UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REHABCARE GROUP OF CALIFORNIA,
LLC d/b/a REHABCARE
Employer

and Case 21-RC-116808

NATIONAL UNION OF HEALTHCARE
WORKERS (NUHW-CNA)
Petitioner

ORDER

The Employer's request for special permission to appeal the Regional Director's Order Withdrawing Approval of the Stipulated Election Agreement and Order Cancelling Election is granted.[1] Because the Regional Director did not abuse her discretion, the appeal is denied on the merits.[2]

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[1] We have treated the Employer's Request for Review as a request for special permission to appeal.

[2] The Employer communicated to the Board Agent its acceptance of the Union's proposed unit description after the Agent informed the Employer of the Agent's understanding that the classifications set forth in the description would result in a unit of "20 or so" employees. Thereafter, however, the Employer submitted a voter list that included only 10 names. The Board's Casehandling Manual contemplates this very scenario, stating: "The Regional Director retains authority to revoke his/her approval of an election agreement for cause at any time before the election. For example, if after review of the *Excelsior* list of eligible voters (Sec. 11312.1), the number or nature of potential challenges raised is so extensive as to cause serious questions concerning the intent or understanding of the parties, such challenges may be the basis for revoking approval." NLRB Casehandling Manual, Part Two, Representation Proceedings, Sec. 11095. Under these circumstances and faced with the prospect that approximately half of the employees would be voting subject to challenge, the Regional Director did not abuse her discretion in setting aside the agreement.

Member Miscimarra would grant the Employer's appeal and find that the Union remains bound by its agreement. See *Laidlaw Transit, Inc.*, 322 NLRB 895, 895 (1997) (a stipulated election agreement "is a binding contract to which the parties will be held"). The Union proposed a unit consisting of six job classifications. The Employer accepted the Union's proposal, and the parties entered into a stipulated election agreement that included all full-time and regular part-time employees in the six classifications the Union had proposed, and the agreement excluded "all other employees." The parties' intent was clear and unambiguous. See, e.g., *Bell Convalescent Hospital*, 337 NLRB 191

MARK GASTON PEARCE, CHAIRMAN

PHILIP A. MISCIMARRA, MEMBER

KENT Y. HIROZAWA, MEMBER

Dated, Washington, D.C., May 23, 2014

(2001), which stated: "The Board will find a clear intent to include those classifications that match the express language [of the stipulation], and will find a clear intent to exclude those classifications not matching the stipulated bargaining unit description. . . . [I]f the classification is not included, and there is an exclusion for 'all other employees,' the stipulation will be read to clearly exclude that classification." "The Board bases this approach on the expectation that the parties know the eligible employees' job titles, and intend their descriptions in the stipulation to apply to those job titles." *Halsted Communications*, 347 NLRB 225 (2006). In these circumstances, contrary to my colleagues' view, the number of potential challenges does not raise a serious question concerning the intent of the parties, as that intent is unambiguously established by the stipulation. To the extent that a party discovers that there were fewer employees than it had anticipated in classifications that were stipulated to using the names of the classifications, Member Miscimarra would find this does not constitute an "unusual circumstance" warranting withdrawal from the stipulation. *Sunnyvale Medical Clinic*, 241 NLRB 1156, 1157 (1979).