

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

BRONXWOOD HOME FOR THE AGED, INC,
Employer

and

Case No: 02-RC-116747

1199 SEIU, UNITED HEALTHCARE WORKERS EAST
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Upon the entire record¹ in this proceeding, it is found that:

1. The Hearing Officer's rulings are free from prejudicial error and hereby are affirmed.

2. The parties stipulated and I find that the Bronxwood Home for Adults, Inc., Licensed Home Care Services Agency, ("the Employer") a New York not-for-profit corporation, with an office and place of business located at 1468 Williamsbridge Road, Bronx, NY, provides health care for the aged, and is a health care provider within the meaning of Section 2(14) of the Act. Annually, in the course and conduct of its business operations, the Employer derives gross revenues in excess of \$100,000, and purchases and receives goods and materials valued in excess of \$5,000, directly from suppliers located outside the State of New York.

Accordingly, 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 herein.

3. The parties stipulated that 1199 SEIU, United Healthcare Workers East, ("the Petitioner"), is a labor organization within the meaning of Section 2(5) of the Act.

Accordingly, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

The parties further stipulated that 373 National Amalgamated Workers Union, ("the Intervenor"), is a labor organization² within the meaning of Section 2(5) of the Act.

¹ The parties waived filing briefs.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

In that regard, the hearing in this matter commenced on November 27, 2013, and the Intervenor contended that its collective-bargaining agreement with the Employer barred an election and therefore, the instant petition should be dismissed. On December 6, 2013, the hearing adjourned for the purpose of receiving additional documents into the record. Thereafter, the Intervenor submitted to the Region a disclaimer of interest in continuing to represent the bargaining unit covered by the petition and stated that it no longer wished to appear on the ballot in any election to be conducted.

The Board has held that a bargaining representative may disclaim interest in further representing a unit of employees and that such disclaimer should be freely allowed and given effect. *Production and Maintenance Union, Local 101*, 329 NLRB 247 (1999). It has also been held that such a disclaimer must be clear and unequivocal and made in good faith. *American Sunroof*, 243 NLRB 1128 (1979). An exception to this policy occurs when there is evidence of collusion. See *NLRB v. Circle A&W Products, Inc.*, 647 F. 2d 924 (9th Circuit, 1981) which cited with approval the Board's discussion of *Mack Trucks, Inc.* 209 NLRB 1003 (1974) in *American Sunroof*, supra. See also *VFL Technology Corp.*, 332 NLRB 1443 (2000). Here, the Intervenor's disclaimer of interest was clear and unequivocal and also disclaimed its interest in participating further in this proceeding. Accordingly, I find that the petition should be processed.

5. In the instant proceeding, the parties stipulated, and I find, that the following unit is an appropriate unit within the meaning of Section 9(b)(3) of the Act:

INCLUDED: All full-time and regular part-time Home Health Aides and Personal Care Aides employed by the Employer at 1468 Williamsbridge Road, Bronx, NY 10461.

EXCLUDED: All other employees, including but not limited to Finance Coordinator, HR Coordinator, Service Coordinator, Office Manager, Director of Patient Service, Program Director, Director, Business Development Receptionist, Registered Nurse, guards, and professional employees and supervisors as defined by the Act.

Voting Eligibility Formula: Eligible to vote are all employees who have at a minimum worked an average of 4 hours per week in the 13-week period prior to the date of the last payroll before the issuance of this Decision and Direction of Election.

² 373 National Amalgamated Workers Union intervened on the basis that it was the incumbent collective-bargaining representative of the unit employees. I hereby approve its request to withdraw its intervention request based upon its clear and unequivocal disclaimer discussed 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. Eligible to vote are those in the unit who were employed an average of 4 hours per week in the 13 week period prior to the date of the last 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. 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. 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 they desire to be represented for collective bargaining purposes by 1199SEIU, United Healthcare Workers East, or by no labor organization.

NOTICE OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

LIST OF VOTERS

To insure that all eligible voters 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 directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 2's Office, 26 Federal Plaza, Room 3614, New York, New York 07728, on or before **December 26, 2013**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be ground for setting aside the election whenever proper objections are filed.

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. This request must be received by the Board in Washington by **January 2, 2014**.

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 its offices. If a party wishes to file one of the documents which may not be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlr.gov. On the home page of the website, select the E-Gov³ tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

DATED at New York, New York
this 19th day of December 2013



Karen P. Fernbach
Regional Director
National Labor Relation Board
Region 2
26 Federal Plaza, Room 3614
New York, New York 07728

³ To file the request for review electronically, go to www.nlr.gov and select the E-Gov tab. Then click on the E-Filing link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the "Submit Form" button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.