

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

HEALTH ACQUISITION CORP.,
d/b/a ALLEN HEALTH CARE SERVICES
Employer¹

and

Case No. 29-RC-9419

COMMUNITY AND SOCIAL AGENCY
EMPLOYEES UNION, D.C. 1707, A.F.S.C.M.E., AFL-CIO
Petitioner²

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Amy J. Gladstone, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.³

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

³ As discussed in more detail below in Section 5, I specifically affirm the Hearing Officer's decision to reject the Employer's offer of proof regarding the appropriateness of the petitioned-for, employer-wide bargaining unit, and to close the record without allowing the Employer to introduce its proffered evidence on that issue.

2. The parties stipulated that Health Acquisition Corp., d/b/a Allen Health Care Services, herein called the Employer, is a New York corporation, with its principal office and place of business located at 175-20 Hillside Avenue, Jamaica, New York, where it is engaged in operating licensed home health care agencies, providing para-professional health care services to the aged and infirm. During the past year, in the course and conduct of its operations, the Employer derived gross revenues in excess of \$250,000, and purchased and received at its Jamaica, New York facility, goods and supplies valued in excess of \$5,000 directly from points located outside the State of New York. The parties also stipulated that the Employer is a health care institution within the meaning of Section 2(14) of the Act.

Based on the stipulations and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and is a health care institution within the meaning of Section 2(14) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved herein claims to represent certain employees of the Employer.

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 (7) of the Act.

5. The Community and Social Agency Employees Union, D.C. 1707, AFSCME, AFL-CIO, herein called the Petitioner, initially sought to represent a unit of all "home health aides and personal care aides" employed by the Employer. At the beginning of the hearing, the Petitioner amended its petition to specify the Employer's

three facilities, located in Jamaica, NY, Lindenhurst, NY, and Mount Vernon, NY.⁴ Then, after the Employer brought additional job classifications to the Petitioner's attention (bookkeepers, maintenance employees, registered nurses, and licensed practical nurses) the Petitioner further amended its petition to include all such classifications.⁵ There is no dispute that *all* non-supervisory classifications employed by the Employer at the three locations were thereby included in the petitioned-for unit, as amended, essentially making it an employer-wide, "wall-to-wall" unit. The Hearing Officer also explained, and the parties understood, that the professional employees (registered nurses) are entitled to vote whether to be included in a unit with non-professional employees in a so-called Sonotone election.⁶ Thus, to summarize, the Petitioner essentially seeks to represent all the Employer's non-supervisory employees as follows:

All full-time and regular part-time employees, including home health aides, personal care aides, registered nurses (RNs), licensed practical nurses (LPNs), bookkeepers and maintenance employees, employed by the Employer at or from its facilities located at 175-20 Hillside Avenue, Jamaica, NY; 222 Wellwood Avenue, Lindenhurst, NY; and 6 Gramaton Avenue, 4th floor, Mount Vernon, NY, but excluding guards and supervisors as defined in the Act.⁷

⁴ As indicated above, the Employer is engaged in providing home health care. Thus, the vast majority of employees actually work in patients' homes. References to the Employer's facilities in Jamaica, Lindenhurst and Mount Vernon, NY, therefore refer to the Employer's administrative offices, from which employees are assigned, rather than their actual workplace.

It should also be noted that two other facilities which the Employer uses only for training purposes (in Brooklyn, NY, and Hempstead, NY) are not relevant herein.

⁵ The parties agreed that drivers, who are not employed by the Employer, are excluded from the unit. It should be noted that an issue regarding "on-call" employees is discussed separately below at Paragraph 6.

⁶ Sonotone Corp., 90 NLRB 1236 (1950).

⁷ Obviously, if a majority of RNs voted to be represented by Petitioner, but in a separate unit from the non-professional employees, then there would be two units: one for RNs, and one for all non-professional employees.

