

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

CORIZON HEALTH, INC.

Employer,

and

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

Petitioner,

and

SEIU UNITED HEALTHCARE WORKERS –
WEST (SEIU-UHW)

Intervenor.

Case No. 32-RC-111382

REQUEST FOR REVIEW OF DECISION AND DIRECTION OF ELECTION

Pursuant to Section 102.67 of the Board’s Rules and Regulations, Corizon Health, Inc. (the “Employer”) herein requests review of the Regional Director’s Decision and Direction of Election (the “DDE”) in the above-captioned matter. There are compelling grounds for granting the present Request for Review, including, but not limited to (1) a substantial question of law and policy is raised by (a) an absence of on-point, controlling Board precedent, and/or (b) to the extent there is applicable Board precedent, the DDE’s departure therefrom, (2) the DDE has resulted in prejudicial error, and (3) to the extent the DDE conforms with Board precedent, the existence of compelling reasons for overruling, or at least reconsidering, such.

On August 29, 2013, a Hearing Officer for the Regional Director of Region 32 held a Notice of Representation Hearing (the “Hearing”) at the Regional Office, 1301 Clay Street, Suite

300N, Oakland California. The National Union Of Healthcare Workers – California Nurses Association, AFL-CIO (“Petitioner”), SEIU United Healthcare Workers – WEST (“Intervenor”), and Employer submitted separate post-hearing briefs on September 5, 2013, and the Regional Director issued the DDE on September 10, 2013.¹ (Attachment A).

The Employer remains neutral in these proceedings and is not concerned with the actual outcome of the election. However, the Employer seeks to ensure that its employees’ right to a free and fair election is protected. Accordingly, the Employer submits this Request for Review of the DDE because, among other things, it disregards the existing, longstanding combined unit of professional and non-professional employees and imposes an unjustified self-determination election. Indeed, the Petitioner’s own Representation Petition, which initiated the current election, recognizes a single unit, one which includes professional as well as non-professional employees.² (Attachment B).

The DDE designates two voting groups, with professional employees in Voting Group A, and non-professional employees in Voting Group B. However, the professional employees already reaffirmed their choice of the current combined unit in 2010, in a self-determination election validated by the Board.³ (Attachment C). Indeed, in 2011, the Board issued a Corrected Decision and Certification of Representative “to combine both voting groups [of professional and non-professionals] in the certified unit” because “[a] majority of the professional employees in Voting Group B elected to be included in the same bargaining unit as the non-professional employees in Voting Group A.” (Attachment D).

¹ On September 10, 2013, the Regional Director also issued an erratum regarding the use of a secret ballot election instead of a secret mail ballot election, but the erratum is not at issue here.

² Additionally, as noted in its Post-Hearing Brief, the Petitioner “offered to stipulate to an election either with or without a *Sonotone* Ballot” at the Hearing. (Underlining added).

³ The DDE notes that the first *Sonotone* self-determination election here was conducted on September 6, 1990 which resulted in a combined unit.

Undermining the certified single unit now by suggesting it be broken apart in yet another self-determination election would flout the professional employees' repeatedly expressed preference for a combined unit, and could substantially interfere with ongoing negotiations for a renewal collective bargaining agreement.

The DDE erroneously reasons that *American Medical Response, Inc.* 344 N.L.R.B. 1406 (2005) (*AMR*), *Westinghouse Electric Corp.*, 116 N.L.R.B. 1545 (1956) (*Westinghouse I*), and *Westinghouse Electric Corp.*, 129 N.L.R.B. 846 (1960) (*Westinghouse II*) mandate a self-determination election here. First of all, these cases are distinguishable because they did not involve the potential for serious disruption present in a situation (like here) where a combined unit was engaged in ongoing renewal collective bargaining agreement negotiations with the employer. Second, these cases all rely on the same superfluous interpretation of Section 9(b)(1) of the Act, in so far as they allege that it always requires self-determination elections when a combined unit is involved. And third, their underlying interpretation of Section 9(b)(1) conflicts with other provisions and the purposes of the Act; and so, to the extent they remain good law, they should be overruled. *See American Baptist Home of the West d/b/a Piedmont Gardens*, 359 N.L.R.B. No. 46 (2012) (reasoning that a “departure from longstanding precedent” was justified because its rationale was “flawed.”).

