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

VISIONQUEST NATIONAL LTD.

Employer

and Case 04-RC-089101

DISTRICT 1199C, NATIONAL UNION
OF HOSPITAL AND HEALTH CARE
EMPLOYEES, AFSCME, AFL-CIO

Petitioner

REQUEST FOR REVIEW OF
PETITIONER DISTRICT 1199C, NATIONAL UNION OF
HOSPITAL AND HEALTH CARE EMPLOYEES, AFSCME, AFL-CIO

Respectfully submitted,

Date: January 17, 2013

/s/ *Lance Geren*

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I. BACKGROUND

On September 11, 2012, Petitioner District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO, (hereinafter the "Petitioner"), filed the petition in the instant matter seeking to represent employees employed by VisionQuest National Ltd., (hereinafter the "Employer"), at its 301 East Chelten Avenue, Philadelphia, Pennsylvania facility. On September 24, 2012, the Regional Director for Region Four approved a Stipulated Election Agreement for an election involving the following bargaining unit:

> Included: All full-time and regular part-time case managers, community backers, clerical support staff employees, administrative assistants, therapists, reintegration workers, transition specialists, admission coordinators, housing coordinators, and in-home detention program directors working at or reporting to the Employer's offices located at 301 East Chelten Avenue, Philadelphia, Pennsylvania.
>
> Excluded: All other employees, managerial employees, guards and supervisors as defined in the Act.

Pursuant to this Stipulated Election Agreement, an election by secret ballot was conducted on October 15, 2012, in the bargaining unit described above. During the election, the Board Agent conducting the election challenged the ballots of Joslyn Brooks, Lucinda Harmon, Julia Strickland, Renee Toney and Troy Jones because their names did not appear on the *Excelsior* list. The Petitioner challenged the ballots of Ernest Conner, Catherine Dertouzos and Randy Sheagley on the ground that they do not share a community of interest with the other bargaining unit employees.[1] The Tally of Ballots showed the following results:

Approximate number of eligible voters…….…….39
Void Ballots……..0
Votes case for Petitioner…….……14
Votes cast against participating labor organization……....14
Valid votes counted……...….28
Challenged Ballots……...…….……8
Valid votes counted plus challenged ballots…...…….…..….36

On November 2, 2012, the Regional Director for Region Four issued a Notice of Hearing on Challenged Ballots, and a hearing was scheduled for and conducted on November 14, 2012, and November 16, 2012, before Hearing Office Jennifer Spector.

On January 3, 2013, the Hearing Officer issued her Report and Recommendations on Challenged Ballots. In her Report, the Hearing Officer recommends that all of the challenges be sustained and that a Certification of Results of Election issue. The Petitioner respectfully requests review of the Hearing Officer's decision for the limited purpose of finding that the record evidence showed that the Stipulated Election Agreement was not unambiguous as it did not represent the parties' intent. The Petitioner requests that the ballots of Brooks, Harmon, Strickland, Toney and Jones be opened.

[1] At the hearing, the Employer agreed that the ballot of Sheagley should not be counted.

II. FACTUAL BACKGROUND[2]

The Employer operates group homes and home-based programs across the United States and throughout Pennsylvania, including a site at 301 East Chelten Avenue in Philadelphia, Pennsylvania. The Employer's 301 East Chelten Avenue facility offers an In-Home Detention Program where the youth are living at home. They are assigned to be monitored, as opposed to putting them in detention. There is also a Lighthouse Program for youth who are transitioning out of placement, and they are taught independent living skills. There is a Family Functional Therapy Program through which the employees work directly with the youth and their families. Finally, there is a Reintegration Program, where the employees assist youth in returning to school, work or the community. The Employer also operates an office at 1806 Callowhill Street, Philadelphia, Pennsylvania, which is strategically located near the juvenile justice center at 1801 Vine Street. The Employer also operates its New Directions Shelter on Old York Road in Philadelphia, Pennsylvania. The Employer also operates an office in Downingtown, Pennsylvania.

Administrative Organizer Maureen Bendig received a telephone call from some of the Employer's employees who expressed a desire to organize. Bendig began conducting meetings with the employees and learned that the Employer operated multiple facilities in the Philadelphia area. Through discussions with the employees, it was determined that the employees at the 301 Chelten Avenue facility would attempt to organize. Bendig visited the Employer's website, and downloaded the Employer's listed job positions. She then met with employees who had indicated their job title on their authorization cards in order to deal with any discrepancies. For example, the Employer's website did not include a position titled Family Intervention Specialist

[2] This is not intended to be a complete recitation of the facts as there are additional facts set forth in the argument section of this brief below.