The Employer contended at the hearing that the petitioned-for, employer-wide unit is inappropriate, and that the only appropriate bargaining units would consist of three separate units for the Employer's three locations. The Employer also raised an argument for the first time in its post-hearing brief that it would be inappropriate to include bookkeepers in a unit with the other petitioned-for employees, whom the Employer characterized as "production and maintenance employees."

The Petitioner has indicated its willingness to proceed to an election in any unit or units found appropriate herein.

Employer-wide unit versus single-site units

The Employer submitted the following offer of proof purporting to show the disparity of interests among employees at the three facilities: (1) that the facilities, located 20 to 30 miles apart from each other, are geographically separate and distinct; (2) that employees working from each facility are supervised separately; (3) that employees from each facility receive different rates of pay; (4) that each facility operates under a separate license; (5) that employees are assigned to work under customers' contracts that are separately administered at each facility, so that employees working from one facility are never assigned to work in the "territory" of another facility; (6) that employees are separately trained at each facility; and (7) that employees are separately interviewed and hired at each facility. The Employer claimed that the only "commonality" among the three facilities was common ownership. The Employer also conceded that employees' working conditions are similar, but only because they are mandated by state law (which the Employer did not specify). It is undisputed that there is no history of collective bargaining involving the Employer's employees.

Section 9(b) of the Act provides the following:

The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

The plain language of the Act clearly indicates that the same employees may be grouped together for bargaining purposes in more than one appropriate unit. For example, under Section 9(b), the same employees who may constitute part of an appropriate employer-wide, multi-plant unit also may constitute an appropriate plant-wide unit, craft unit or other subdivision. Overnite Transportation Co., 322 NLRB 723 (1996). It is well settled that there is more than one way in which employees may be grouped for purposes of collective bargaining, and that a certifiable bargaining unit need only be *an* appropriate unit, not the most appropriate unit. Morand Bros. Beverage Co., 91 NLRB 409 (1950), *enfd* 190 F.2d 576 (7th Cir. 1951), Omni-Dunfey Hotels, Inc., d/b/a Omni International Hotel of Detroit, 283 NLRB 475 (1987), P.J. Dick Contracting, 290 NLRB 150 (1988), Dezcon, Inc., 295 NLRB 109 (1989). Thus, although a petitioner must seek *an* appropriate unit, it is not compelled to seek a narrower appropriate unit if a broader unit is also appropriate. Overnite, *supra*, 322 NLRB at 723-4, citing NLRB v. Carson Cable TV, 795 F.2d 879, 123 LRRM 2225 (9th Cir. 1986).

Citing the language of Section 9(b) regarding an "employer unit," the Board has long held that an employer-wide unit is presumptively appropriate for collective bargaining purposes. Western Electric Co., Inc., 98 NLRB 1018, 1032 (1952); Owens-Illinois Glass Co., 136 NLRB 389, 392 (1962); Gourmet, Inc., d/b/a Jackson's Liquors et al., 208 NLRB 807, 808 (1974); Montgomery County Opportunity Board, Inc., 249 NLRB 880, 881 (1980); Hazard Express, Inc., 324 NLRB 989 (1997); Greenhorne &

O'Mara, Inc., 326 NLRB No. 57, at notes 3 and 7 (1988); and Acme Markets, Inc., 328 NLRB No. 173, fn. 9 (1999). It is therefore the Employer's burden to establish that a petitioned-for, employer-wide unit is inappropriate. Greenhorn & O'Mara, supra, slip. op. at p.3. The Board has held that "a community of interest inherently exists" among certain groups of employees, making the broad group presumptively appropriate, unless it can be shown that the interests of subgroups are so disparate that they cannot be represented in the same unit. Airco, Inc., 273 NLRB 348, 349 (1984)(referring to a presumptively appropriate plant-wide unit, not excluding one job classification).

