Specialty Healthcare* petitioned only for a unit of CNAs. In the instant case, the Union has petitioned for non-professional service employees in several classifications who nevertheless share sufficient community of interest to be included in an appropriate unit.

With regard to the additional classifications of employees the Employer herein seeks to include, I find, based upon the record as a whole, that the Employer has failed to meet its burden of showing that these employees enjoy such an overwhelming

⁷ Contrary to the assertions of the Employer in its brief, the petitioned-for unit is not an arbitrary segment or a “fractured” unit, which the Board in *Specialty Healthcare*, *supra* at p. 13, defines as “an arbitrary segments” of what would be an appropriate unit, for example, only selected CNAs on a certain shift or on one floor.

community of interest that they must be included in an appropriate unit. The Board notes in *Specialty Healthcare, supra* at p. 11, that a showing of this heightened standard requires, *inter alia*, that there would be “no legitimate basis upon which to exclude certain employees.”

Specifically, the record shows that the Business Office Coordinators, including the Clinical Case Manager, the receptionists, and the Assistant MDS Coordinator perform largely clerical, billing, and accounting functions. The record contains no evidence of any training or certification like that required of the CNAs and RNAs.⁸ Although these employees are part of an integrated operation to provide for elderly residents, their services do not go towards the day-to-day activities of the residents in the way the efforts of the CNAs, RNAs, food providers and servers, maintenance and housekeeping, and others in the petitioned- unit. Rather, the tasks these employees perform support the business and billing operations of the Employer, and other clerical functions like reception. This constitutes an articulable basis for their exclusion which is not adequately rebutted by the Employer.

For these reasons, I conclude that the limited overlap and interaction of these employees, as well as the different focus of their work, does not demonstrate an “overwhelming” community of interest so as to include them in the petitioned-for unit.

⁸ The Employer in its brief describes the job duties of the employees it seeks to include in the unit based on the prepared job descriptions proffered by the Employer at the hearing. However, witness testimony often contradicted the descriptions and their accuracy was called into question on several occasions. Thus, without supporting testimony as to whether these employees actually perform those functions, or that the prepared descriptions even actually accurately perform those functions, they are of limited usefulness and thus I rely upon the record testimony where possible.

V. CONCLUSION

Based on the evidence and the entire record, I find that the following is an appropriate unit and I shall direct an election in this unit:

All full-time, regular party-time and on-call Certified Nursing Assistants, Restorative Nursing Assistants, Dietary Aides, Cooks, Activities Assistants, Social Services Assistants, Medical Records Assistants, Central Supplies, Maintenance, Janitors, Housekeeping, and Laundry workers employed by the Employer at its facility located at 3415 West Ball Road, Anaheim, California; excluding all supervisory staff as defined in the Act, confidential employees, professional employees, guards, managers and supervisors as defined in the Act, Licensed Vocational Nurses, Registered Nurses, Receptionists, Assistant MDS Coordinators, and Business Office Coordinators.

There are approximately 114 employees in the Unit.

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 purposed of collective bargaining by the **SEIU – Service Employees International Union, CTW, CLC**. The date, time, and place of the election will be specified in the notices of election that the Board’s Regional Office will issue subsequent to the 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 Co.*, 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 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 return, 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 **February 16, 2012**. 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 electronic filing through the Agency's website, www.nlr.gov,⁹ by mail, or by facsimile transmission at (213) 894-2778. 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 **four** copies of the list, unless the list is submitted by facsimile or e-mail, in which only **one** copy 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 of 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

⁹ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed directions.

the election are filed. Section 103.20© 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 stops employers from filing objections based on nonposting of the election notice.

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 **February 23, 2012**. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov,¹⁰ but may not be filed by facsimile.

DATED at Los Angeles, California, this 9th day of February, 2012.

/s/D. Bruce Hill
Acting Regional Director, Region 21
National Labor Relations Board

¹⁰ To file the request for review electronically go to www.nlr.gov and select the E-Gov tab. Then click on the E-Filing link in 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.