

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

2850 GRAND ISLAND BOULEVARD  
OPERATING COMPANY LLC D/B/A  
ELDERWOOD AT GRAND ISLAND

Employer

and

Case 03-RC-184298

1199 SEIU UNITED HELATHCARE  
WORKERS EAST

Petitioner

ORDER

The Employer's Request for Review of the Acting Regional Director's Supplemental Decision and Order on Challenged Ballots and Objections is denied as it does not raise any substantial issues warranting review.<sup>1</sup>

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<sup>1</sup> In denying review, we do not rely on the Acting Regional Director's citation to *Lily Transportation Corp.*, 352 NLRB 1028 (2008), a two-member Board decision. See *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010). Acting Chairman Miscimarra agrees with the denial of review based on the record presently before the Board and, regarding the question of whether the Employer's licensed practical nurse (LPN) Team Leaders are statutory supervisors under Sec. 2(11) of the Act, consistent with the principles set forth in Acting Chairman Miscimarra's separate opinions in *Buchanan Marine, LP*, 363 NLRB No. 58, slip op. at 3-10 (2015) (Member Miscimarra, dissenting); *G4S Government Solutions, Inc.*, 363 NLRB No. 113, slip op. at 4-7 (2016) (Member Miscimarra, dissenting); *LakeWood Health Center*, 365 NLRB No. 10, slip op. at 1-5 (2016) (Member Miscimarra, dissenting); and similar cases. However, Acting Chairman Miscimarra disagrees with and disclaims reliance on statements in the Acting Regional Director's Supplemental Decision and Order on Challenged Ballots and Objections ("Order") to the effect that the Board should disregard evidence, even if it is un rebutted, whenever such evidence can be characterized as "conclusionary" (Order, pp. 3-4), "unaccompanied by specific examples" (*id.*), provided "in response to leading questions" (*id.*, p. 4), a "mere paper showing" (*id.*, p. 5), or "general conclusionary evidence . . . [supported by] only three specific examples" (*id.*, p. 6). In Acting Chairman Miscimarra's view, these types of recurring observations create the impression that the Board strains to avoid findings of "supervisor" status, even if such findings are supported by relevant documentation and un rebutted testimony. As stated in *Buchanan Marine*, *supra*, Acting Chairman Miscimarra believes the Board cannot appropriately disregard or discount relevant documentation and un rebutted evidence "merely because it could

PHILIP A. MISCIMARRA, ACTING CHAIRMAN

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

Dated Washington, D.C., April 21, 2017.

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have been stronger, more detailed, or supported by more specific examples.” *Buchanan Marine, LP*, slip op. at 9 (Member Miscimarra, dissenting) (internal quotation and citation omitted).