

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

NEW YORK REHABILITATION CARE MANAGEMENT, LLC  
D/B/A NEW YORK CENTER FOR REHABILITATION CARE AND  
NEW YORK CENTER FOR REHABILITATION CARE, INC.  
D/B/A NEW YORK CENTER FOR REHABILITATION CARE,  
A SINGLE EMPLOYER

Employer

and

**Case No. 29-RC-9785**

LOCAL 300S, PRODUCTION, SERVICE AND SALES DISTRICT COUNCIL,  
UNITED FOOD AND COMMERCIAL WORKERS UNION, AFL-CIO, CLC

Petitioner

NEW YORK REHABILITATION CARE MANAGEMENT, LLC  
D/B/A NEW YORK CENTER FOR REHABILITATION CARE AND  
NEW YORK CENTER FOR REHABILITATION CARE, INC.  
D/B/A NEW YORK CENTER FOR REHABILITATION CARE,  
A SINGLE EMPLOYER

Employer

and

**Case No. 29-RC-9937**

1199, NEW YORK'S HEALTH AND HUMAN SERVICE EMPLOYEES' UNION,  
SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

Petitioner

and

LOCAL 300S, PRODUCTION, SERVICE AND SALES DISTRICT COUNCIL,  
UNITED FOOD AND COMMERCIAL WORKERS UNION, AFL-CIO, CLC

Intervenor

**SUPPLEMENTAL ORDER REVOKING CERTIFICATION  
AND SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION**

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Tracy Belfiore, 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.
2. The parties stipulated that New York Center for Rehabilitation Care, Inc. d/b/a New York Center for Rehabilitation Care<sup>1</sup> ("NY Center"), a New York corporation, with its principal office and place of business located at 26-13 21<sup>st</sup> Street, Astoria, New York, herein called the 21<sup>st</sup> Street facility, has been engaged in the operation of an adult care facility, providing long-term healthcare services to the public. During the past year, which period is representative of its annual operations generally, NY Center, in the course and conduct of its business operations, derived gross annual revenues in excess of \$100,000, and purchased and received at its 21<sup>st</sup> Street facility, goods, products and materials valued in excess of \$5,000, directly from points located outside the State of New York.

New York Rehabilitation Care Management, LLC, d/b/a New York Center for Rehabilitation Care ("Rehab Management"), a domestic corporation, with its principal office and place of business located at 26-13 21<sup>st</sup> Street, Astoria, New York, has been established for the purpose of operating the 21<sup>st</sup> Street facility.

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<sup>1</sup> The stipulation and petition in Case 29-RC-9937, and numerous other documents, omit the "Inc.," using NY Center's d/b/a name. The record reflects that the 21<sup>st</sup> Street facility is currently operated by NY Center. Further, the record indicates that in the near future, Rehab Management will operate that facility, after acquiring NY Center's operating license and other assets and assuming NY Center's lease.

Based on the stipulation of the parties and the record as a whole, I find that NY Center and Rehab Management are engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>2</sup>

3. The labor organizations involved herein claim to represent certain employees of NY Center.<sup>3</sup>

4. A question affecting commerce exists concerning the representation of certain employees of NY Center within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. The following unit sought by both petitioners is appropriate for the purposes of collective bargaining:

All full-time and regular part-time employees of NY Center at the facility located at 26-13 21<sup>st</sup> Street, Astoria, New York, excluding all office clerical employees, professional employees, guards and supervisors as defined in Section 2(11) of the Act.

### **PROCEDURAL HISTORY**

On January 25, 2002, Local 300S, Production, Service and Sales District Council, United Food and Commercial Workers Union, AFL-CIO, CLC, herein called Local 300S, filed a petition in Case No. 29-RC-9785, seeking to represent all full-time and regular part-time service employees employed by Rehab Management, at 26-13 21<sup>st</sup> Street, Astoria, New York, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

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<sup>2</sup>As further discussed *infra*, I have concluded that NY Center, Rehab Management and Lyden Care Center constitute a single employer. A single employer may be treated as one corporation for jurisdictional purposes. E.g., *Pet Inn's Grooming Shoppe*, 220 NLRB 828 (1975).

<sup>3</sup> Although the petition, stipulated election agreement and certification in Case No. 29-RC-9785 name Rehab Management as the employing entity, NY Center was operating the 21<sup>st</sup> Street facility during the relevant time period.

On January 31, 2002, the undersigned approved a Stipulated Election Agreement between Rehab Management and Local 300S, for an election on February 22, 2002, in a unit of all full-time and regular part-time certified nurses' aides, housekeepers, maintenance employees, dietary employees and recreational employees, employed by Rehab Management at 26-13 21<sup>st</sup> Street, Astoria, New York, during the payroll period ending January 12, 2002, exclusive of office clerical employees, professional employees, guards and supervisors as defined in Section 2(11) of the Act.<sup>4</sup>

Pursuant to the election held on February 22, 2002, Local 300S was certified as the collective bargaining representative of the petitioned-for unit on March 13, 2002.

Thereafter, on October 22, 2002, 1199, New York's Health and Human Service Employees' Union, Service Employees International Union, AFL-CIO, herein called Local 1199, filed a petition in Case No. 29-RC-9937, seeking to represent all full-time and regular part-time employees of NY Center,<sup>5</sup> employed at 26-13 21<sup>st</sup> Street, Astoria, New York, exclusive of office clerical employees, guards and supervisors as defined in the Act.<sup>6</sup>

On October 25, 2002, Local 1199 filed a motion to revoke the certification of Local 300S in Case No. 29-RC-9785, for the following reasons: (1) the certification was obtained by fraudulent means; (2) the size of the bargaining unit fluctuated rapidly within a short time period; and (3) NY Center and Local 300S failed to notify the Board of

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<sup>4</sup> The *Excelsior* list in 29-RC-9785 also includes NY Center's licensed practical nurses ("LPNs"), as does the collective bargaining agreement between Local 300S, Rehab Management and NY Center.

<sup>5</sup> NY Center argues that the certification of Local 300S to represent the employees of Rehab Management, which will become the operator of the Astoria facility at a future point in time, bars Local 1199's petition to represent the employees of NY Center, the current operator.

<sup>6</sup> Subsequent to the first hearing in the instant case, Local 1199 amended its petition to exclude registered nurses from the bargaining unit. That amendment was granted. (Bd. Ex. 1(l))

Local 1199's interest in representing the petitioned-for unit, such interest having been known to both NY Center and Local 300S.

On December 20, 2002, the undersigned issued an order to show cause requesting the above-captioned parties to show cause, if any, why the certification that issued on March 13, 2002, should not be revoked and the proceeding in Case No. 29-RC-9785 be reopened to resolve the question concerning representation.