AMR and *Westinghouse II* both expressly—and singularly—rely on *Westinghouse I*'s reasoning that “Section 9(b)(1) of the Act precludes the Board from joining in a single bargaining unit professional and nonprofessional employees without first affording to the professional employees an opportunity of separately expressing their desires respecting such inclusion.” 116 N.L.R.B. at 1547 (underlining added). However, Section 9(b)(1) does not include a condition precedent that nonprofessional employees must “first” or always be afforded

a right to vote for inclusion in a combined unit, or that it must do so when the unit has already been (and currently is) joined. Rather, Section 9(b)(1) plainly states:

The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: Provided, That the Board shall not (1) decide that any unit is appropriate for such purposes 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 unit.

29 U.S.C. §159(b)(1).

The Board recognizes that “the starting point for interpreting a statute is the language of the statute itself.” *Firstline Transportation Security, Inc.*, 347 N.L.R.B. 447, 449 (2006) (quoting *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980)). And as a fundamental corollary, “the words of a statute must be read in their context and with a view to their place in the overall statutory scheme” so as to produce “a harmonious whole.” *Brown University*, 342 N.L.R.B. 483, 488, fn. 23 (2004)(quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132-133 (2000)). Here, Section 9(b)(1) plainly does not state that an election is required where a unit has been (and is already) validly combined as a result of a recent “vote for inclusion,” and so the Board must decline to do so. Indeed, the status quo here is “inclusion.” Furthermore, reading in a self-determination election requirement undermines the Act’s stated commitment to “sound and stable industrial peace” by potentially disrupting a historically combined unit, especially one in the midst of ongoing renewal collective bargaining agreement negotiations; and so, again, the Board must decline to do so. 29 U.S.C. 171.

In addition to the fact that the DDE’s reliance on *Westinghouse I* and its progeny’s

interpretation of Section 9(b)(1) is erroneous, *AMR* itself, in so far as could purport to stand for some independent policy, is inapplicable here. In *AMR*, the Board invalidated an RC-Certification election because professional employees had not been provided a *Sonotone* ballot. Going beyond the facts before it, the *AMR* Board implied that Section 9(b)(1) always requires self-determination elections when professional employees are involved. Even at face value, this sweeping dicta is distinguishable.

First, the prior election in *AMR* had been conducted according to state procedures, not those of the NLRB (here, the previous 2010 election was run and validated by the NLRB). Second, the prior election in *AMR* did not involve both the incumbent and challenging union (here, the prior 2010 election involved both SEIU-UHW and NUHW). And third, the prior election in *AMR* had not complied with the mandatory *Sonotone* procedures (here, it did). For these three reasons alone, or together, *AMR* is not controlling.

Nevertheless, beyond limiting *AMR* to its unique facts, to the extent that *AMR* or *Westinghouse I* and its progeny remain good law for the proposition that a self-determination election is always and repeatedly required, they should be overruled because they undermine the Act's stated commitment to "sound and stable industrial peace" by potentially disrupting an established unit and ignoring bargaining history without any showing of inadequacy or illegitimacy.⁴ 29 U.S.C. 171.

Indeed, in the parallel context of decertification petitions, the Board recognizes that "it is well established that decertification petitions are inappropriate where, as here, the unit sought to be decertified is not coextensive with the certified or recognized unit." *Group Health Assn.*, 317

⁴ The Employer is unaware of any factual determinations (let alone inquiries) made by Board or Region 32 that professional employees now seek to be separately represented or even vote on such a departure from the established and certified combined unit.

N.L.R.B. 238, n.3 (1995)(citing *Green-Wood Cemetery*, 280 N.L.R.B. 1359 (1986)).⁵ The one “unique” exception is when professional employees have “never had an opportunity to vote in a self-determination election.” *Utah Power & Light*, 258 N.L.R.B. 1059, 1061 (1981))(underlining added).

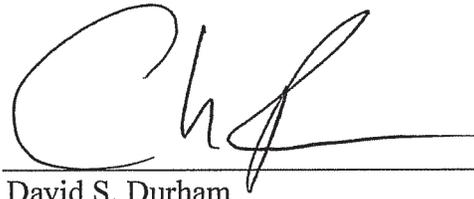
Here, the professional employees had the opportunity to vote in a valid self-determination election just a few years ago. And they chose a combined unit, yet again. The Board has no justification for second-guessing that decision in this RC-certification context, but not second-guessing that decision in the decertification context. That distinction is untenable. And, in any case, the present election is essentially one for decertification in a longstanding combined unit, so the Board’s commitment to “maintaining established bargaining relationships,” as protected in the decertification context, should also apply here, especially where there is no showing that a self-determination election is necessary or desired by *any* (let alone a majority) of the professional employees. Furthermore, the plain text of Section 9(b)(1), contrary to *Westinghouse I* and its progeny, does not require a self-determination election where professional employees have already affirmed (and re-affirmed) their desire to be in a combined unit and are so situated at the time of the election.

