

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 24**

HPM FOUNDATION d/b/a
HEALTH PROMED FOUNDATION, INC.,

Employer

and

VIVIAN VELILLA-MIRABAL,
an Individual,

Case 12-RD-120221

Petitioner

and

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

Union

DECISION AND DIRECTION OF ELECTION

HPM Foundation d/b/a Health ProMed Foundation, Inc. (the Employer) provides primary health care services at its San Juan, Puerto Rico location.¹ On January 8, 2014, the Petitioner filed a petition seeking an election to decertify Unidad Laboral de Enfermeras (os) y Empleados de la Salud (the Union) which has been the exclusive collective-bargaining representative of the following unit since on or before January 11, 2011:

All full-time and regular part-time billing and collection clerks, X-ray clerks, office clerks, dental assistants, sonogram technicians, inventory clerks and messengers employed by the Employer at its facility located in Barrio Obrero, Santurce, Puerto Rico; excluding all other employees, other

¹ The parties stipulated that the Employer is a Puerto Rico corporation with a place of business in San Juan, Puerto Rico, and is engaged in the business of providing primary care services. During the past 12 months, it has derived gross revenues exceeding \$250,000, and has purchased and received materials valued in excess of \$50,000 directly from points located outside the Commonwealth of Puerto Rico. I find that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

professional employees, managerial employees, guards, and supervisors as defined in the Act.²

According to the petition, the unit consists of approximately 20 employees.

A collective-bargaining agreement between the Employer and the Union covering this unit, which was effective by its terms from January 11, 2011, to December 31, 2013, expired before the filing of the petition herein.

Pursuant to the filing of the petition herein, a hearing officer of the Board conducted a hearing on January 21, 2014, at which the Employer, the Union, and the Petitioner were given the opportunity to present evidence, including witnesses. The parties raised no issues and they did not present any witnesses or other evidence.³

Based upon the foregoing, and the record as a whole, I shall direct an election in the above-described unit.

I. Conclusions and Findings

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. 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 Union claims to represent certain employees of the Employer.

² The parties stipulated to this description of the petitioned-for unit. I take official notice of the fact that the Union was certified as the representative of a similarly described unit (Unit B) in the matter of Junta del Centro de Salud Comunal, Dr. Jose Belaval, Inc., Case 24-RC-7847 on January 30, 1997. It appears that Junta del Centro de Salud Comunal, Dr. Jose Belaval, Inc. was a predecessor to the Employer. I also take official notice of the fact that the unit described in the parties' stipulation herein is virtually identical to the unit described in the Notice of Election in the matter of HPM Foundation d/b/a Health Pro Med, Case 24-UD-081722, in which an election was conducted on June 22, 2012, and in which a Certification of Results of Election issued on July 11, 2012. Thus, it appears that the unit set forth in the parties' stipulation as to the description of the petitioned-for unit is coextensive with the recognized unit and is an appropriate unit in which to conduct an election in this decertification proceeding. *Campbell Soup Co.*, 111 NLRB 234 (1955).

³ The parties waived their right to file 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 Section 2(6) and 2(7) of the Act.

5. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time billing and collection clerks, X-ray clerks, office clerks, dental assistants, sonogram technicians, inventory clerks and messengers employed by the Employer at its facility located in Barrio Obrero, Santurce, Puerto Rico; excluding all other employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

II. Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Unidad Laboral de Enfermas (os) y Empleados de la Salud. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote are those in the 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. Those in military service of the United States may vote if they appear in person at the

polls. Ineligible to vote are (1) employees who have quit or have been discharged for cause since the designated payroll period; (2) 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 (3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of the 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); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all eligible voters. North Macon Health Care Facilities, 315 NLRB 359 (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. Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the National Labor Relations Board Subregion 24 Office, La Torre de Plaza, Suite 1002, 525 F.D. Roosevelt Avenue, San Juan, Puerto Rico 00918-1002, on or before February 13, 2014. 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. Since the list will be made available to all parties to the election, please furnish two copies of the list.⁴

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three full working days prior to the date 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 nonposting of the Election Notice.

III. 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-

⁴ The list may be submitted electronically through the Agency's website at www.nlr.gov, or by facsimile transmission to (813) 228-2874, as well as by hard copy. To file the list electronically, go to the Agency's website at www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. Only one copy of the list should be submitted if it is filed electronically or by facsimile.

0001. This request must be received by **February 20, 2014**. The request may not be filed by facsimile, but may be filed electronically.⁵

DATED at Tampa, Florida this 6th day of February, 2014.


Margaret J. Diaz, Regional Director
National Labor Relations Board, Region 12
201 E. Kennedy Boulevard, Suite 530
Tampa, Florida 33602

⁵ See www.nlr.gov for instructions about electronic filing and the Board's Rules and Regulations with respect to filing requirements generally.