In this case, it is clear that all employees work for the same company that owns and operates all three facilities in question. Most employees perform the same type of work, i.e., providing home health care and personal care to aged and infirm patients in the patients' homes. The Employer concedes that their working conditions are similar, as per certain requirements of state law. Although employees assigned from one facility have no interchange or contact with employees assigned from another facility, it is obvious that employees assigned from the *same* facility likewise have little or no contact with each other, since they spend their time working in the patients' homes. In other words, since employees are engaged in providing home care, the geographical location of each office facility has little, if any, importance. Finally, there is no history of collective bargaining on any separate-facility basis.

Based on the case law and the factors above, it does not appear that the Employer would be able to establish that an employer-wide unit would be inappropriate for collective bargaining. For example, in Jackson's Liquors, supra, that store managers retained broad discretion to operate their geographically-dispersed stores, and that there

was only limited interchange of employees among the different stores, did not render inappropriate a petitioned-for, employer-wide unit. 208 NLRB at 808. In Acme Markets, supra, involving an employer's pharmacies in four states, the small amount of interchange or contact among the pharmacists in certain states, and the different licensing requirements in each state, did not change the Board's conclusion that an employer-wide unit was appropriate. It is clear from these cases that the strong, "inherent" community of interests that exists among *all* an employer's employees is not rebutted by such factors as differences in local supervision, or a lack of interchange, or geographical dispersion of the facilities. Nor do I reach a different conclusion, even assuming as true the other factors on which the Employer relies to contend that the employer-wide unit is inappropriate.⁸ Thus, even if the Employer herein had been allowed to introduce its proffered evidence regarding separate supervision, lack of interchange, and separate licensing among its three facilities, as well as the other factors it referred to in its offer, such evidence would not have shown such a strong disparity of interests that the employees could not be represented appropriately in the same unit.

⁸ See page 4 above.

Most of the other cases cited in the Employer's brief involve whether a *petitioned-for, single-site* bargaining unit would be appropriate.⁹ Those cases involve a different legal presumption, which is not applicable to the instant case. Capital Coors Co., 309 NLRB 322, n.1 (1992); NLRB v. Carson Cable TV, 795 F.2d 879, 886-7, 123 LRRM 2225, 2230-1 (9th Cir. 1986)(where a labor organization seeks to represent a multi-location unit, the presumptive appropriateness of a single-location unit does not apply). *The Employer has not specifically cited any cases to support its contention that the presumptive appropriateness of a petitioned-for, employer-wide bargaining unit would be rebutted in these circumstances.* The only case it cited where a petitioning union was unable to obtain a multi-site unit, Passavant Retirement & Health Center, Inc., 313 NLRB 1216 (1994), was an unit clarification (UC) case where an incumbent union at one facility unsuccessfully sought to accrete employees at another facility. However, since a finding of accretion deprives employees of their right to vote, the Board applies an entirely different standard. In the instant case, the Petitioner seeks simply to allow the Employer's employees to vote whether or not to be represented in an employer-wide unit, which Congress has expressly empowered the Board to find appropriate under Section 9(b) of the Act.

⁹ In most of the cases cited by the Employer, the presumptive appropriateness of a petitioned-for, single-site unit was not rebutted. Staten Island University Hospital v. NLRB, 24 F.3d 450, 146 LRRM 2385 (2nd Cir. 1994); Courier Dispatch Group, Inc., 311 NLRB 728 (1993); Haag Drug Co., 169 NLRB 877 (1968); Executive Resources Associates, Inc., 301 NLRB 400 (1991); First Security Services Corp., 329 NLRB No. 25 (1999); O'Brien Memorial, Inc., 308 NLRB 553 (1992); and Manor Healthcare Corp., 285 NLRB 224 (1987). By contrast, in a couple of cases cited by the Employer, the presumptive appropriateness of a petitioned-for, single-site unit was in fact rebutted. West Jersey Health System, 293 NLRB 749 (1989); Queen City Distributing Co., t/a Sol's, 272 NLRB 621 (1984). Regardless of their specific outcome, however, those cases involve a different legal presumption which is not applicable here.