On January 16, 2003, after duly considering the parties' responses to the Order to Show Cause, the undersigned issued a Notice of Hearing in the above-entitled matter, to address the following issues:

- 1) Whether Rehab Center's and Local 300S' failure to notify Region 29 of 1199's potential interest in this matter should result in the revocation of the certification issued on March 13, 2002 in Case No. 29-RC-9785;
- 2) Whether it was appropriate to hold the election in Case No. 29-RC-9785 on February 22, 2002, in light of the employee complement then employed, the job classifications that were filled and the nature of the business operation at the time; and
- 3) Any other relevant issues that the parties may wish to raise.

A hearing on the above issues was held on February 10 and 11, 2003, before Joanna Pieprgrass, a hearing officer of the National Labor Relations Board, herein called the Board. All parties were afforded full and complete opportunity to be heard, to examine and cross-examine witnesses, to argue orally and to file briefs.

NY Center and Local 300S chose not to participate in the hearing, contending that the above issues would be better addressed in an unfair labor practice proceeding.

Although NY Center produced its payroll records and other documents, in response to a subpoena duces tecum served by Local 1199, no NY Center witness was made available to testify about them. These documents, and additional documents obtained from the New York State Department of Health (“DOH”) pursuant to the New York Freedom of Information Law (“FOIL”), were introduced into evidence by Local 1199. The witnesses for Local 1199 were Joanne McCarthy, Vice President of Local 1199, Jeannie Stallings, Organizer for Local 1199, and Suzanne Hepner, an attorney for Levy, Ratner & Behroozi, P.C. Local 1199 submitted a brief, and Local 300S and NY Center submitted letter briefs.

On March 21, 2003, the undersigned issued an Order Consolidating Cases and Revoking Certification and Decision and Direction of Election in the above-captioned cases, wherein the certification and the election in Case No. 29-RC-9785 were declared a nullity. Based on the record evidence and briefs submitted in connection with the February 10 and 11, 2003, hearing, I concluded that the February 22, 2002, election occurred before NY Center commenced operations, at a time when it did not employ a substantial and representative complement of employees; that Lyden Care Center (“Lyden”), Rehab Management and NY Center constitute a single employer; that NY Center knew that all or most Lyden employees, represented by Local 1199, would be transferred to NY Center in October, 2002, and were part of the petitioned-for bargaining unit in Case No. 29-RC-9785; that the former Lyden employees and other bargaining unit members were disenfranchised in the February 22, 2002, election; and that the failure to notify Local 1199 of the representation proceedings in Case 29-RC-9785, the failure to

notify the Region of Local 1199's potential interest, and the omission of Local 1199 from the ballot, compromised employees' Section 7 rights.

On April 3, 2003, and April 14, 2003, NY Center and Local 300S, respectively, filed requests for review of the Order issued on March 21, 2003.

On August 7, 2003, the Board issued a Decision and Order (unpublished) reversing the decision to revoke Local 300S's certification. The Board remanded the case to the Region, (1) to hold the petition in Case No. 29-RC-9937 in abeyance until a determination was made in Case Nos. 29-CA-25195 and 29-CB-12057, involving the same parties, and (2) to hold a new hearing, if one became necessary, in Case Nos. 29-RC-9785 and 29-RC-9937, in light of the due process concerns arising from the refusal of two parties, NY Center and Local 300S, to participate in the February 10-11, 2003, hearing. In this regard, the Board ordered the Region to provide the parties with a second opportunity "to litigate all relevant issues, including the single employer issue [and] whether there was a representative complement at the time of the election in Case 29-RC-9785." In addition, the Board, citing *Boston Gas Company*, 235 NLRB 1354 (1978), raised the issue of whether the Local 1199 unit employees constituted an accretion to the bargaining unit represented by Local 300S.

On September 3, 2003, the undersigned approved Local 1199's request for permission to withdraw the charges in Case Nos. 29-CA-25195 and 29-CB-12057.

On September 5, 2003, the undersigned issued a Notice of Hearing, apprising the parties that a second hearing would be conducted upon the following issues: (1) single employer; (2) representative complement; (3) accretion; and (4) any other relevant issues the parties wished to raise.

The second hearing was held before Hearing Officer Belfiore on September 23, 25, and 29, and October 2, 2003. At the second hearing, the parties stipulated to the admission of the exhibits admitted at the first hearing. This time, NY Center participated in the hearing and called two witnesses: Chaim Sieger, who testified that he is currently NY Center's controller, and Sieger's son-in-law, Nathan Brachfeld, who testified that he is currently NY Center's administrator. Local 1199's witnesses were Joanne McCarthy, Vice President of Local 1199, and three employees of NY Center who previously worked for Lyden: Francisco Contreras, cook, and certified nursing assistants Miriam Cabira and Juanita Perez. Local 300S again refused to participate in the hearing.

## **FACTS**

### **Lyden Care Center**

The record reflects that Lyden Care Center ("Lyden") was a 114-bed skilled nursing facility located at 27-37 27<sup>th</sup> Street, Astoria, New York. Lyden was a limited liability company whose members (similar to the shareholders of a corporation) were Chaim Sieger and Abe Grossman, each holding a 50% interest. Chaim Sieger was the administrator, and Sieger's son-in-law, Nathan Brachfeld, was the assistant administrator. Sieger is a licensed nursing home administrator, and Brachfeld is not. Sieger was in charge of labor relations policy at Lyden, and some human resources issues were handled by the secretary to the director of nursing, the department heads, and Brachfeld.

Lyden recognized Local 1199 as the exclusive bargaining representative of its employees in three separate bargaining units: registered nurses ("RNs,") licensed practical nurses ("LPNs") and paraprofessional employees. Lyden's most recent

collective bargaining agreement with Local 1199 was signed by Chaim Sieger, and was effective October 1, 1997, through September 30, 2002.

In October, 2002,<sup>7</sup> nearly all of Lyden's employees and patients (often referred to as "residents") were transferred to NY Center, a few blocks away. Lyden closed shortly thereafter.

A closing plan dated June 27, 2002, stated that Lyden's operator had retained the Association Geriatric Information Network, Inc. ("AGIN"), to assist with the closing of Lyden, the transfer of residents, and the opening of NY Center. However, Brachfeld maintained that AGIN billed the NY Center, as well as Lyden, and that the two corporations were billed separately. He testified that AGIN helped the NY Center to develop policies and procedures, floor layouts, regulatory posters and notices.

**New York Center for Rehabilitation Care, Inc.**  
**d/b/a New York Center for Rehabilitation Care**

The NY Center operates a 280-bed skilled nursing facility located at 26-13 21<sup>st</sup> Street, Astoria, New York, just a few blocks from where Lyden formerly operated. It began admitting residents on April 29, 2002. It is owned by "Mrs. Schon, Mrs. Taub, and Mrs. Weingarten," according to Sieger. The three owners are not involved in the day-to-day operations of the nursing home.

Brachfeld, the administrator of NY Center, testified that when he assumed this position in January, 2002, the construction of the building was substantially completed, but there were no patients or employees. He claimed that initially, he was in charge of interviewing and hiring new employees, but that this responsibility was turned over to the

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<sup>7</sup> All dates herein are in 2002 unless otherwise specified.

department heads, when they were hired. Brachfeld asserted that he is responsible for the Center's overall labor relations policies.