For all of the above reasons, the Employer respectfully requests that the Board grant its Request for Review of the DDE.

⁵ In *Green-Wood Cemetery*, the four-member majority reasoned that “[t]o return, as our dissenting colleague would do, to the time of the creation of the office clerical unit would ignore a 6-year history of bargaining and bargaining agreements containing a merged recognition clause and other manifestations of an overall unit. This would disturb the reasonable balance the Board seeks to achieve between the aims of freedom of employee’s choice and fostering established bargaining relationships.” 128 N.L.R.B. at 1360 [internal citation omitted]. Here, like in *Green-Wood Cemetery*, the Parties have a long history of bargaining and their past and present collective bargaining agreements contain manifestations of an overall unit, including a recognition clause for the combined unit.

Dated: September 24, 2013

By:

A handwritten signature in black ink, appearing to read 'CD', is written over a horizontal line.

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ATTORNEYS FOR EMPLOYER
CORIZON HEALTH, INC.

WEST\242273393

ATTACHMENT A

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32¹**

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)²**

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, 2013,³ 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,

¹ Herein called the Board.

² The names of all parties appear as stipulated at the hearing.

³ 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,⁴ 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.

⁴ 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-003290,⁵ 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

⁵ 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.⁶

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

⁶ 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 6TH 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 Sherriff'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,⁷ 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 6TH 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.

⁷ 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 Intervenor⁸ 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:

⁸ 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 6th 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,⁹ 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

⁹ 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.

request may be filed electronically through the Agency's web site, www.nlr.gov,¹⁰ 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

¹⁰ 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.

ATTACHMENT B



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 32
1301 Clay St Ste 300N
Oakland, CA 94612-5224

FAX NO.: (510)637-3315

FAX TRANSMISSION COVER SHEET

DATE: August 16, 2013

TO: KIM TAVAGLIONE Fax: (510)834-2019
NATIONAL UNION OF HEALTHCARE
WORKERS - CALIFORNIA NURSES
ASSOCIATION, AFL-CIO

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SERVICES (Attn: Andrea Williams)

FROM: PALOMA LOYA, Field Examiner
Telephone: (510)637-3292

NUMBER OF PAGES INCLUDING THIS PAGE: 5

Original will NOT follow Original WILL follow

RE: Corizon Health/Prison Health Services
Case 32-RC-111382

Attached is petition filed in this office and a Notice of Representation Hearing. These were also served via U.S. Mail with the docket letter and other documents today.

CONFIDENTIALITY NOTICE: OFFICIAL GOVERNMENT BUSINESS

This communication is intended for the sole use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this communication is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication may be strictly prohibited. If you have received this communication in error, please notify me immediately by telephone, and return communication to me at the address above via united states postal service. Thank you.

INTERNET FORM NLRB-502 (2-0)

UNITED STATES GOVERNMENT NATIONAL LABOR RELATIONS BOARD PETITION

FORM EXEMPT UNDER 45 U.S.C.

DO NOT WRITE IN THIS SPACE

Case No. 32-RC-111382 Date Filed 08/15/2013

INSTRUCTIONS: Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

- 1. PURPOSE OF THIS PETITION (if box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)
[] RC-CERTIFICATION OF REPRESENTATIVE
[] RM-REPRESENTATION (EMPLOYER PETITION)
[] RO-DECERTIFICATION (REMOVAL OF REPRESENTATIVE)
[] UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES)
[] UC-UNIT CLARIFICATION
[] AC-AMENDMENT OF CERTIFICATION

2. Name of Employer: Corizon Health/Prison Health Services; Employer Representative to Contact: Andrea Williams; Tel. No.: 925-551-8707

3. Address(es) of Establishment(s) involved: See Attachment A; Fax No.: 825-803-7207

4a. Type of Establishment: Prison Health Services; 4b. Identify principal product or service: Health Care; Cell No.; e-Mail

5. Unit involved: Included: All classifications included in existing unit; Excluded: All other job titles, specifically, supervisors, managers, confidential employees; 6a. Number of Employees in Unit: Present: Approx. 140; Proposed (By UC/AC)

7a. Request for recognition as Bargaining Representative was made on (Date) and Employer declined; 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Name of Recognized or Certified Bargaining Agent: SEIU United Healthcare Workers West (SEIU-UHW); Address: 560 Thomas L. Berkeley Way, Oakland CA 94612; Tel. No.: 510-251-1250; Date of Recognition or Certification: unknown; Fax No.: 510-763-1280; e-Mail

9. Expiration Date of Current Contract: 4/26/2013; 10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop: 2013 AUG 15

11a. Is there now a strike or picketing at the Employer's establishment(s) involved? No; 11b. If so, approximately how many employees are participating?