In complaining that the Petitioner "should be required to demonstrate the appropriateness of the petitioned-for multi-plant unit,"¹⁰ and that its own right to a hearing was violated, the Employer shows a misunderstanding of the Board's use of legal presumptions and policies regarding appropriate bargaining units. As stated above, a petitioning union need only seek *an* appropriate unit and, under Section 9(b) and the Board's case law, certain units are presumed to be appropriate. Therefore, if a union seeks a unit which, on its face, is presumptively appropriate, the union carries no burden of demonstrating its appropriateness. Rather, an employer who claims that the unit is *inappropriate* carries the burden of rebutting the presumption. Furthermore, although the Board has a duty to ensure due process and to provide "an appropriate hearing" under Section 9(c)(1) of the Act, the Board also has a duty to protect the integrity of its processes against an unwarranted burdening of the record and unnecessary delay, and promptly to resolve questions concerning representation. Bennett Industries, Inc., 313 NLRB 1363 (1994); HeartShare Human Services of New York, Inc., 320 NLRB 1 (1995); Mariah, Inc., 322 NLRB 586 (1996). Thus, when the evidence proffered in an offer of proof is insufficient to rebut the presumptive appropriateness of a petitioned-for unit, this agency is not required to allow full-blown litigation of the issue. Laurel Associates, Inc., d/b/a Jersey Shore Nursing and Rehabilitation Center, 325 NLRB 603 (1998). In the instant case, I find that the evidence proffered by the Employer in its offer of proof, even if assumed to be true, would not demonstrate such a disparity of interests among employees at the three facilities that they could not be appropriately represented in

¹⁰ This is set forth in a letter from the Employer's attorney to the undersigned on January 28, 2000,

an employer-wide unit. I therefore find that the Hearing Officer, by rejecting the offer of proof, struck the proper balance between the parties' right to due process and the agency's duty to avoid delay and an unnecessary burdening of the record.

Finally, the case law that the Employer cites to support its contention that three separate units would decrease the risk of patient-care disruption during a strike do not support this contention. In Manor Healthcare Corp., 285 NLRB 224 (1987), the Board held that the presumptive appropriateness of a petitioned-for, single-facility bargaining unit would be applied in the health care industry. However, the Board's discussion in that case made clear that Congress' desire to avoid proliferating bargaining units in the health care industry referred more to fragmentation of job classifications within a facility, than to employers with multiple facilities. Id. at 226. In any event, having three separate units would create a greater "proliferation" of units than the petitioned-for employer-wide unit in the instant case. Furthermore, as the Second Circuit pointed out in Staten Island University Hospital v. NLRB, 24 F.3d 450, 146 LRRM 2385 (2nd Cir. 1994), the existence of separate bargaining units at an employer's multiple facilities may threaten *quantitatively* greater labor disputes, although an employer-wide, multi-facility unit may threaten *qualitatively* greater disruption in the event of a strike. 146 LRRM at 2390. In the instant case, it seems just as likely that creating three separate units would increase the *number* of potential disruptions, as that creating one overall unit would increase the disruptive *quality* of an employer-wide strike. Finally, I also note that the Employer's assertion in this regard -- that it could minimize the effect of a strike at one

requesting *inter alia* to re-open the record. In a letter dated January 31, 2000, I denied the request.

facility by assigning aides from another facility -- contradicts its earlier assertion that aides from one facility are never assigned to work in another "territory."

Accordingly, based on the foregoing, I hereby find that the petitioned-for, employer-wide unit encompassing the Employer's three facilities, is an appropriate bargaining unit.

