

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 24**

ST. LUKE'S MEMORIAL HOSPITAL, INC.
D/B/A HOSPITAL SAN LUCAS PONCE

Employer

and

Case 24-RC-099415

UNIDAD LABORAL DE ENFERMERAS(OS) Y
EMPLEADOS DE LA SALUD

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on March 13, 2013, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

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, the undersigned makes the following findings and conclusions¹ :

¹ The undersigned finds:

- (a) The hearing officer's rulings made at the hearing are free from error and are hereby affirmed. More specifically, the hearing officer rejected the Employer's request to present evidence, but received an offer of proof, regarding the following issues:
 - i) Whether the instant petition should be consolidated with the Petition in Case 24-RC-099271, involving the same Employer and Union but for a separate disputed unit of registered nurses. A request to file a Special Appeal regarding this ruling was denied;
 - ii) Whether this Petition should be blocked similar to the Petition in 24-RD-520 which has been blocked due to various meritorious unfair labor practice charges affecting the separate bargaining unit in that case. In this regard, it raises that some of the employees in the bargaining unit involved in the blocked Petition in Case 24-RD-520 were transferred to, and are now working in, the stipulated bargaining unit herein. However, as noted in the Response denying the Employer's Request for Special Appeal on this issue, the Petitioner has filed a Request to Proceed to an election in the instant matter notwithstanding any pending unfair labor practice charges.

I. THE APPROPRIATE UNIT

In agreement with the parties, I find that the bargaining unit, as petitioned for and as set forth herein, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full time and regular part time licensed practical nurses, x-ray technicians, operating room technicians, medical emergency technicians, physical therapy technicians, respiratory technicians and medical escorts employed by the Employer at its hospital facility located at Tito Castro Avenue, 917, Ponce, PR, and excluding all other employees,

Excluded: All other employees, office clerical employees, confidential employees, guards, supervisors, professional employees as defined in the Act, and those employees located in the cardiovascular department who are represented by the Union in a separate bargaining unit.

There are approximately 220 employees in the unit found appropriate herein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees 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.² Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility

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- (b) 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. The Employer operates an acute health care institution offering tertiary services, located in Ponce, Puerto Rico. During the last twelve (12) months, a representative period, it purchased supplies and materials valued in excess of \$50,000 directly from places located outside the Commonwealth of Puerto Rico, and caused them to be transported to its place of business in Ponce, Puerto Rico. During the same period of time, it had gross revenues in excess of \$250,000.
 - c. The labor organization involved claims to represent certain employees of the Employer.
 - d. 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.

²As provided for in Section 103.20 of the Board's Rules and Regulations, the Employer is required to post copies of the Board's Official Notice of Election in conspicuous places at least 3 full working days (excluding the day of the election, Saturdays, Sundays, and holidays) prior to the date of the election; said notices are to remain posted until the end of the election. Failure to post the election notices as required by the Board's Rules and Regulations shall be grounds for setting aside the election whenever proper and timely objections are filed. An employer shall be conclusively deemed to have received copies of the election notices unless it notifies the Regional Office at least 5 working days prior to the commencement of the election that it has not received copies of said notices.

period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Unidad Laboral de Enfermeras(os) de la Salud (ULESS).

LIST OF VOTERS

In order to insure 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); North Macon Health Care Facility, 315 NLRB 359 (1994); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters in the unit found appropriate herein, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, La Torre de Plaza Suite 1002, 525 F.D. Roosevelt Ave., San Juan, Puerto Rico 00918-1002, on **April 18, 2013**. The list may be submitted by facsimile transmission or electronically as notified at the time of the filing of the petition. No extension of time to file the list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 - 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **April 25, 2013**, at 5:00 p.m. (ET), unless filed electronically. Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically. If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within

which to file.³ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on File Case Documents, enter NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was offline or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated: **April 11, 2013.**⁴



/s/

Marta M. Figueroa
Regional Director, Region 24
National Labor Relations Board
La Torre de Plaza, Suite 1002
525 F.D. Roosevelt Avenue
San Juan, Puerto Rico 00918-1002

³ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

⁴ In accordance with section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlr.gov.