

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

**THE PERMANENTE MEDICAL
GROUP, INC.**

Employer

and

**SERVICE EMPLOYEES INTERNATIONAL UNION,
UNITED HEALTHCARE
WORKERS – WEST (SEIU-UHW)**

Case 32-RC-101129

Petitioner

and

**NATIONAL UNION OF
HEALTHCARE WORKERS –
CALIFORNIA NURSES ASSOCIATION,
AFL-CIO (NUHW-CNA, AFL-CIO)¹**

Intervenor/Incumbent Union

**REGIONAL DIRECTOR’S DECISION
AND DIRECTION OF ELECTION**

The Permanente Medical Group, Inc., herein called the Employer, is a California professional corporation of physicians that is engaged in the operation of medical offices in Northern California. On March 26, 2013,² Service Employees International Union, United Healthcare Workers – West, herein called the Petitioner, filed a petition in Case 32-RC-101129 with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act, herein called the Act, seeking to represent a unit of approximately 370 optical workers, herein called the Unit, employed by the Employer. The employees in the Unit are currently represented

¹ The names of all parties appear as corrected on Board Exhibit 2 from the April 9, 2013 hearing.

² All dates hereinafter refer to the year 2013 unless otherwise indicated.

by National Union of Healthcare Workers – California Nurses Association, AFL-CIO, herein called the Intervenor, which was certified as the exclusive collective-bargaining representative of the Unit employees on November 18, 2010, pursuant to a Board-conducted election in Case 32-RC-005766.

A hearing officer of the Board held a hearing in this matter on April 9. The Petitioner, the Employer and the Intervenor appeared at the hearing and stipulated to all potentially litigable issues. The Employer and the Intervenor each waived its respective opportunity to file a post-hearing brief. The Petitioner filed a post-hearing brief which I have duly considered.³

CONCLUSIONS AND FINDINGS

Based upon the record in this matter, I conclude and find as follows:

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The parties stipulated, and I find, that Petitioner and the Intervenor are labor organizations within the meaning of Section 2(5) of the Act.

³ During a closing statement at the hearing, Petitioner asserted for the first time that the Intervenor has disclaimed interest in representing the Unit employees. Continuing this argument in its post-hearing brief, Petitioner requests that I not accord the Intervenor a place on the ballot, relying on *Riggs Optical Co.*, 77 NLRB 265 (1948), and asserting that, in addition to disclaiming interest, Intervenor’s conduct leading up to and at the hearing was “akin to not showing up at all to the hearing.” Petitioner failed to raise this issue in a timely manner during the hearing and presented no evidence to support its assertions. Moreover, unlike the situation in *Riggs*, the Intervenor continues to actively represent and seek to represent the Unit employees and, to this end, fully participated in the hearing. Therefore, I am denying Petitioner’s post-hearing request that the Intervenor’s name be removed from the ballot.

4. The parties stipulated, and I find, that 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, and there is no bar to an election in this matter.

5. The parties stipulated, and I find, that 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:

All full-time and regular part-time optical workers, including benchman journeypersons, contact lens assistants, contact lens fitters, contact lens trainees, inspectors, lead optical dispensers, optical dispensers, optical dispenser apprentices, optical equipment maintenance technicians, optical laboratory apprentices, optical services assistants, prescription stock clerk journeypersons, senior prescription stock clerks, special optical workers, surface grinder journeypersons, working foremen optical lab, and utility optical workers employed by the Employer throughout Northern California; excluding all other employees, branch managers, office clericals, guards, and supervisors as defined by the Act.

There are approximately 370 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 election will be conducted by mail ballot. The employees in the Unit will vote on whether or not they wish to be represented for purposes of collective-bargaining by Service Employees International Union, United Healthcare Workers – West (SEIU-UHW), National Union of Healthcare Workers – California Nurses Association, AFL-CIO (NUHW-CNA, AFL-CIO), or Neither. The dates, times, and place of the mail ballot

election will be specified in the Notice of Election that the Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately prior to 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.

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 Company*, 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 the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This 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. This list may initially be used by the Region to assist in determining an adequate showing of interest. The Region shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5224, on or before **April 22, 2013**. 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,⁴ by mail, by hand or courier delivery, or by facsimile transmission at (510) 637-3315. The burden of establishing the timely filing and receipt of this list will continue to be placed on the sending party.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the

⁴ To file the eligibility list electronically, go to www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

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 estops 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, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **April 29, 2013**. The request may be filed electronically through the Agency's web site, www.nlr.gov,⁵ but may not be filed by facsimile.

Dated at Oakland, California, this 15th day of April, 2013.

/s/ William A. Baudler
William A. Baudler
Regional Director
National Labor Relations Board, Region 32
1301 Clay Street, Suite 300N
Oakland, California 94612

⁵ 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.