Bookkeepers

The Employer employs approximately 10 bookkeepers at its Jamaica, NY, facility. As noted above, the Petitioner seeks to include the bookkeepers in its petitioned-for, wall-to-wall unit. The Employer did not state any opposition to this at the hearing, but contended for the first time in its brief that bookkeepers should be excluded from the unit. Needless to say, since the Employer did not raise this specific issue at the hearing, there was no need to even consider taking record evidence regarding the issue. I reject the Employer's improper attempt to raise this issue after the hearing, and to introduce "evidence" in the form of factual assertions made in its post-hearing brief. Nevertheless, even assuming that the assertions therein are true (e.g., that bookkeepers perform different kinds of work than the aides and nurses, do not wear the white uniform worn by aides and nurses, work in an office as opposed to the patients' homes, etc.), they do not rebut the presumptive appropriateness of a "wall-to-wall" unit encompassing all of the Employer's non-supervisory job classifications. Kalamazoo Paper Box Corp., 136 NLRB 134, 136 (1962); Airco, Inc., *supra*. The Board has found appropriate overall units of non-professional employees, including "business office clericals," in non-acute health care institutions. *See, e.g., Brattleboro Retreat*, 310 NLRB 615, 626 (1993)(business office

clericals appropriate in overall, non-professional unit).¹¹ Finally, the alternatives to a wall-to-wall unit herein would seem less appropriate. There is no logic to including the maintenance employees in a unit with health-care employees while excluding the bookkeepers; yet to exclude both maintenance employees¹² and bookkeepers would leave an arbitrary "residual" unit of employees, a result which the Board disfavors. Airco, supra, 273 NLRB at 349.

Based on the foregoing, I reject the Employer's belated attempt to exclude bookkeepers from the petitioned-for, presumptively appropriate "wall-to-wall" unit.

6. The parties also raised a potential eligibility issue regarding "on-call" employees, who work for the Employer sporadically or as needed. At the hearing, the Petitioner sought to include on-call employees, and the Employer did not object to including on-call employees. However, there seemed to be confusion as to how "on-call employees" would be defined, and whether they would be eligible as "regular part-time" employees. No evidence was introduced by either party to indicate whether on-call employees worked an average of at least four hours per week during the last quarter (13 weeks) prior to the eligibility date, which is a formula the Board uses to distinguish eligible part-time employees from truly casual or irregular part-time employees. *See*,

¹¹ By contrast, in the case cited by the Employer for the proposition that office clerical employees must be excluded from a unit of health care workers, Health and Medical Care Foundation, d/b/a Pomona Golden Age Convalescent Home, 265 NLRB 1313 (1982), the parties had agreed to exclude office clerical employees as part of a stipulation. As a result, the Board did not actually decide that issue.

¹² The Employer also raised another issue for the first time in its post-hearing brief, alleging at footnote 1 that "maintenance employees also perform guard duties, such as controlling access to the facility, and they should not be included in the unit on that ground alone." If the Employer had a good-faith, legitimate doubt as to the unit's appropriateness under Section 9(b)(3) of the Act (prohibiting mixed units of guards and non-guards), it could have raised the issue at the hearing and proffered its evidence. However, at this late stage, the Employer is obviously "fishing" for additional issues in order to obfuscate and delay the proceedings. I hereby reject this belated attempt to inject extraneous, frivolous issues into

e.g., Tri-State Transportation Co., Inc., 289 NLRB 356 (1988); Brattleboro Retreat, supra, 310 NLRB at 627 (eligibility formula for "per diem" employees). In this circumstance, I find that any employees who have worked an average of at least four (4) hours per week during the 13-week period prior to the issuance of this Decision shall be eligible to vote as part-time employees. The parties are free to challenge the eligibility of any "on-call" employees believed not to meet this test.

Accordingly, I make the following findings with regard to the appropriate bargaining unit(s):

If the majority of the professional employees (registered nurses) vote for inclusion in a unit with non-professional employees, I find that the following employees will constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(a) of the Act:

All full-time and regular part-time¹³ employees, including home health aides, personal care aides, registered nurses (RNs), licensed practical nurses (LPNs), bookkeepers and maintenance employees, employed by the Employer at or from its facilities located at 175-20 Hillside Avenue, Jamaica, NY; 222 Wellwood Avenue, Lindenhurst, NY; and 6 Gramaton Avenue, 4th floor, Mount Vernon, NY, but excluding guards and supervisors as defined in the Act.