11c. The Employer has been picketed by or on behalf of (Insert Name) organization, at (Insert Address) Since (Month, Day, Year)

Table with 4 columns: Name, Address, Tel. No., Fax No. and 4 rows for other organizations.

13. Full name of party filing petition (If labor organization, give full name, including local name and number): National Union of Healthcare Workers - California Nurses Association, AFL-CIO

14a. Address (street and number, city, state, and ZIP code): 5801 Christie Ave., Suite 525, Emeryville, CA 94608; 14b. Tel. No.: 510-834-2009; 14c. Fax No.: 510-834-2019; 14d. Cell No.; 14e. e-Mail

15. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization): California Nurses Association

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief. Name (Print): Lalika Malkani; Signature: Lalika Malkani; Title (if any): Attorney; Address: 1939 Harrison Street, Suite 307, Oakland CA 94612; Tel. No.: 510-452-6000; Fax No.: 510-452-5004; e-Mail: lmalkani@ef-employmentlaw.com

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1003) PRIVACY ACT STATEMENT Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings of litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Case No. 32-RC-111382

date Filed: 08/15/2013

**Attachment A:
Address of Establishments Involved**

Corizon Health/Prison Health Services

Facilities:

Glenn E. Dyer Detention Facility
550 6th Street
Oakland, CA 94607
(510) 268-7777

Santa Rita Jail
5325 Broder Blvd Dublin, CA 94568
(925) 551-6500

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2013 AUG 15 PM 1:26
OAKLAND, CA

Case No. 32-RC-111382

Date Filed: 08/15/2013

**Attachment B:
Unit Involved (Included)**

Included: All 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 at the Glenn Dyer Detention Facility 550 6th 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, California where the Employer is providing services under the same Sheriff's Office contract.

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OAKLAND, CA.



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



<p>CORIZON HEALTH/PRISON HEALTH SERVICES Employer</p> <p>and</p> <p>NATIONAL UNION OF HEALTHCARE WORKERS - CALIFORNIA NURSES ASSOCIATION, AFL-CIO Petitioner</p> <p>and</p> <p>SEIU UNITED HEALTHCARE WORKERS - WEST Intervenor</p>	<p>Case 32-RC-111382</p>
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NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 9:00 a.m. on Monday, August 26, 2013, and on consecutive days thereafter until concluded, at the National Labor Relations Board offices located at 1301 Clay Street, Suite 300N, Oakland, California, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony. Form NLRB-4669, *Statement of Standard Procedures in Formal Hearings Held Before The National Labor Relations Board Pursuant to Petitions Filed Under Section 9 of The National Labor Relations Act*, is attached.

Dated: August 16, 2013

William A. Baudler
Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224

ATTACHMENT C

Dublin, CA

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

PRISON HEALTH SERVICES, INC.

Employer

and

Case 32-RC-5675

NATIONAL UNION OF HEALTHCARE
WORKERS

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board has considered objections and challenged ballots in a second election held November 30, 2010, and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The revised tally of ballots shows 59 ballots cast for the Petitioner, 62 ballots cast for the Intervenor,¹ with 1 vote cast for neither participating labor organization. There was 1 challenged ballot, an insufficient number to affect the results.²

No exceptions have been filed to the Regional Director's report within the time provided. Accordingly, the Board adopts the Regional Director's findings and recommendations, and finds that a certification of representative should be issued.

¹ SEIU-UHW (Service Employees International Union, United Healthcare Workers-West).

² A majority of the professional employees in Voting Group B elected to be included in the same bargaining unit as the non-professional employees in Voting Group A. Accordingly, the ballots of both voting groups were pooled and tallied.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for SEIU-UHW (Service Employees International Union, United Healthcare Workers – West) and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

VOTING UNIT A: All full-time and regular part-time licensed psychiatric technicians, health educators, licensed vocational nurses, medical records technicians, dental assistants, perinatal coordinators, lab technicians, medical assistants and clerical employees employed by the Employer and performing work at the Glenn Dyer Detention Facility and the Santa Rita jail, or any other detention facility in Alameda County where the Employer is providing services under the same contract; excluding all other employees, confidential employees, guards, and supervisors as defined in the Act.