There is no dispute that the stipulated election agreement (January 31), the election (February 22), and the certification (March 13) in Case No. 29-RC-9785, and the resulting contract with Local 300S (April 26) preceded the admission of NY Center's first two patients on April 29. It was not until April 25, 2002, that a letter from the New York State Department of Health ("DOH") to Brachfeld approved the commencement of operations. (1199 Ex. 24(bb)) The DOH letter permitted NY Center to admit residents to the first 40-bed unit at the maximum rate of five admissions per day. When the unit approached 100% occupancy, NY Center would have to request approval to admit residents to the next 40-bed unit. The letter includes a hand-written notation: "First Admission 4/29/02."<sup>8</sup> According to Brachfeld, before obtaining DOH permission to open each 40-bed unit, the NY Center first has to staff the new unit.

On April 26, 2002, the day after the DOH approved the commencement of operations at NY Center, Brachfeld signed a collective bargaining agreement with Local 300S, covering NY Center's service, maintenance, and LPN employees, effective March 26, 2002, through March 23, 2006. The collective bargaining agreement indicates, on the face of the document, that Nathan Brachfeld signed it on behalf of both NY Center and Rehab Management.

Subsequently, DOH issued an operating certificate to NY Center, effective June 13, 2002, providing for the admission of an additional 40 residents and a total bed capacity of 80. Then, in October, 2002, more than 100 additional residents transferred

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<sup>8</sup> NY Center's patient census records for the period April 25, 2002, through January 14, 2003, disclose that its first two patients were admitted on April 29, 2002, and NY Center's witnesses do not dispute this. (1199 Ex. 16)

from Lyden to the 21<sup>st</sup> Street facility, along with about 77 Lyden employees. There were 218 residents at the end of October, 2002. (1199 Ex. 16) The record indicates that sometime in 2003, the number of residents increased to its present complement of about 280.

**Role of Sieger at New York Center**

Sieger testified that in January, 2003, he became the controller of NY Center, at the request of its owners. He contended that he had no prior involvement with the operation of the facility. However, Sieger conceded that he “had visits” to NY Center in October, 2002 (when Lyden’s employees and residents transferred to the Center), and he “constantly visited” in November, 2002. After Brachfeld left Lyden to become the administrator of NY Center (in late December, 2001, or early January, 2002, according to Sieger), Sieger and Brachfeld communicated every day “about everything...as a father-in-law and a son-in-law.”

A January 13, 2003, thank-you letter from the son of a resident was addressed to Chaim Sieger, New York Centre [sic] for Rehabilitation Care. (1199 Ex. 15)

The three employee witnesses called by Local 1199 testified that Sieger is in charge of labor relations matters at NY Center. Employee Cabira was unaware of any instance in which an employee discussed labor relations matters with Brachfeld. Employee Perez testified that Sieger is her boss at NY Center.

Sieger acknowledged that he sometimes discusses labor relations issues with Brachfeld, and tries to help Brachfeld resolve them. However, he asserted that employees at NY Center generally discuss labor relations issues with their department heads, and that Brachfeld handles issues the department heads are unable to resolve.

**New York Rehabilitation Care Management, LLC**  
**d/b/a New York Center for Rehabilitation Care**

Rehab Management, a limited liability company, was organized in August, 2001, for the purpose of assuming the operation of the NY Center. There is no dispute that Sieger is Rehab Management's majority shareholder and administrator.<sup>9</sup> According to Sieger, he has never received any remuneration from Rehab Management. Rather, the only function of Rehab Management is "to eventually take over the Center when it gets the license." However, he also stated that Rehab Management is a management company which manages NY Center and "makes sure that the place runs." This latter testimony conflicts with Sieger's testimony, in general, that Rehab Management has not been operating the 21<sup>st</sup> Street facility pending New York State approval of the transfer of NY Center's license to Rehab Management, and the closing in connection therewith.

Sieger further testified that sometime in 2001, he applied to the New York State Department of Health ("DOH") (presumably on behalf of Rehab Management) for a license to operate the 21<sup>st</sup> Street facility. This testimony is consistent with a Certificate of Need ("CON") application filed with the DOH by Sieger on November 15, 2001, "seeking the establishment of New York Rehabilitation Care Management, LLC d/b/a New York Center for Rehabilitation Care as the new operator of New York Center for Rehabilitation Care." (1199 Ex. 24(a)) The CON included the following list of

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<sup>9</sup> In Rehab Management's operating agreement dated October 30, 2001, Brachfeld and Sieger were both identified as managers. (1199 Ex. 24(k)) However, subsequent operating agreements identified only Sieger as manager. (1199 Ex. 24(n), 24(y))

members, with their percentage interests:

Chaim Sieger	50.5%
Chaim Z. Stern	16.5%
Jack Basch <sup>10</sup>	16.5%
Tibor Klein	16.5%

The record contains a portion of a July 1, 2002, agreement between NY Center (referred to in the agreement as “Operator”) and Rehab Management (referred to as “New Operator”), which was signed by Sherman Taub, Vice President of NY Center, and by Chaim Sieger on behalf of Rehab Management. (1199 Ex. 24(d)) The July 1, 2002, agreement states that Rehab Management had entered into a lease of the 21<sup>st</sup> Street facility;<sup>11</sup> that it had applied to DOH to be the operator of the facility; and that NY Center’s interests in the 21<sup>st</sup> Street facility would be transferred to Rehab Management on the third (3<sup>rd</sup>) business day after the Public Health Council of the New York State Department of Health (“Council”) approved Rehab Management’s application to be the operator of the 21<sup>st</sup> Street facility.

On July 30, 2003, the Council approved Rehab Management’s application for a license to operate the 21<sup>st</sup> Street facility. (1199 Ex. 26) However, Sieger stated that the license has not yet been transferred to Rehab Management, because there has been no closing yet. The record does not reflect why the closing did not take place three days after the Council’s approval, as set forth in the July 1 agreement.

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<sup>10</sup> Miriam Basch and Miram Klein were later substituted for Jack Basch and Tibor Klein.

<sup>11</sup> An unsigned lease agreement dated October 12, 2001, indicated that Rehab Management would lease the 21<sup>st</sup> Street facility when DOH and the Public Health Council of the New York State Department of Health (“Council”) approved Rehab Management’s operating certificate. (1199 Ex. 24J)

**Initial Plans to Transfer Lyden Patients and Employees to NY Center's New Facility**

Brachfeld testified that when he first became the Administrator of NY Center in January, 2002, he planned to hire approximately 300 employees, based on his analysis of the staffing requirements of a 280-bed facility.<sup>12</sup> Both Sieger and Brachfeld knew the facility would have to hire approximately one full-time employee for each patient.

