

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

UHS-CORONA, INC. D/B/A CORONA REGIONAL
MEDICAL CENTER¹

Employer

and

Case 21-RC-092844

UNITED NURSES ASSOCIATIONS OF CALIFORNIA/
UNION OF HEALTH CARE PROFESSIONALS²

Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer is engaged in the operation of a hospital and other healthcare facilities. The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act, seeking to represent a unit of all full-time, part-time, and per diem Registered Nurses, employed by the Employer at 800 S. Main Street, Corona, CA 92882; excluding all other employees, registry registered nurses, traveler registered nurses, guards, and supervisors as defined in the Act.

At the hearing, The Employer contended that a multi-facility unit is appropriate and that it should also include the Employer's facilities located at 730 Magnolia Avenue, Corona, CA; and at 760 Washburn Avenue, Corona, CA. The Petitioner agreed with the

¹ The name of the Employer appears as corrected at the hearing.

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Employer's contention that the appropriate unit should include the additional facilities as noted.³

Further, at the hearing, the Employer contended that 31 charge nurses, seven house supervisors, and one lead house supervisor, are supervisors under Section 2(11) of the Act, and should be excluded from the appropriate unit. The Petitioner agreed to exclude the charge nurses, house supervisors and lead house supervisors from the unit on the basis that they are supervisors under Section 2(11) of the Act. The parties, however, failed to present any basis for their conclusion that the noted categories of employees are supervisors under Section 2(11) of the Act. Because a factual basis to establish supervisory status is necessary before employees are excluded from any unit as supervisors, I shall permit the charge nurses, the house supervisors and the lead house supervisor to cast ballots subject to challenge.

Next, the Employer contended that the following classifications of employees do not share a community of interest with the unit employees, and should be excluded from the appropriate unit: The RN home health coordinator, the RN case manager, performance improvement coordinator/core measures, quality assurance coordinator, quality coordinator, wound care coordinator/RN, wound care enterostomal, quality improvement nurse, UR coordinator, MDS coordinator/RN, operating room clinical educator, nurse educator, care partner, community liaison, infection control nurse, risk analyst/risk management analyst, RN Clinical specialist and clinical systems analyst.

The Union agreed that the named categories of employees do not share a community of

³ Because the Petitioner now seeks to represent employees in the multi-facility unit, and because all parties agree that the appropriate unit should include the three noted facilities, I find that it therefore constitutes an appropriate bargaining unit. As the Board noted in *Manor Healthcare Corp.*, 285 NLRB 224 (1987), while a single facility unit in the health care industry is presumptively appropriate, a broader unit might also be appropriate.

interest and should be excluded from the appropriate unit. Based on the parties' agreement to exclude the noted categories because they do not share a community of interest with the Unit, I shall exclude them from the Unit.

Finally, at the hearing, the Employer submitted that the appropriate unit should describe the classifications which conforms to the Employer's classifications. The Union agreed that the appropriate unit should conform to the description of the classifications as proposed by the Employer. Accordingly, I shall describe the classifications as agreed-to by the parties, in the appropriate Unit.

CONCLUSIONS AND FINDINGS

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

At the hearing, the Employer sought to present testimony regarding its contentions that certain employees are supervisors and with regard to its claim that certain other employees did not share a community of interest with the Unit employees. Because the Petitioner did not oppose the Employer's contention, the hearing officer concluded that there was no dispute worthy of any testimony and accordingly, she denied the Employer's request. She also denied the Employer's request to file a post-hearing brief, finding that because there are no disputes, briefs were not necessary.

In *Bennett Industries, Inc.*, 313 NLRB 1363 (1994), the Board emphasized its "affirmative duty to protect the integrity of the Board's processes against unwarranted burdening of the record and unnecessary delay," in the processing of representation petitions. In light of my ruling that the alleged supervisors will vote subject to challenge,

I conclude that the Hearing Officer's ruling not permitting testimony on the supervisory status issue was appropriate and it is hereby affirmed.

With regard to the Hearing Officer's ruling not to permit testimony on the community of interest among employees, I conclude that because the Petitioner agreed that the proposed excluded categories of employees did not share a community of interest with the Unit employees, testimony was not necessary and would have only burdened the record and caused unnecessary delay in these proceedings.

