

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32<sup>1</sup>**

**CORIZON HEALTH, INC.**

**Employer**

**and**

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

**Case 32-RC-111382**

**Petitioner**

**and**

**SERVICE EMPLOYEES INTERNATIONAL UNION,  
UNITED HEALTHCARE WORKERS—WEST (SEIU-UHW)<sup>2</sup>**

**Intervenor**

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

Corizon Health, Inc., herein called the Employer, a Delaware corporation, provides correctional medical services at Alameda County's Glenn Dyer Detention Facility, located in Oakland, California, and at the County's Santa Rita Jail, which is in Dublin, California. The National Union of Healthcare Workers – California Nurses Association, AFL-CIO (NUHW-CNA), herein called the Petitioner, filed a petition on August 15, 2013,<sup>3</sup> under Section 9(c) of the National Labor Relations Act, herein called the Act, seeking to represent a unit of approximately 140 professional and non-professional healthcare workers, herein called the Combined Unit,

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<sup>1</sup> Herein called the Board.

<sup>2</sup> The names of all parties appear as stipulated at the hearing.

<sup>3</sup> All dates hereinafter occurred in 2013 unless otherwise indicated.

employed by the Employer in Alameda County. The Employees in the Combined Unit are currently represented by Service Employees International Union, United Healthcare Workers – West (SEIU-UHW), herein called the Intervenor.

A hearing officer of the Board held a hearing in this matter on August 29. No issues were litigated at the hearing and no testimony was taken. However, as agreed at the hearing, the parties filed post-hearing briefs with me on a single legal issue involving the manner in which the election will be conducted. Therefore, the sole issue before me is whether, as contended by Petitioner, Section 9(b)(1) of the Act requires that a *Sonotone* self-determination election be conducted in this case, or whether, as contended by the Employer and the Intervenor, a *Sonotone* self-determination election is not required and, instead, I should direct a regular election in a single combined unit containing both professionals and non-professionals.

As discussed more fully below, and as stipulated by the parties, should I find that a *Sonotone* self-determination election is required, there will be two voting groups in the election: the first group, herein Voting Group A, consisting of the Employer’s professional employees, including registered nurses, case workers, physician assistants, nurse practitioners, licensed clinical social workers, marriage/family/child counselors, and occupational therapists; and the second group, herein Voting Group B, consisting of the Employer’s non-professional employees, including licensed psychiatric technicians, health educators,<sup>4</sup> licensed vocational nurses, health information clerks, dental assistants, perinatal coordinators, lab technicians, medical assistants and clericals.

In the alternative, should I find that a *Sonotone* self-determination election is not warranted, employees in the above-referenced job classifications will be combined in a single bargaining unit to vote in the election on the question concerning representation.

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<sup>4</sup> There are no health educators currently employed by the Employer.

The parties stipulated at the hearing that the employees employed in the classifications listed above under the first voting group are professional employees as defined in Section 2(12) of the Act, in that they are engaged in work predominantly intellectual and varied in character involving the consistent exercise of discretion and judgment and requiring knowledge of an advanced type.

Having duly considered the parties' arguments on the legal issue in this matter, for the reasons set forth below, I find, contrary to Intervenor and the Employer, that a *Sonotone* self-determination election is required in this case.

### **I. Background**

I take administrative notice of the fact that, on September 6, 1990, the Region conducted the first *Sonotone* self-determination election at the correctional facilities at issue in this matter, in Case 32-RC-003290,<sup>5</sup> which resulted in the certification of Service Employees International Union, Local 250 and 616 Joint Council, the predecessor to the Intervenor, in a combined unit of professional and non-professional employees. On November 30, 2010, in Case 32-RC-005675, the Region held a second *Sonotone* self-determination election at the same Alameda County correctional facilities in response to a petition filed by Petitioner in Case 32-RC-5675. In that case, the professional voting group once again voted to be included in a unit with non-professionals and a majority of the combined unit voted to be represented by the Intervenor. On May 11, 2011, the Board certified the Intervenor as the collective-bargaining representative of a combined unit of the Employer's professional and non-professional employees. At the hearing in this matter, the parties stipulated that the currently recognized bargaining unit, which

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<sup>5</sup> At the time, the Combined Unit employees were employed by a predecessor Employer, Prison Health Services, Inc.

combines Voting Groups A and B as set forth above, is an appropriate unit within the meaning of Section 9(b) of the Act.