Prior to January, 2002, the Department of Health had told Brachfeld that if the patients at Lyden transferred to NY Center, "it would be beneficial for the residents of Lyden to have the staff come along with them." Brachfeld testified that in January, he knew that if Lyden closed, he would "try to get" the Lyden employees to transfer. At the time, he anticipated that filling a 280-bed facility would take 14 to 16 months if the Lyden patients transferred to NY Center, and two years if they did not.

According to the CON filed by Sieger on November 12, 2001, on behalf of Rehab Management (1199 Ex. 24(a)), the residents of Lyden would be transferred to NY Center, "in accordance with an approved plan for the closure of Lyden." In addition, a "census and revenue" projection filed by Sieger on November 15, 2001, predicted that the 21<sup>st</sup> Street facility would have an 80% occupancy rate within 12 months, "since Lyden Nursing Home will be transferring its patients to the NY Center after a few months of operation." (1199 Ex. 24(b))

However, Sieger testified that in November, 2001, he had merely "anticipated the possibility of a closure." According to Sieger, it was not until August or September, 2002, that he submitted a transfer plan to the DOH for the transfer of Lyden's patients

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<sup>12</sup> Brachfeld testified that at the time of the election, DOH had granted an operating license for the operation of NY Center as a 280-bed facility, but had not yet approved the admission of any residents. Brachfeld testified extensively regarding the precise number of employees required to staff a 280-bed facility. However, both Brachfeld and Sieger denied that any particular staff-to-patient ratio is required by law.

and staff to NY Center. He did not explain the reason for this long delay. Shortly thereafter, in September, 2002, DOH approved the transfer plan and the closure of Lyden.

**Employer's Communications with Lyden Employees Regarding the Relocation to New York Center; Hiring Procedures for the former Lyden Employees**

Sieger testified that in early February, 2002, he held a staff meeting at Lyden. At the meeting, employees expressed the concern that Lyden might close. According to Sieger, he advised that "if the day comes that we close down Lyden, they should all apply over there [at NY Center] for a job." Sieger claimed that he "recommended" the Lyden employees to Brachfeld and the owners of NY Center.

By contrast, employees Perez and Cabira testified that in the spring or summer of 2002, Sieger held a general meeting with all departments of Lyden, at which Sieger told them, "We'll be moving to our new facility and you won't lose anything. You'll have your vacation and sick days, everything will remain the same." Similarly, employee Contreras testified that Sieger "promised" to move the Lyden employees to the NY Center.

On August 1, 2002, a memorandum to department heads and employees signed by Chaim Sieger, Administrator, announced that Lyden Care Center would close in about the first two weeks of October, 2002.

Perez testified that about a month before the relocation, in September, 2002, her supervisor at Lyden, Gloria Heroche, brought her to NY Center to tour the new facility. At the tour, there were about eight Lyden employees in Perez's group. The actual tour was conducted by Ms. Nato, who was not employed by Lyden. Perez stated that she was paid by Lyden for the time spent touring NY Center, which occurred during working hours. The record reflects that Cabira attended a similar tour.

Although the Lyden employees had to fill out new applications to work at NY Center, Perez and Cabira maintained that they were never interviewed for their positions with NY Center. Brachfeld acknowledged that some of the former Lyden employees were not interviewed, particularly those working under NY Center department heads who previously worked for Lyden.

**Employer's Communications with Local 1199 Regarding the Relocation**

Joanne McCarthy, Vice President of Local 1199, testified that Local 1199 learned of Lyden's relocation plans when members complained that Sieger had asked them to fill out new employment applications. This led Local 1199 to request a meeting with Sieger, which was confirmed in a February 28, 2002, letter to Sieger from Maryann Allen, 1199's Vice President at Large. The letter stated:

You have informed the 1199 representative that Lyden...will cease operations, and transfer its operation to New York Center for Rehabilitation Care...Further, you have informed the bargaining unit members as well as the Union representative that the workforce will continue their employment at the new location under the current CBA. However, we are informed by our bargaining unit members that they have been told to fill out new employment forms because they will allegedly be new employees of the facility.

...[W]e have consulted with Union counsel...the employment relationship at the new facility does not affect 1199's members' rights under the CBA...our Union members will not be new employees as a matter of law....(1199 Ex. 19)

McCarthy testified that Sieger agreed to a meeting in early March, 2002, with three Local 1199 representatives (McCarthy and organizers Jenny Stallings and Nelson Calderon). At the meeting, however, Sieger refused to provide any information regarding the relocation.

On the afternoon of the March meeting, McCarthy, Stallings and Calderon visited the NY Center facility, four or five blocks from Lyden. According to McCarthy, they

observed that the facility was unlit. They did not see any residents or employees, other than construction workers and a security guard who told them that there was nothing to see, because the building was not open.

A standard letter dated March 21, 2002, from Dennis Rivera, president of Local 1199, to Sieger, in his position as administrator of Lyden, requested negotiations for a new collective bargaining agreement, noting that the current collective bargaining agreement was set to expire on September 30, 2002.

McCarthy testified that a subsequent meeting in mid-August, 2002, was attended by Sieger, Stallings and herself. At that meeting, Sieger told the Local 1199 representatives that New York State had approved the transfer of Lyden residents to NY Center's new facility, but that he was still waiting for his administrative license to operate the new facility. If he was not granted a license, he would keep Lyden open for another three years and sign a "me-too" agreement, agreeing to the terms of the new multi-employer association agreement between the Greater New York Health Care Facilities Association and Local 1199. But he told them that if he obtained the license, Lyden would close 30 days after he obtained the license.

It was only through a series of letters from Sieger to the Lyden residents, in late August and early September, 2002 (1199 Ex. 21-23), that Local 1199 learned that Lyden would be closing.

**Employer's Communications with Lyden Residents and Family Members Regarding the Relocation to New York Center**

An August 27, 2002, letter from Sieger to residents' family members and designated representatives, stated:

We are now approaching the time when Lyden Care Center will close its doors and move to its new name and location: New York Center for Rehabilitation Care at 26-13 21<sup>st</sup> St., Astoria, NY 11102. Pending New York State Department of Health approval, the move will take place during the first week of October. We are confident that you and your loved one...will enjoy the elegance and comfort of the surroundings while having the reassurance of being cared for by the familiar Lyden staff. (1199 Ex. 21)

A September 12, 2002, letter, also from Sieger to family members and representatives, confirmed:

As you are already aware, Lyden is planning to close within the first two weeks of October and we will be bringing our dedicated staff and wonderful residents with us to New York Center for Rehabilitation Care located just a few blocks away at 26-13 21<sup>st</sup> St., Astoria, NY 11102. (1199 Ex. 22)

A September 16, 2002, letter, from Sieger to residents, family members and representatives, advised that Lyden residents would be transferred to the Center on October 7, 8 and 9. (1199 Ex. 23)

**Case No. 29-RC-9785: the Failure to Notify the Board of Local 1199's Interest**

In connection with Case No. 29-RC-9785, the Region's standard letter to Rehab Management, dated February 1, 2002, requested, *inter alia*, the following information:

- (b) Copies of any existing or recently-expired collective bargaining agreements, and any addenda thereto, covering *any* of the employees in the petitioned-for unit;
- (c) Name of any other labor organization claiming to represent *any* of the employees in the petitioned-for unit. (Bd. Ex. 1(a) (emphasis added))

In its petition in Case No. 29-RC-9785, filed on January 25, 2002, Local 300S wrote "None," in answer to the following questions:

- 12. Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c) which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in *any* employees in unit described in item 5 above. (If none, so state.) (Bd. Ex. 1(c) (emphasis added))

Brachfeld was served with the letter and petition, and he testified that he was aware the Lyden employees were represented by Local 1199. However, at no time did either Lyden, NY Center, Rehab Management or Local 300S advise the Board that employees of Lyden, covered by a current collective bargaining agreement with Local 1199, would be transferred to NY Center in October, 2002. Brachfeld claimed that he saw no reason to notify the Board of Local 1199's interest in the Lyden employees, since he did not know whether the DOH would permit Lyden to close, or whether any Lyden employees would become employees of the Center.