("FIS"). Bendig met with some of the FISs, and it was determined that they were likely included under the title of Case Manager.

After gathering the necessary authorization cards and the information from the employees and the Employer's website, in early September 2012, Bendig met with Petitioner's attorney Lance Geren in order to prepare the filing of the petition. Bendig and Geren met in the Petitioner's union hall. Bendig and Geren reviewed the authorization cards and the Employer's website and formulated the bargaining unit description. The positions on the Employer's website were included, as well as the positions of Administrative Assistant and Clerical Employees, even though they were not included on the website because some employees had listed those positions on their cards and it was viewed that the Employer had to have employees in those positions. Geren then prepared the petition for filing with the Board. After the filing of the petition, Employer's counsel James Sullivan contacted Geren to discuss the bargaining unit. Sullivan indicated that there were additional job classifications and provided the number of employees filling those additional job classifications, which was a total of nine. Sullivan also indicated that the total number of employees would be increased from the petitioned-for 25 to 34.

Geren then contacted Bendig and explained that the Employer had proposed including other job classifications, and explained that this would increase the size of the bargaining unit from 25 to 34. Believing that the parties were talking about a wall-to-wall unit at 301 East Chelten Avenue, the Petitioner agreed to the inclusions. When the Employer provided the *Excelsior* list, the Petitioner, for the first time, realized that the Employer had attempted to include employees from other locations as well as excluding the FISs. On October 12, 2012, at Bendig's direction, Geren issued a letter to the Board identifying employees who the Petitioner believed had been improperly excluded from the *Excelsior* list. The FISs voted during the

election, and their ballots were challenged. In addition, Jones, who is a Safety Monitor at 301 East Chelten Avenue, also voted even though neither the Employer nor the Petitioner had ever mentioned his job position. His ballot was challenged.

III. ARGUMENT

In her Report, the Hearing Officer properly cited *Caesar's Tahoe*, 337 NLRB 1096 (2002),where the Board explained that it will apply a three-prong test in determining the parties' intent in cases involving stipulated elections. First, the Board will determine whether the stipulation is ambiguous. If the objective intent of the parties is expressed in the clear and unambiguous terms of the stipulated election agreement, the Board will simply enforce the agreement. Second, if the stipulation is ambiguous, the Board must seek to determine the parties' intent through normal methods of contract interpretation, including the use of extrinsic evidence. Third, if the parties' intent still cannot be determined, then the Board will employ a traditional community-of-interest test.

In applying the *Caesar's Tahoe* factors, the Hearing Officer found that the Family Intervention Specialists and Safety Monitor were unambiguously excluded from the bargaining unit in the Stipulated Election Agreement. She further found that, if the Stipulated Election Agreement was ambiguous, the Family Intervention Specialists and Safety Monitor clearly share a community of interest with the bargaining unit employees and would otherwise be included. The Petitioner submits that the Hearing Officer erred in finding that the Stipulated Election Agreement was unambiguous resulting in the exclusion of just four employees.[3]

[3] The Petitioner submits that the Hearing Officer properly found that the Family Intervention Specialists and Safety Monitor share a community of interest with the bargaining unit employees, and that Conner and Dertouzos were properly excluded. The Petitioner also submits that the Hearing Officer properly found the Family Intervention Specialists not to be statutory supervisors.

A. Stipulated Election Agreement is Ambiguous

In applying the first prong of the *Caesars Tahoe* analysis, the Board must determine whether the stipulated unit is ambiguous. In doing so, the Board compares the "express language of the stipulated unit with the disputed classifications." *Northwest Community Hospital*, 331 NLRB 307, 307 (2000). The Board will find that that the parties have "a clear intent to include those classifications matching the description and a clear intent to exclude those classifications not matching the stipulated unit description." *Id.* In applying this test, some general rules have developed. For example, where the express language of the stipulated election agreement does not include or exclude the contested classification, the Board has found that the parties' intent with respect to that classification is not clear. *Caesars Tahoe*, 337 NLRB at 1097-1098; *R.H. Peters Chevrolet*, 303 NLRB 791, 792 (1991); *Lear Siegler*, 287 NLRB 372, 373 (1987). In addition, where the stipulated election agreement enumerates the job classifications that are included in the unit, the classification at issue is not among them, "and there is an exclusion for 'all other employees,' the stipulation will be read to clearly exclude that classification." *Bell Convalescent Home*, 337 NLRB 191 citing *National Public Radio*, 328 NLRB 75 (1999).