## II. Analysis

Pursuant to Section 9(b)(1) of the Act, the Board shall not decide that any unit is appropriate for the purposes of collective bargaining if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such a unit. *See* 29 U.S.C. §159(b)(1). In *Sonotone Corp.*, 90 NLRB 1236 (1950), the Board adopted the two-step voting procedure for professional employees in elections involving both professional and non-professional employees. In such a self-determination election, the first question on the professional employees' ballot asks the professional employees if they wish to be included with nonprofessional employees in a unit for the purposes of collective bargaining. Only if a majority of the professional employees choose to be included with nonprofessional employees in a combined unit are the professional employees' ballots mingled with the nonprofessional employees' ballots to determine whether or not the employees in the combined unit wish to be represented for purposes of collective bargaining.<sup>6</sup>

In *Westinghouse Electric Corp.*, 116 NLRB 1545, 1547 (1956) (*Westinghouse I*), the Board rejected the contention that *Sonotone* balloting was unnecessary where, six years prior, a group of professional employees already expressed their desire, under Section 9(b)(1) of the Act, in a *Sonotone* self-determination election. That holding was later reaffirmed in *Westinghouse Electric Corp.*, 129 NLRB 846, 848 (1960) (*Westinghouse II*), where the Board again determined that Section 9(b)(1) of the Act precludes the Board from joining professional and nonprofessional employees in a single unit without first giving the professionals an opportunity

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<sup>6</sup> Since the Board's decision in *Sonotone Corp.*, this two-step process to determine if professional employees want to be included in the same unit as nonprofessional employees is known as a *Sonotone* election.

to vote on such inclusion. Thus, as the Board noted, the requirement that professional employees vote on whether to be included in a unit with nonprofessional employees applies “whether or not the professional employees have, on a prior occasion, been afforded such opportunity.” *Id.*

More recently, in *American Medical Response, Inc.*, 344 NLRB 1406, 1408-09 (2005), the Board overruled the administrative law judge’s finding that a *Sonotone* election was unnecessary where the professional employees in question had voted to be included in a combined professional/nonprofessional unit in a previous election. In setting aside the election and ordering a *Sonotone* election, the Board found that under Section 9(b)(1) of the Act and the principles of *Westinghouse I* and *Westinghouse II*, professional employees must be given the opportunity to decide whether they want to join a unit of nonprofessionals even if the professional employees were previously given the opportunity to vote on inclusion in a prior election. *See id.*

On brief, the Employer argues that the Region’s reliance on *American Medical Response* is misplaced since its holding should be limited to its unique facts – the prior election was conducted according to state procedures, not those of the NLRB, and did not comply with the mandatory *Sonotone* procedures, and it did not involve both an incumbent and a challenging union. However, I find these arguments unconvincing, given in particular that the Board’s decisions in *Westinghouse I* and *II* also involved situations where, despite prior valid *Sonotone* elections, the Board ordered new *Sonotone* elections. I also find unavailing the Employer’s argument that Board precedent like *American Medical Response* should be overturned since it undermines the Act’s commitment to “sound and stable industrial peace,” given that I am bound to apply the majority holdings of established Board precedent that has not been reversed by the

Supreme Court. *See Waco, Inc.*, 273 NLRB 746, 749 fn.14 (1984) (citing *Iowa Beef Packers*, 144 NLRB 615, 616 (1963)).

Based on the facts as stipulated at the hearing and the authority cited above, I find that a *Sonotone* self-determination election is required in this matter. In that regard, the historical bargaining unit that is currently represented by Intervenor, and which Petitioner here seeks to represent, is a combined unit of professional and nonprofessional employees. Thus, as is made clear by the legal authority discussed above, the professional employees are entitled to vote in this election as to whether they again choose to be included in a unit with nonprofessional employees. Accordingly, a self-determination, or *Sonotone*, election is required in this case. *See* 29 U.S.C. §159(b)(1); *see also Westinghouse I* and *Westinghouse II*; *American Medical Response, Inc.*, 344 NLRB at 1408-09.

### **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.
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:

**VOTING GROUP/UNIT A (PROFESSIONALS):**

All full-time and regular part-time registered nurses, case workers, physician assistants, nurse practitioners, licensed clinical social workers, marriage/family/child counselors, and occupational therapists employed by the Employer and performing work at the Glenn Dyer Detention Facility, 550 6<sup>TH</sup> Street, Oakland, California 94607, and the Santa Rita Jail, 5325 Broder Blvd, Dublin, California 94568, and at any other jail or other detention facility in Alameda County where the Employer is providing services under the same Sheriff's Office contract; excluding all other job titles, specifically managers, confidential employees, and supervisors as defined in the Act.