***The Transfer of Lyden Patients and Employees to New York Center***

In October 2002, nearly all of Lyden's patients and most of its staff were relocated to NY Center. This included all but 5 or 6 Lyden employees, and all but one Lyden patient, according to Sieger, who stated that some of the former Lyden employees were hired at the NY Center "way before" October. During the months leading up to the relocation, there is evidence that some employees worked at Lyden and NY Center concurrently.

The record indicates that a number of NY Center supervisors were previously supervisors at Lyden, including the Center's director of nursing (who hires aides, orderlies, and CNAs), the assistant director of nursing, a supervisor in the dietary department, and the department heads for the recreation, physical therapy, and maintenance departments. The head of the laundry department at NY Center was a laundry aide at Lyden. Some department heads transferred to NY Center before Lyden closed, and from that time until Lyden's actual closure, their assistant department heads at Lyden served as temporary department heads (at Lyden).

Contreras, Perez and Cabira testified that their current job duties at the NY Center are substantially the same as they were at Lyden.

**Initial Complement of Employees: The Excelsior List Employees**

Brachfeld testified that he began interviewing and hiring NY Center's first group of employees in January, 2002, when he became the Center's administrator. He acknowledged that NY Center "was not operating" at the time. The employees hired in January, 2002, performed cleaning tasks, made beds, "arranged things," waxed floors, prepared the kitchen, and stocked the pantries and stock room. Since there were no patients at the Center prior to April 29, 2002, the employees who were hired in January to perform patient care-related functions were "preparing themselves to do patient care" by making beds and cleaning out their areas, according to Brachfeld. In addition, Brachfeld testified that the LPNs and certified nurses' aides organized patient care binders into sections, so that patient care information could later be placed into the binders. Brachfeld told the new hires that they needed to get the building ready for a Department of Health inspection, and that "we expect to open the facility in a month, in six weeks." However, NY Center subsequently failed three DOH inspections and was not granted permission to open until April, 2002. It was not until April 29, 2002, that the Center admitted its first two patients.

NY Center hired its first employee on January 7, 2002, five days before the January 12, 2002, eligibility date in Case No. 29-RC-9785.<sup>13</sup> The record reflects that of

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<sup>13</sup> NY Center's payroll records set forth the d/b/a name, "NY Center for Rehabilitation Care." The same d/b/a name is used by both Rehab Management and NY Center.

the 45 individuals included on the *Excelsior* list, four were hired *after* the eligibility date. These included Hanover (or Hanoman) Bechan, who worked only the week of the election (February 17-23), earning a total of \$14.44; Vincent Mehearwanlal, who worked only during the weeks ending January 19 and April 6, earning a total of \$63.75; Balgrim Dait (date of hire January 14) and Chandrawattie Mangar (date of hire January 14). (1199 Ex. 1, 2)

Of the remaining 41 *Excelsior* list employees, 37 individuals had performed less than 8 hours' work, in total, for NY Center as of the January 12 eligibility date.<sup>14</sup> The overwhelming majority of the *Excelsior* list employees continued to work fewer than 8 hours per week until NY Center began operations on April 29 (pursuant to the Department of Health's April 25 approval letter). When NY Center opened for business, most of the *Excelsior* list employees disappeared from the payroll. In this regard, during the week of April 21-27, 2002, 35 *Excelsior* list employees remained on NY Center's payroll, out of a total of 83 unit employees. However, by the week ending May 8, 2002, just 14 employees on the *Excelsior* list remained on the payroll, out of a total of 54 unit employees, most of whom were full-time. (1199 Ex. 1, 2) And, as of the week ending October 30, 2002 (shortly after the Lyden patients and employees transferred to NY Center), the 12 remaining *Excelsior* list employees, out of a total of 207 unit employees,

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<sup>14</sup>NY Center's payroll records reflect wages received, not hours worked. However, hours worked can be computed by dividing wages received by wage rates. Brachfeld estimated that dietary aides, housekeeping and maintenance employees hired in January, 2002, were paid "\$6 or \$7 an hour, maybe \$5." He further testified that LPNs earned \$15 or \$16 per hour, and that aides and orderlies, transporters, and recreation employees were paid \$5 or \$6 an hour. Brachfeld acknowledged that most employees hired in January, 2002, were not working full-time, and that some were working 4 to 6 hours per week.

constituted less than 6% of the bargaining unit.<sup>15</sup>

The *Excelsior* list includes three LPNs,<sup>16</sup> eight aides and orderlies, two recreation employees, and one transporter (a type of aide who transports patients). Despite their job titles, all of which would normally entail direct patient care, all 14 of these individuals disappeared from NY Center’s payroll records as soon as NY Center admitted its first two patients on April 29, 2002. NY Center’s payroll records for April 21-27, 2002, include these 14 individuals, but those for May 8, 2002, do not. (1199 Ex. 1, 2)

According to Brachfeld, some *Excelsior* list employees “got dishearted [sic] and left” because of the delay in commencing operations. He did not explain why the departure of most *Excelsior* list employees coincided with the April 25, 2002, letter from DOH, approving the commencement of operations.