If a majority of the professional employees do not vote for inclusion in the unit with non-professional employees, I find that the following two groups of employees will constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act:

the proceeding. In any event, the mere assertion that maintenance employees control access to the facility, without more, is insufficient to prove that they constitute "guards."

¹³ Eligible employees will include all on-call employees who worked an average of at least four (4) hours per week in the 13 week period preceding the issuance of this Decision.

All full-time and regular part-time¹⁴ registered nurses (RNs) employed by the Employer at or from its facilities located at 175-20 Hillside Avenue, Jamaica, NY; 222 Wellwood Avenue, Lindenhurst, NY; and 6 Gramaton Avenue, 4th floor, Mount Vernon, NY, but excluding all other employees, non-professional employees, guards and supervisors as defined in the Act.

All full-time and regular part-time¹⁵ non-professional employees, including home health aides, personal care aides, licensed practical nurses (LPNs), bookkeepers and maintenance employees, employed by the Employer at or from its facilities located at 175-20 Hillside Avenue, Jamaica, NY; 222 Wellwood Avenue, Lindenhurst, NY; and 6 Gramaton Avenue, 4th floor, Mount Vernon, NY, but excluding all professional employees, guards and supervisors as defined in the Act.

Finally, because the unit found appropriate herein is larger than the originally-petitioned for unit, a showing of interest issue arises. Originally, the Petitioner estimated that the Employer employs approximately 1,000 home health aides and personal care aides; the Petitioner submitted an adequate showing of interest based on that estimate. Subsequently, as noted above, the Petitioner amended its petition to seek a wall-to-wall unit, which includes additional job classifications. Furthermore, the unit found appropriate herein includes on-call employees who meet the eligibility formula described above. In its post-hearing brief, the Employer estimates that more than 2,000 aides (including on-call aides) accepted employment with the Employer in 1999, but it is unknown at this point how many employees meet the specific criteria for eligibility, and therefore whether the Petitioner's showing of interest is adequate in the expanded unit.

Therefore, within 7 days of the date of this Decision, the Employer may submit a list of employees in the broad unit found appropriate herein, who met the criteria articulated above, as of the week preceding the filing of the petition. Specifically, such list must include employees in all the classifications listed above, and all on-call

¹⁴ Eligible employees will include all on-call employees who worked an average of at least four (4) hours per week in the 13 week period preceding the issuance of this Decision.

¹⁵ Eligible employees will include all on-call employees who worked an average of at least four (4) hours per week in the 13 week period preceding the issuance of this Decision.

employees who had worked an average of at least four (4) hours per week during the 13-week period prior to the filing of the petition on January 13, 2000. At that time, I will administratively determine whether the Petitioner has submitted a sufficient showing of interest. If necessary, the Petitioner will have 14 days from the date of such determination to submit any additional evidence of interest, and I will determine at that time whether the continued processing of the instant petition is warranted.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, 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 employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining purposes by Community and Social Service Agency Employees Union, D.C. 1707, AFSCME, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may 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 that 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, four (4) copies of election eligibility lists, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In addition to a "master list" of all unit employees, the Employer shall file a separate list of the professional employees (who are eligible to vote using a Sonotone ballot), as well as separate sub-lists corresponding to each of the three facilities. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such lists must be received in the Regional Office, One MetroTech Center North-10th Floor (Corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201 on or before February 24, 2000. No extension of time to file the lists may be granted, nor shall the filing of a request for review operate to stay the filing of such lists except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies

of the election notices unless it notifies the Regional Office at least five working days prior to the commencement of the election that it has not received the notices. Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

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. This request must be received by March 2, 2000.

Dated at Brooklyn, New York, this 17th day of February, 2000.

/S/ ALVIN BLYER

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
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420-0150
440-1720 et seq.
440-3300, 440-3350
470-8500, 470-8533

393-6068-0100, 393-6068-8000

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362-6712, 362-6734
460-5067-4200, 460-5067-8200