

**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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NATIONAL LABOR RELATIONS BOARD	)	
	)	
Petitioner	)	No. 12-3524
	)	
v.	)	
	)	
NEW VISTA NURSING AND	)	Board Case No.
REHABILITATION, LLC	)	22-CA-029845
	)	
Respondent	)	

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**STATUS REPORT OF THE NATIONAL LABOR RELATIONS BOARD**

To the Honorable, the Judges of the United States  
Court of Appeals for the Third Circuit:

The National Labor Relations Board, by its Assistant General Counsel,  
hereby files this status report in response to the Court’s November 20, 2018 Order.

In the instant case, the Board found that New Vista Nursing and  
Rehabilitation, LLC, violated Section 8(a)(1) and Section 8(a)(3) of the National  
Labor Relations Act by taking certain actions directed at its licensed practical  
nurses (LPNs). 29 U.S.C. §§ 151, 158(a)(1), 158(a)(3). On November 14, 2012,  
the Court stayed the briefing scheduled in the instant case pending a decision in  
*NLRB v. New Vista Nursing & Rehabilitation*, 870 F.3d 113 (3d Cir. 2017) (*New  
Vista I*), wherein the Board sought enforcement of an Order requiring New Vista to  
recognize and bargain with 1199 SEIU United Healthcare Workers East, NJ

Region, as the collective-bargaining representative of the LPNs. In so holding, the Board found that the LPNs were statutory employees under the Act, and not, as New Vista claimed, supervisors excluded from the Act's coverage. On August 29, 2017, the Court determined that, in *New Vista I*, the Board relied on "inappropriate factors" under circuit law in finding that the LPNs were not supervisors.

Accordingly, the Court vacated the Board's Order in *New Vista I* and remanded the case "for the Board to apply the correct legal test on the [supervisory] issue."

On November 20, 2018, the Court granted the Board's request for a continued stay pending a decision by the Board following remand in *New Vista I* on the supervisory status of the LPNs. The Court also directed the parties to file a written report addressing the status of the pending administrative proceedings on December 21, 2018, and every 30 days thereafter.

As of the date of this filing, *New Vista I* remains pending before the Board.

/s/ David Habenstreit  
David Habenstreit  
Assistant General Counsel  
National Labor Relations Board  
1015 Half St, SE  
Washington, DC 20570  
(202) 273-2960

Dated at Washington, DC,  
this 22nd day of February 2019

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 22, 2019, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system. I further certify that the foregoing document was served on all the parties or their counsel of record through the CM/ECF system.

/s/ David Habenstreit \_\_\_\_\_  
David Habenstreit  
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1015 Half Street, SE  
Washington, DC 20570  
(202) 273-2960

Dated at Washington, DC  
this 22nd day of February 2019