**The Expansion of NY Center’s Work Force**

During the first 5 ½ months after the DOH’s April 25, 2002, approval letter, NY Center’s resident population grew at a rate of about 15 admissions per month. The first two residents were admitted on April 29. As of October 4, there were 92 residents. Shortly thereafter, there was an influx of residents resulting from the closure of Lyden,

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<sup>15</sup> The dwindling complement of *Excelsior* list employees is summarized below:

<i>Payroll Weeks Ending (2002)</i>	<i>Number of Excelsior List employees</i>
May 8 - 15	15 or fewer
May 22 - 29	0
June 5 - August 7	13 or fewer
August 14 – October 30, 2002	12 or fewer

<sup>16</sup> LPNs were not among the job classifications set forth in the Stipulated Election Agreement. However, the LPNs are part of the Local 300S contractual unit, they share a community of interest with other unit employees, and all of the parties agree that they should be included in the bargaining unit.

and the transfer of virtually all of its residents and employees to NY Center. By October 9, there were 196 residents, and on October 31, there were 218. (1199 Ex. 16)<sup>17</sup>

NY Center's payroll records (1199 Ex. 2) reflect that with the growth in the number of residents, there was a corresponding growth in the number of employees in the bargaining unit represented by Local 300S. During the payroll weeks ending January 12 through April 20 (a period encompassing the petition, the stipulated election agreement, the election, and the certification in Case No. 29-RC-9785), the employees in the Local 300S bargaining unit numbered 41 or less. There were 54 unit employees during the week ending May 8,<sup>18</sup> 63 unit employees during the week ending June 5, 102 during the week ending August 14, 138 during the week ending October 9, and over 200 during the weeks ending October 16 through 30, 2002.<sup>19</sup>

According to two employee lists compiled by NY Center (1199 Ex. 3, 4), NY Center employed a total of 214 employees in the Local 300S unit as of the payroll week ending November 11, 2002. Of the 214, 60 are on NY Center's list of unit employees who transferred from Lyden. An additional 17 employees, whom NY Center did not include on the list of employees who transferred from Lyden, nevertheless appear on a dues checkoff list submitted by Lyden to Local 1199 on October 15, 2002. (1199 Ex. 5) Thus, it appears that there were a total of 77 former Lyden employees working at NY Center as of the week ending November 11, 2002.

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<sup>17</sup> See Appendix 1 of my March 21, 2003, decision. (Bd. Ex. 1(I))

<sup>18</sup> Brachfeld testified that during the week of April 21 to 27, 2002, when he signed the contract with Local 300S, there were a total of 94 employees at the Center, of whom 83 were bargaining unit employees. Brachfeld did not explain why 23 of the bargaining unit employees on the April 21 to 27 payroll earned less than \$10 for the week, or why 10 of these employees earned under \$5 for the week (and thus, if NY Center was paying the minimum wage, these 10 employees worked less than one hour that week).

<sup>19</sup> See Appendix 2 of my March 21, 2003, decision. (Bd. Ex. 1(I))

Payroll records submitted by NY Center at the second hearing indicate that there were 232 unit employees during the week ending December 4, 2002, and 243 during the week ending June 4, 2003. In early October, 2003, during the second hearing in the instant case, Brachfeld estimated that NY Center employed about 220 unit employees and 80 non-unit employees (including RNs). Sieger confirmed that NY Center currently employs between 215 and 220 bargaining unit employees.

## **ANALYSIS**

### **Single Employer Issue**

A single employer relationship exists “where two nominally separate entities are actually part of a single integrated enterprise so that, for all purposes, there is in fact only a ‘single employer.’” *Silver Court Nursing Center*, 313 NLRB 1141, 1142 (1994). A single employer may be treated as one corporation for jurisdictional purposes, *e.g.*, *Pet Inn’s Grooming Shoppe*, 220 NLRB 828 (1975), and the employees of the two companies may be combined in a single bargaining unit. *E.g.*, *Numrich Arms Corporation*, 237 NLRB 313 (1978).

The four operative criteria used to determine whether two separate companies constitute a single employer are: (1) interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership. *JMC Transport, Inc.*, 283 NLRB 554, 555(1987). However, no one of these factors is controlling, and it is not necessary for all four of these factors to be present. *JMC*, 283 NLRB at 555; *Blumenfeld Theatres Circuit*, 240 NLRB 206, 215 (1979), *enf’d*, 626 F.2d 865 (9th Cir. 1980); *see Jerry’s United Super*, 289 NLRB 125, 135 (1988); *see also Soule Glass and Glazing Co.*, 246 NLRB 792, 795 (1979). Single employer status depends on

all the circumstances of the case, and is “characterized as an absence of an arm’s length relationship found among unintegrated companies.” *Silver Court*, 313 NLRB at 1142; *see also Emsing’s Supermarket, Inc.*, 284 NLRB 302, 303, 304 (1987); *Blumenfeld*, 240 NLRB at 215.

**Interrelation of operations**

NY Center and Lyden are both skilled nursing facilities, which were operating concurrently, within a few blocks from one another, from about April until October, 2002. Sieger’s own letters to residents’ family members and representatives reveal that he considered NY Center to be a continuation of Lyden. In his August 27 letter, for example, he announced that “Lyden Care Center will close its doors and move to its new name and location: New York Center for Rehabilitation Care.” According to Cabira, Sieger told employees, “We’ll be moving to our new facility and you won’t lose anything.”

Nearly all of Lyden’s employees and residents, and many department heads, were transferred to NY Center. Before the transfer, Lyden employees were given orientation tours of NY Center, while on Lyden’s payroll. Many were never interviewed for their positions at NY Center, which (in most cases) were substantially the same as their positions at Lyden. It appears that prior to Lyden’s closure, some employees worked at Lyden and NY Center concurrently.

The Association Geriatric Information Network (“AGIN”) was retained both by Lyden and NY Center, to assist in the closing of Lyden, the transfer of residents, and the opening of the NY Center. Although Brachfeld testified that NY Center was billed

separately from Lyden, he did not indicate which of the two companies paid for AGIN's assistance with the transfer of residents.

Sieger testified that Rehab Management, of which he is the principal, has not yet acquired the license to operate the Astoria facility. He claimed that he, personally, had no role at the 21<sup>st</sup> Street facility until he was hired as NY Center's controller in January, 2003. However, the record belies this testimony, as discussed further below, and it appears that NY Center and Rehab Management have sometimes been treated interchangeably. For example, NY Center contends that the certification of Local 300S as the bargaining representative of Rehab Management's employees, in Case 29-RC-9785, bars Local 1199's petition to represent the employees of NY Center. In addition, the Certificate of Need ("CON") application was filed by Sieger, as co-administrator and principal shareholder of Rehab Management. The April 25 DOH approval letter and June 13 operating certificate appear to have been in response to this CON, but they were issued to NY Center, and not Rehab Management. Sieger was apparently referring to these documents when he told Local 1199 representatives in mid-August, 2002, that New York State had approved the transfer of Lyden residents to the new facility. At that time, Sieger told Local 1199 that he was awaiting approval of his license<sup>20</sup> to operate the 21<sup>st</sup> Street facility, and that without this approval, Lyden would remain open for another three years. However, the closure and transfer took place in October, 2002, without DOH approval of Sieger or Rehab Management's license to operate the 21<sup>st</sup> Street facility.

Notably, at the time of the meeting with Local 1199 in mid-August, 2002, Sieger failed to mention that he had signed a memorandum to Lyden's department heads and

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<sup>20</sup> Since Sieger claims he had nothing to do with NY Center at the time, the reference to "his" license is apparently a reference to Rehab Management's CON application.

employees on August 1, 2002, announcing that Lyden would close in about the first two weeks of October, 2002. He also omitted to mention to Local 1199 that Local 300S had been certified to represent Rehab Management's employees.