**VOTING GROUP/UNIT B (NON-PROFESSIONALS):**

All full-time and regular part-time licensed psychiatric technicians, health educators,<sup>7</sup> licensed vocational nurses, health information clerks, dental assistants, perinatal coordinators, lab technicians, medical assistants and clericals employed by the Employer and performing work at the Glenn Dyer Detention Facility, 550 6<sup>TH</sup> Street, Oakland, California 94607, and the Santa Rita Jail, 5325 Broder Blvd, Dublin, California 94568, and at any other jail or other detention facility in Alameda County where the Employer is providing services under the same Sheriff's Office contract; excluding all other job titles, specifically managers, confidential employees, and supervisors as defined in the Act.

There are approximately 140 employees in the Unit.

**DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret mail ballot election among the employees in the two Voting Groups of the unit found appropriate above.

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<sup>7</sup> As there are currently no health educators employed by the Employer, but the job classification remains in the recognized bargaining unit, the parties were unable to determine whether the job classification should be placed in the professional or nonprofessional voting group. Health educators apparently voted in the professional voting group in the 1990 election but in the nonprofessional group in the 2011 election. If, pursuant to the *Sonotone* election I am hereby directing, a separate professional unit is established, and if, in the future, the Employer does employ health educators, the Region will entertain a UC petition to clarify whether or not the health educators are professional employees if the parties are not able to reach agreement on the issue.

The following two questions shall appear on the ballot for Voting Group A (Professionals):

1. Do you wish to be included with nonprofessional employees in a unit for the purposes of collective bargaining?

To which the choice of answers will be “Yes” or “No.”

2. By which union, if any, do you wish to be represented for purposes of collective bargaining?

To which the choice of answers will be the names of Petitioner and Intervenor<sup>8</sup> and “Neither.” The order of appearance of the choices on the ballot will be based on agreement of the parties, if there is agreement; on chance, if there is not.

The single question on the ballot for Voting Group B shall be the same as Question 2 for Voting Group A.

If a majority of the professional employees voting in Voting Group A vote “Yes” to the first question, indicating their desire to be included in a unit with non-professional employees, they will be so included, and their votes on the second question will be counted together with the votes of the non-professional employees in Voting Group B to decide the question concerning representation for the overall unit consisting of the employees in Voting Groups A and B. If on the other hand, a majority of the professional employees voting in Voting Group A do not vote “Yes” to the question, their ballots will be counted separately to decide the question concerning representation in a separate Unit A.

If a majority of the professional employees in Voting Group A elect to be included with non-professionals in a unit for collective bargaining, the Combined Unit for the purpose of certification of representative or of results of the election shall be:

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<sup>8</sup> Both Petitioner and Intervenor have requested the use of shortened names on the ballots which will be set forth in parentheses after each union’s correct legal name.

All full-time and regular part-time registered nurses, case workers, physician assistants, nurse practitioners, licensed clinical social workers, marriage/family/child counselors, occupational therapists, licensed psychiatric technicians, health educators, licensed vocational nurses, health information clerks, dental assistants, perinatal coordinators, lab technicians, medical assistants, and clericals employed by the Employer and performing work at the Glenn Dryer Detention Facility, 550 6<sup>th</sup> Street, Oakland, California 94607, and the Santa Rita Jail, 5325 Broder Blvd, Dublin, California 94568, and at any other jail or detention facility in Alameda County where the Employer is providing service under the same Sheriff's Office contract; excluding all other job titles, specifically managers, confidential employees, and supervisors as defined in the Act.

The dates, times, and place of the 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 Combined 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.

**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 seven 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. **The names of the employees on the list should be divided into Voting Groups A and B. They also should also be divided into those employees who are employed at the Employer's Glenn Dyer Detention Facility and those who are employed at the Santa Rita jail.**

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 **September 17, 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](http://www.nlr.gov),<sup>9</sup> 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 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 non-posting 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 **September 24, 2013**. The

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<sup>9</sup> To file the eligibility list electronically, go to [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

request may be filed electronically through the Agency's web site, [www.nlr.gov](http://www.nlr.gov),<sup>10</sup> but may not be filed by facsimile.

Dated at Oakland, California, this 10th day of September, 2013.

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

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<sup>10</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.