Here, the Stipulated Election Agreement is ambiguous. First, the parties neither expressly included nor excluded the job classifications of Family Intervention Specialist or Safety Monitor. However, the parties did include language excluding "all other employees." In *Los Angeles Water and Power Employees Assn.*, 340 NLRB 1232, 1235 (2003), the Board found a similar stipulation to be ambiguous because the intent of the parties still was not clear. Here, the Petitioner clearly intended to include all employees at the Employer's 301 East Chelten Avenue facility, while the Employer intended something different. The Petitioner relied to its detriment on the Employer's listing of job positions on its website. In negotiating the Stipulated

Election Agreement, the Petitioner understood the Employer to be including nine additional employees to the petitioned-for 25, thus resulting in 34. The confusion resulted when the Employer failed to include employees who clearly work at 301 East Chelten Avenue.

Notably, in negotiating the Stipulated Election Agreement, it was the Employer, and not the Petitioner, that suggested the inclusion of additional positions, but never raised sought to change the reference to 301 East Chelten Avenue. Additionally, the Employer included Receptionists and Functional Family Therapists, job titles not specifically included or excluded in the stipulated election agreement, on the *Excelsior* list. At the hearing, the Employer appeared to assert that the Receptionist is considered a clerical employee and the Functional Family Therapists are simply "therapists." The Petitioner takes a similar position with respect to the Family Intervention Specialists in that they are case managers, and the Employer's own job descriptions describes them as such. (Employer Exhibit 11). There was even such confusion with the actual name of positions that the Notice of Hearing referred to the Safety Monitor as the Safety Coordinator.

The Petitioner was clearly attempting to petition for an election in a wall-to-wall unit at a single location, as there is a presumption that a single location unit is appropriate. *Hegins Corp*., 255 NLRB 1236 (1981); *Penn Color, Inc.,* 249 NLRB 1117, 1119 (1980); *Marks Oxygen Co.,* 147 NLRB 228, 230 (1964); *Huckleberry Youth Programs*, 326 NLRB 1272 (1998). As the Employer clearly was seeking a different unit, the parties did not have a meeting of the mind and the resultant Stipulated Election Agreement is ambiguous. The unwanted result of the Employer's argument and the Hearing Officer's Report is that, in an age of glossy job titles, an Employer will always have an ability to manipulate the establishment and creation of a bargaining unit except in the very limited circumstance of a *Norris-Thermador* election. Safety

Monitor Troy Jones represents the most glaring injustice in this matter. As the Hearing Officer found, he clearly belongs in this bargaining unit, and he would be the only non-supervisory employee not included. While the record reflects that the Employer did not even have an accurate job title for him, the Hearing Officer's Report seems to instruct that the Petitioner was supposed to know it. This result will dissuade any Union from ever entering into a Stipulated Election Agreement where it has any question about the actual titles of positions.

IV. CONCLUSION

Based on the foregoing, the Hearing Officer's Report and Recommendations were not founded in applicable law, and the Petitioner demonstrated that the Stipulated Election Agreement was ambiguous. Accordingly, the Petitioner respectfully requests that the ballots of Brooks, Harmon, Strickland, Toney and Jones be opened and counted.

Respectfully submitted,

Dated: January 17, 2013

/s/

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CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 17th day of January 2013, a true and correct copy of the foregoing REQUEST FOR REVIEW OF DISTRICT 1199C, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, AFSCME, AFL-CIO, was served on the following by the method designated:

Dorothy L. Moore-Duncan, Regional Director (*Via E-File and U.S. Mail*)
National Labor Relations Board
Region 4
615 Chestnut Street, 7th Floor
Philadelphia, PA 19106

James Sullivan, Esq. (*Via U.S. Mail*)
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Two Liberty Place
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Philadelphia, PA 19102-2555

Dated: January 17, 2013

/s/
LANCE GEREN