### **Common management**

Brachfeld, the former assistant administrator of Lyden, is the administrator of NY Center. Sieger, the former administrator of Lyden, is the administrator of Rehab Management, and he testified that in January, 2003, he became the controller of NY Center. In November, 2001, Sieger filed a Certificate of Need application with DOH, for a license to operate the 21<sup>st</sup> Street facility. Starting in about early January, 2002, when Brachfeld became the administrator of NY Center, Sieger was in daily contact with him. Sieger visited NY Center frequently in the fall of 2002, when Lyden's residents and employees were transferred there. Sieger testified that sometimes, he helps Brachfeld to resolve labor relations issues.<sup>21</sup> Employees testified that Sieger is in charge of labor relations at NY Center and they consider him their boss.

A January 13, 2003, thank-you letter from the son of a resident was addressed to Chaim Sieger, New York Centre [sic] for Rehabilitation Care.

### **Centralized control of labor relations**

Sieger was in charge of labor relations at Lyden, and was the signatory to Lyden's most recent collective bargaining agreement with Local 1199. He was the primary Lyden official involved in all communications with that labor organization, on matters ranging from the negotiation of a new contract to the transfer of Lyden employees to the NY Center facility. In addition, it was Sieger who held a staff meeting or meetings in early 2002, to inform Lyden employees of the impending relocation to NY Center (or

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<sup>21</sup> Sieger did not indicate when he first started "helping" Brachfeld with labor relations issues.

according to Sieger, to inform employees that if Lyden closed, they should apply for a job at NY Center). The August 1, 2002, memorandum to Lyden department heads and employees, informing them that Lyden would close in early October, 2002, was signed by Sieger.

The three employee witnesses called by Local 1199 testified that Sieger is in charge of labor relations matters at NY Center. Sieger acknowledged that he sometimes discusses labor relations issues with Brachfeld, and tries to help Brachfeld resolve them.

The record indicates that Brachfeld was the assistant administrator at Lyden and is now the administrator of NY Center, and that he has had a role in labor relations at both locations. At NY Center, according to Brachfeld, he is responsible for the Center's overall labor relations policies and hired the initial group of employees, before turning over this responsibility to the department heads. Many of the NY Center department heads were previously department heads at NY Center, and were involved in hiring employees at both locations.

In addition, Brachfeld signed the Local 300S contract on behalf of both Rehab Management and NY Center. In Case 29-RC-9785, Rehab Management (of which Sieger is the administrator and majority shareholder) is the named employer on the petition, the stipulated election agreement, and the certification.

### **Common ownership**

Sieger, one of the two principal shareholders of Lyden, is also the principal shareholder of Rehab Management. Although Brachfeld had no ownership interest in Lyden, and has no ownership interest in Rehab Management or NY Center, he is the son-in-law of Sieger.

### **Conclusion**

Based on all the facts and circumstances outlined above, I find that Lyden, Rehab Management and NY Center are a single employer. In reaching this conclusion, I place particular weight on the involvement of Sieger and Brachfeld in the management, labor relations and ownership of all three entities. In addition, I rely on NY Center's admission that it considered NY Center to be a continuation of Lyden, with the same residents and staff. The manner in which the transfer was effectuated, involving the retention of nearly all of Lyden's employees, and the transfer of virtually all of its patients, is consistent with this admission. With regard to the relationship between Rehab Management and NY Center, the record indicates that the two entities have often been treated interchangeably by the principals, even with respect to the instant petitions.

### **Revocation of Local 300S's Certification**

It is well settled that the Board, "having issued a certification under Section 9 of the Act...has the power to police and revoke the certification on a showing of good cause." *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 671 (Airborne Freight Corporation of Delaware)*, 199 NLRB 994 (1972); *Setzer's Super Markets of Georgia, Inc.*, 145 NLRB 1500, 1502 (1964); *Alto Plastics Manufacturing Corporation*, 136 NLRB 850, 854 (1962). The issue of whether a certification should be revoked may be addressed in a supplemental proceeding in the underlying representation case. *E.g., U.S. Chaircraft, Inc.*, 132 NLRB 922 (1961); *Somerville Iron Works, Inc.*, 117 NLRB 1702 (1957). Moreover, "[u]nder the delegation of decision-making authority in representation cases, Regional Directors have the same authority as the Board, in cases which it decides, to reconsider their decisions." *Pentagon*

*Plaza, Inc.*, 143 NLRB 1280, 1283 n. 3 (1963). This includes the authority to revoke a certification, once issued. *E.g., Flatbush Manor Care Center*, 287 NLRB 457 (1987); *see* Section 3(b) of the Act; Board Rules and Regulations, Sections 102.62(a), 102.69(b)(certifications issued by Regional Director have “the same force and effect as if issued by the Board”); *see also Riviera Mines Company*, 108 NLRB 112 (1954)(Regional Directors’ authority to withdraw approval of consent-election agreements). A union’s certification as a bargaining agent may be rescinded

at any time upon a showing that such agent is not according equal representation to all employees in the bargaining unit, or where the Board finds the existence of unusual circumstances...Thus, the certification of a union as a bargaining agent is not completely sacrosanct but may be modified, amended, or even rescinded by the Board at any time where necessary to effectuate the policies of the Act, even though such action involves a change or destruction of an existing bargaining status.

*Stow Manufacturing Co.*, 103 NLRB 1280 (1953). As discussed below, the Board has held that the circumstances which justify the revocation of a union’s certification include (1) the disenfranchisement of bargaining unit members because of election irregularities, and/or because of the expansion of the bargaining unit after an election, and (2) the failure of parties in a representation case to provide full disclosure to the Board, particularly with regard to the identities of other interested labor organizations. Both of these considerations justify the revocation of the certification issued to Local 300S in Case No. 29-RC-9785.

### **Disenfranchisement of Voters**

The enfranchisement of eligible voters is an important public policy goal in representation cases. Therefore, “[i]t is the Board’s responsibility to establish the proper procedure for the conduct of its elections, which procedure requires that all eligible

employees be given an opportunity to vote.” *Baker Victory Services, Inc.*, 331 NLRB 1068,1070 (2000). If just one employee, whose vote is determinative, is disenfranchised as the result of being “delayed in the normal course of his duties and...unable to return before the polls closed,” the Board is compelled to revoke the certification. *Central Distributors, Inc.*, 266 NLRB 1021 (1983). Likewise, after an election in which the names of just two eligible voters, whose votes were potentially determinative, had been omitted from the *Norris-Thermador*<sup>22</sup> list, the resulting certification had to be invalidated. *Smith and Smith Aircraft Company*, 735 F.2d 1215 (10<sup>th</sup> Cir. 1984).

In the instant case, nearly the entire bargaining unit was disenfranchised, because of the inclusion of ineligible employees on the *Excelsior* list, and because of the expansion of the bargaining unit, an expansion that resulted in the disenfranchisement of about 200 employees (including the 77 former Lyden employees represented by Local 1199, and over 100 employees hired after NY Center began admitting residents on April 29, 2002).