Finally, with regard to the Employer's request to file a post-hearing brief, I note that the Employer failed to avail itself of an opportunity to present oral argument at the close of the hearing. Moreover, as is noted above, the hearing presented no factual disputes as the Petitioner agreed to the changes proposed by the Employer concerning the scope of the unit and the unit description. Thus, the Hearing Officer was correct in concluding that no briefs were necessary and I hereby affirm that ruling as well.

2. The parties stipulated that the Employer, a California corporation, is engaged in operation of a hospital and other healthcare facilities. During the past 12 months, which period is representative of the Employer's operations, the Employer derived gross revenues in excess of \$250,000 from the operation of its healthcare institutions and purchased and received goods valued in excess of \$50,000, which goods were shipped directly to the Employer's Corona, California, facilities from points outside the State of California.

Based on the parties' stipulations, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act, and that it claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. The following employees of the Employer constitute an appropriate bargaining unit:

Included: All full-time, and regular part-time, and per diem Registered Nurse-ICU, Registered Nurse-PCU, Registered Nurse-ER, Registered Nurse-OP/SS Surgery, Registered Nurse-Recovery, Registered Nurse-Surgery/OR, RN-Surgical, RN-Special/Specialty Nurse, Registered Nurse-L&D, Registered Nurse-Nursery, Registered Nurse-OB/GYN Nursing, Registered Nurse-PEDS, Registered Nurse-Lactation Consultant, Registered Nurse-Infusion Therapy, Registered Nurse-Medical, Registered Nurse-PHP, Registered Nurse-Psych, Registered Nurse-Home Health, Registered Nurse-Skilled Nursing Unit, Registered Nurse-Cardiac Cath. Lab, Registered Nurse Hospice, and Registered Nurse-Special Procedure employed by the Employer at 800 South Main Street, Corona, California; 730 Magnolia Avenue, Corona, California; and 760 Washburn Avenue, Corona, California.

Excluded: All other employees, including, but not limited to, agency employees, RN Home Health Coordinator, RN Case Manager, Performance Improvement Coordinator/ Core Measures, Quality Assurance Coordinator, Quality Coordinator, Wound Care Coordinator/RN, Wound Care Enterostomal, Quality Improvement Nurse/UR Coordinator, MDS Coordinator/RN, Operating Room Clinical Educator/ Nurse Educator, Care Partner, Community Liaison, Infection Control Nurse, Risk Analyst/Risk Management Analyst, Clinical Systems Analyst, RN Clinical Specialist, Assistant Director-Surgical Services, Director-Infection Prevention, Director-Education, Interim Director-ICU, Director-ICU, Manager-Nursing, Director-Emergency Room, Interim Director-OR/Recovery/OPS, Director-Quality Management, Director-Women's Health Center/Services, Director-Med/Surg./Telemetry/PCU, Director-Risk Management, Director-Nursing, Rehab Hospital Administrator, Director-Psyche Services, Director Home Health, Director-Rehab/Therapy Services, Director-Case Management, Director Diagnostic Imaging, Director-Information Systems, office clerical and administrative employees, confidential employees, professional employees, managers, guards, and supervisors as defined in the Act.

There are approximately 307 employees in the appropriate unit.⁴

⁴ Inasmuch as I have found a unit different than that requested by the Petitioner, in accordance with established Board practice, I shall allow the Petitioner ten (10) days from the date of the Decision and

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 purposes of collective bargaining by the United Nurses Associations of California/Union of Health Care Professionals. 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

Direction of Election in which to perfect its 30-percent showing of interest in the Unit. In the event the Petitioner does not establish a proper showing of interest in the Unit within a 10-day period, I shall dismiss the petition unless it is withdrawn. Should the Petitioner not wish to participate in an election in the unit found appropriate herein, it may withdraw its petition, without prejudice, by giving notice to that effect to the Regional Director within ten (10) days from the of this Decision and Direction of Election.

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 Voters⁵

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 **December 4, 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.

⁵ The list of voters shall be made available to the Petitioner when, and if, an adequate showing of interest has been established among the employees in the Unit found appropriate.

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,⁶ 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 the election are filed. Section 103.20(c) 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,

⁶ To file the eligibility list electronically, go to the Agency's website at www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed directions.

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 **December 11, 2012**. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov,⁷ but may not be filed by facsimile.

DATED at Los Angeles, California, this 27th day of November, 2012.

/s/William M. Pate
Acting Regional Director, Region 21
National Labor Relations Board

⁷ To file the request for review electronically, go to www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, 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 on the Agency's website, www.nlr.gov.