VOTE UNIT B: (professional employees) All full-time and regular part-time registered nurses, case workers, physician assistants, nurse practitioners, licensed clinical social workers, marriage/family/child counselor, and occupational therapists employed by the Employer and performing work at the Glenn Dyer Detention Facility and the Santa Rita jail, or any other detention facility in Alameda County where the Employer is providing services under the same contract; excluding all other employees, confidential employees, guards, and supervisors as defined in the Act.

Dated, Washington, D.C., April 19, 2011.

By direction of the Board:

Henry S. Breitenreicher

Associate Executive Secretary

ATTACHMENT D

Dublin, CA

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

PRISON HEALTH SERVICES, INC.

Employer

and

Case 32-RC-5675

NATIONAL UNION OF HEALTHCARE
WORKERS

Petitioner

**CORRECTED DECISION AND
CERTIFICATION OF REPRESENTATIVE**

The National Labor Relations Board has considered objections and challenged ballots in a second election held November 30, 2010, and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The revised tally of ballots shows 59 ballots cast for the Petitioner, 62 ballots cast for the Intervenor,¹ with 1 vote cast for neither participating labor organization. There was 1 challenged ballot, an insufficient number to affect the results.²

No exceptions have been filed to the Regional Director's report within the time provided. Accordingly, the Board adopts the Regional Director's findings and recommendations, and finds that a certification of representative should be issued.

¹ SEIU-UHW (Service Employees International Union, United Healthcare Workers–West).

² A majority of the professional employees in Voting Group B elected to be included in the same bargaining unit as the non-professional employees in Voting Group A. Accordingly, the ballots of both voting groups were pooled and tallied.

The Decision and Certification of Representative that previously issued in this case on April 19, 2011 has been corrected to combine both voting groups in the certified unit description.

CERTIFICATION OF REPRESENTATIVE

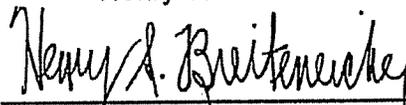
IT IS CERTIFIED that a majority of the valid ballots have been cast for SEIU-UHW (Service Employees International Union, United Healthcare Workers – West) and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time registered nurses, case workers, physician assistants, nurse practitioners, licensed clinical social workers, marriage/family/child counselor, occupational therapists, licensed psychiatric technicians, health educators, licensed vocational nurses, medical records technicians, dental assistants, perinatal coordinators, lab technicians, medical assistants, and clerical employees employed by the Employer and performing work at the Glenn Dyer Detention Facility and the Santa Rita jail, or any other detention facility in Alameda County where the Employer is providing services under the same contract; excluding all other employees, confidential employees, guards, and supervisors as defined in the Act.

Dated, Washington, D.C., May 11, 2011.

By direction of the Board:

Henry S. Breitenreicher



Henry S. Breitenreicher

Associate Executive Secretary

PROOF OF SERVICE

I am a citizen of the United States and a resident of the State of California. I am employed in the County of San Francisco, State of California. My business address is 555 Mission Street, Suite 2400, San Francisco, California 94105-2933. I am over the age of eighteen years and not a party to this action.

On September 24, 2013, I served the **EMPLOYER'S REQUEST FOR REVIEW OF DECISION AND DIRECTION OF ELECTION** (*Case No. 32-RC-111382*) on the following interested parties, as indicated.

Gary Shinnors
Executive Secretary
National Labor Relations Board
1099 14th St. N.W.
Washington, D.C. 20570-0001
via website upload [www.nlr.gov]

William A. Baudler
Regional Director
National Labor Relations Board, Region 32
1301 Clay St., Ste. 300N
Oakland, CA 94612-5224
via email [william.baudler@nlrb.gov]

Paloma Loya
Board Agent/Hearing Officer
National Labor Relations Board, Region 32
1301 Clay St., Ste. 300N
Oakland, CA 94612-5224
via email [paloma.loya@nlrb.gov]

Latika Malkani
Siegel Lewitter & Malkani
Counsel for National Union of Healthcare
Workers – California Nurses Association,
AFL-CIO
1939 Harrison St., Ste 307
Oakland, CA 94612
via email [lmalkani@sl-employmentlaw.com]

Bruce Harland
Manuel Boigues
Weinberg, Roger & Rosenfeld
Counsel for Service Employees International
Union – United Healthcare Workers, West
1001 Marina Village Parkway, Ste. 200
Alameda, CA 94501-1091
*via email [bharland@unioncounsel.net;
mboigues@unioncounsel.net]*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: September 24, 2013

Signature: 
Tomika D. Thomas