

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

In the Matter of

MARRIOTT INTERNATIONAL, INC.,
d/b/a SHIPLEY MANOR NURSING HOME

Employer

and

Case 5-RD-1276

VIRGINIA LEE BIDDLE

Petitioner

and

PRODUCTION WORKERS LOCAL 148

Union

and

DISTRICT 1199C, NATIONAL UNION OF HOSPITAL AND
HEALTH CARE EMPLOYEES, AFSCME, AFL-CIO

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein call the Act, a hearing was held before 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.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it

will effectuate the purposes of the Act to assert jurisdiction.

3. The labor organization involved 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. Marriott International, Inc., d/b/a Shipley Manor Nursing Home (hereinafter "the Employer") is a Delaware corporation engaged in the operation of a retirement community at its 2723 Shipley Road, Wilmington, Delaware location. At the hearing, the parties stipulated that during the past 12 months, a representative period, the Employer received gross revenues in excess of \$100,000 from the operation of its retirement community at its Wilmington, Delaware location, and purchased and received products valued in excess of \$5,000 directly from points located outside the State of Delaware. The parties further stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act.

The parties stipulated, and I find, that Production Workers Union Local 148 (hereinafter "Local 148") is a labor organization within the meaning of Section 2(5) of the Act. At the outset of the hearing, District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO (Hereinafter "District 1199C") moved to intervene in this proceeding. The parties stipulated that District 1199C is a labor organization within the meaning of Section 2(5) of the Act. District 1199C's motion to intervene is granted.

Local 148 is the current collective-bargaining representative of certain of the Employer's employees, and is party with the Employer to a collective-bargaining agreement effective by its terms from August 1, 1998, to and including July 31, 2001. The recognition clause of the agreement describes the unit as "all employees in the healthcare component at Shipley Manor Nursing Home, but excluding all office and clerical employees, guards, maintenance employees, social activity employees, temporary or casual employees, part-time employees working less than 16 hours per week and professional employees, including L.P.N.'s, R.N.'s, cooks and "Supervisors" as defined in the National Labor Relations Act, as amended." The parties stipulated that the contractual unit is an appropriate unit. There are approximately 50 employees in this unit.

The sole issue presented is whether the petition, which was filed on May 25, 2001, is timely or must be dismissed as filed during the insulated period preceding expiration of the current collective-bargaining agreement. In general, to be timely with respect to an existing contract having a term of 3 years or less, the petition must be filed more than 60 days but less than 90 days before the expiration date of the contract. Leonard Wholesale Meats, 136 NLRB 1000 (1962). In the health care industry, however, the petition must be filed not more than 120 days or less than 90 days before expiration.

Trinity Lutheran Hospital, 218 NLRB 199 (1975). It is undisputed that the Employer is a health care institution as defined in Section 2(14) of the Act. Accordingly, the petition would appear to be untimely filed in relation to the contract's July 31 expiration.

The Employer, the Petitioner and District 1199C argue, however, that the petition should be treated as timely because the Petitioner followed a Board agent's instructions with regard to the appropriate time for filing her petition. The evidence in this regard establishes that on several occasions beginning in April 2000, and continuing through May 2001, the Petitioner spoke with a Board agent who repeatedly explained that her petition must be filed at least 60 days prior to the contract's expiration. During these conversations, the Board agent did not inquire as to the type of employer involved, although the Petitioner told him the name of the Employer.

In these circumstances, I conclude that the petition should be treated as timely. In Vanity Fair Mills, 256 NLRB 1104 (1981), the Board treated as timely for contract bar purposes a petition that was in fact untimely but had been filed in accordance with advice received from a regional office of the Board. As the Board there stated, "the Petitioner understandably followed the [regional office's] advice in the reasonable expectation that he was acting in accordance with Board requirements for filing a petition in a timely manner during the contract term. . . . Accordingly, in view of the unusual circumstances presented herein, where Petitioner received from the Regional Office erroneous information concerning the application of a complex provision of Board law and procedure, we . . . direct that an appropriate election be conducted." Id. at 1106. The circumstances of the instant case are very similar to those in Vanity Fair. See also Excalibur Extrusions, Inc., 296 NLRB 1292 (1989) ("Regarding procedural issues that are a creature of Board policy, a party may be 'justified in relying upon the word of a responsible agent of the Board.'" (citation omitted)).

Based on the foregoing, I shall direct an election among employees in the following appropriate unit:

All employees in the healthcare component at Shipley Manor Nursing Home, but excluding all office and clerical employees, guards, maintenance employees, social activity employees, temporary or casual employees, part-time employees working less than 16 hours per week and professional employees, including L.P.N.'s, R.N.'s, cooks and "Supervisors" as defined in the National Labor Relations Act, as amended.

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 those 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 may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **PRODUCTION WORKERS LOCAL 148**, or by **DISTRICT 1199C, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, AFSCME, AFL-CIO**, or by neither labor organization.

LIST OF VOTERS

To insure that all eligible voters 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 that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely 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, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by, **AUGUST 27, 2001**.

Re: Shipley Manor
Case 5-RD-1276

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August 13, 2001

Dated: August 13, 2001
At Baltimore, Maryland

Acting Regional Director, Region 5



347-4010-4000