

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

ALAI D ANDREW CORPORATION,
D/B/A VALLEY CONVALESCENT HOSPITAL^{1/}

Employer

and

Case No. 31-RD-129686

JESSIE BLAIR BROOKS, an Individual

Petitioner

and

SEIU, SERVICE EMPLOYEES INTERNATIONAL UNION

Union

DECISION AND DIRECTION OF ELECTION

I. INTRODUCTION

On May 30, 2014, Jessie Blair Brooks, an individual (Petitioner), filed petition 31-RD-129686 under Section 9(c) of the National Labor Relations Act (Act), seeking to decertify SEIU, Service Employees International Union (Union) as the representative of a unit of employees employed by Alaidandrew Corporation, d/b/a Valley Convalescent Hospital (Employer), at its facility located at 1205 8th Street, Bakersfield, California.

^{1/} The name of the Employer appears as corrected by the Employer at the hearing.

Since at least April 19, 2011, the Union has been the Section 9(a) representative of the unit employees described in the Certification of Representative, Case 31-RC-8857.

A hearing on this petition was held on June 12, 2014, before a hearing officer of the National Labor Relations Board (Board). Although the hearing officer advised the parties that briefs were unnecessary as the hearing was a non-issue hearing, both the Employer and the Union filed briefs and the Petitioner submitted a brief statement.^{2/} No issues were litigated at the hearing.^{3/} The parties stipulated to commerce, labor organization status, appropriate unit and question concerning representation. No party raised any bar issues.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Upon the entire record in this proceeding, I find:

1. HEARING OFFICER'S RULINGS: The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

^{2/} In its brief, the Union argues that the Petition should be dismissed because the Employer and its agents provided assistance to the Petitioner, as evidenced by the fact the individual Petitioner initially inadvertently identified herself at the hearing as being present "for Valley Convalescent Hospital" and because, according to the Union, the Employer's counsel repeatedly represents employers whose employees have filed decertification petitions. The Petitioner quickly corrected her statement at the hearing and confirmed she was there as the Petitioner, not as the representative of the Employer, who was represented by counsel. I note that an allegation that the showing of interest was tainted is not a matter to be litigated at a pre-election hearing. However, I further note that the assertions by the Union concerning the inadvertent misstatement by an individual layperson in a formal proceeding would be an insufficient basis for me to dismiss the petition on the grounds that the Employer and its agents unlawfully assisted the Petitioner. Furthermore, even assuming the Employer's attorney regularly represents other employers where decertification petitions have been filed, this would not warrant a dismissal of the Petition herein. Thus, I will not dismiss the petition in this matter based on the Union's contentions.

^{3/} Despite the hearing officer's explanation to the parties that the manner of conducting an election is not litigable at a pre-election hearing, both the Employer and the Union submitted briefs on this issue and both cite reasons in support of their positions. In addition, the Petitioner submitted a statement that she thinks a manual election would be appropriate. I will consider the parties' positions and make an administrative determination with respect to this issue and will notify the parties by letter of the manner in which the Region will conduct the election.

2. JURISDICTION: The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of Section 2(6) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.^{4/}

3. LABOR ORGANIZATION: The parties stipulated, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

4. QUESTION CONCERNING COMMERCE: 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.

5. APPROPRIATE UNIT: 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 (Unit):

Included:

All full-time, regular part-time, and per diem C.N.A.s, R.N.A.s, dietary aids, cooks, maintenance employees, janitors, housekeeping employees, laundry employees, activities aid, and receptionist employed by the Employer at its facility located at 1205 8th Street, Bakersfield, California.

Excluded:

All other employees, office clerical employees, confidential employees, guards, and supervisors as defined in the Act, as amended.

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

^{4/} The Employer, Alaidandrew Corporation, d/b/a Valley Convalescent Hospital, is a California corporation with a place of business located in Bakersfield, California where it is engaged in the operation of a long term care facility. Within the past 12 months, a representative period, the Employer's gross revenues exceeded \$100,000 and during this same period of time the Employer purchased and received goods, supplies, and materials valued in excess of \$5,000 directly from enterprises located outside the State of California.

not they wish to be represented for purposes of collective bargaining by SEIU, Service Employees International Union. The date, time, and place of the election will be specified in the Notice of Election that the Region will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in this matter are those in the Unit found appropriate above 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 an 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 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 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.

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 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 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 (overall or by department, etc.). 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 31 Regional Office, 11500 W. Olympic Boulevard, Suite 600, Los Angeles, California 90064, on or before **July 1, 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. The list may be submitted to the Regional office by E-filing through the Agency's website, **www.nlr.gov**,^{5/} by

^{5/} To e-file, go to the agency's website at **www.nlr.gov**, click "e-file documents," and enter the 10-digit case number (found at the top right of the charge or petition form) Then simply follow the prompts. At the end, you will receive a confirmation number and an e-mail notification that the documents were successfully filed.

mail, by hand or courier delivery, or by facsimile transmission at (310) 235-7420. The burden of establishing the timely filing and receipt of this list will continue to be placed on the sending party. Since the list will be made available to all parties to the election, please furnish a total of **three** copies, unless the list is submitted by facsimile or E-Filing through the Agency website, in which case no copies need be submitted. You may not submit the list to the Region by email. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

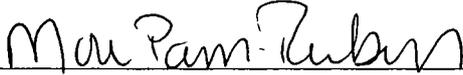
According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement 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 five (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.

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 **July 8, 2014**. The request may be filed electronically through the Agency's web site, www.nlr.gov,^{6/} but may not be filed by facsimile.

DATED at Los Angeles, California this 24th day of June, 2014.



Mori Pam Rubin, Regional Director
National Labor Relations Board
Region 31

^{6/} To e-file, go to the agency's website at www.nlr.gov, click "e-file documents," and enter the 10-digit case number (found at the top right of the charge or petition form). Then simply follow the prompts. At the end, you will receive a confirmation number and an e-mail notification that the documents were successfully filed.