### **Expanding Bargaining Unit**

If an employer has plans to relocate and/or expand its workforce, an election is not appropriate unless “the present workforce constitutes a ‘substantial and representative complement’ of the employer’s reasonably foreseeable future workforce.” *Deutsche Post Global Mail Ltd.*, 315 F.3d 813 (7<sup>th</sup> Cir. 2003); *see Riviera Mines Company*, 108 NLRB 112 (1954)(certification revoked due to expansion of bargaining unit, combined with employer misconduct); *see also Gilmore Motors, Inc.*, 121 NLRB 1672 (1958)

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<sup>22</sup> *See Norris-Thermador Corp.*, 119 NLRB 1301 (1958).

(certification revoked after the merger of two bargaining units). In determining whether the present employee complement is substantial and representative, the Board

“must often balance what are sometimes conflicting *desiderata*, the insurance of maximum employee participation in the selection of a bargaining agent, and permitting employees who wish to be represented as immediate representation as possible. Thus, it would unduly frustrate existing employees’ choice to delay selection of a bargaining representative for months or years until the very last employee is on board. Conversely, it would be pointless to hold an election for very few employees when in a relatively short period the employee complement is expected to multiply many times.”

*Clement-Blythe Companies*, 182 NLRB 502 (1970), *enfd*, 77 LRRM 2373 (4<sup>th</sup> Cir. 1971); *see Deutsche Post*, 315 F.3d at 815-16; *Toto Industries*, 323 NLRB 645 (1997).

Accordingly, the Board applies a case by case balancing test, rather than a set of “hard and fast rules” or “rigid formulas,” in determining whether the present employee complement is sufficiently substantial and representative to hold an immediate election.

*Deutsche Post*, 315 F.3d at 816; *Clement-Blythe*, 182 NLRB at 502. Factors entering into this determination include the following:

(1) the size of the present work force at the time of the representation hearing; (2) the size of the employee complement who are eligible to vote; (3) the size of the expected ultimate employee complement; (4) the time expected to elapse before a full work force is present; (5) the rate of expansion, including the timing and size of projected interim hiring increases prior to reaching a full complement; (6) the certainty of the expansion; (7) the number of job classifications requiring different skills which are currently filled; (8) the number of job classifications requiring different skills which are expected to be filled when the ultimate employee complement is reached; and (9) the nature of the industry.

*Toto Industries*, 323 NLRB at 645; *see also Deutsche*, 315 F.3d at at 816; *Clement-Blythe*, 182 NLRB at 502.

In applying these criteria, the Board has found a substantial and representative complement to exist when employees constituting 31 percent of the contemplated work force were employed in 50 percent of the planned job classifications. *General Cable Corporation*, 173 NLRB at 251, 251 n. 3 (1968). In a recent case involving a relocation to a larger facility, combined with an expanding unit, the Board asserted that “an existing complement of employees [is] substantial and representative when approximately 30 percent of the eventual employee complement is employed in 50 percent of the anticipated job classifications.” *Yellowstone International Mailing, Inc.*, 332 NLRB No. 35 slip op. at 1 (2000), *summary judgment granted, Deutsche Post Global Mail, Ltd., formerly known as Yellowstone International Mailing, Inc., a Wholly Owned Subsidiary of Deutsche Post*, 334 NLRB No. 102 (2001), *enfd, Deutsche Post Global Mail Ltd.*, 315 F.3d 813 (7<sup>th</sup> Cir. 2003).

Similarly, in *Clement-Blythe Companies*, 182 NLRB 502 (1970), *enfd*, 77 LRRM 2373 (4<sup>th</sup> Cir. 1971), the Board found that the 43 employees employed at the time of the eligibility date were a substantial and representative complement (slightly over 30%) of the 140 employees it expected to have within a reasonably foreseeable time. “Reasonably foreseeable” was defined as a period of 8 months; a two-year projection of 180 to 190 employees was rejected by the Board as too remote in time. *Clement-Blythe*, 182 NLRB at 502, 503. In *Endicott Johnson de Puerto Rico, Inc.*, 172 NLRB 1676 (1968), approximately 200 employees in 115 job classifications were found to be a substantial and representative complement (40%) of the 500 employees, working in 250 job classifications, whom the employer expected to employ within nine months at a new shoe factory. The employer’s projections regarding the number of employees to be hired

at a second shoe factory, which had not yet been built, appear to have been disregarded by the Board in light of the employer's inability to estimate when the new factory would be in full operation. *Endicott Johnson*, 172 NLRB at 1676, 1677.

By contrast, in *K-P Hydraulics Company*, 219 NLRB 138 (1975), the Board found that the employee complement at the time of the hearing, consisting of about 40 employees and 8 temporary employees, in 13 job classifications, was not a substantial and representative complement of The employer's prospective work force of about 140 employees in 29 job classifications. Similarly, the Board found that four registered nurses ("RNs") were not substantial and representative of a projected future complement of 21 to 24 RNs. *St. John of God Hospital*, 260 NLRB 905 (1982); *see also Trailmobile, Division of Pullman, Inc.*, 221 NLRB 954 (1975)(The employer anticipated that a planned recall of laid-off employees would result in a work force of approximately 130 salaried personnel and 550 hourly employees; therefore, the current work force of 24 hourly paid employees and 18 to 24 salaried employees was not substantial and representative).

Applying the nine factors set forth in *Toto Industries*, 323 NLRB 645 (1997), to the instant case, I am unable to conclude that the voters who participated in the election in 29-RC-9785 were a substantial or representative complement of NY Center's reasonably foreseeable workforce.

***Size of the Work Force at the time of the Representation Case***

During the eligibility week in Case No. 29-RC-9785 (the week ending January 12, 2002), NY Center's payroll included 38 individuals in the petitioned-

for job classifications, as well as the three LPNs who were later added to the unit, for a total of 41 unit employees.<sup>23</sup>

**The Size of the Employee Complement who were Eligible to Vote**

Of the 41 unit employees employed during the eligibility week, none had been employed by NY Center prior to that week. Of the 41, 37 had worked 8 hours or less during their first week of employment (the eligibility week). The vast majority continued to work 8 hours or less through the time of the election. Paradoxically, during the week ending May 8, shortly after the NY Center began operations and admitted its first two patients, there was a precipitous drop in the number of *Excelsior* list employees on the payroll, with only 14 remaining. All LPNs, recreation employees, aides and orderlies, and transporters (a type of aide who transports patients), disappeared from the payroll during the week ending May 8.

Accordingly, it is questionable whether any of the *Excelsior* list employees were eligible to vote in the election in Case No. 29-RC-9785. The Board has generally included part-time employees in a unit with full-time employees only when they have performed unit work on a regular basis for a sufficient period of time, prior to the eligibility date, to demonstrate that they have “a substantial and continuing interest in the wages, hours, and working conditions of the full-time employees in the unit.” *Farmers Insurance Group, et al.*, 143 NLRB 240, 244-45 (1963); see *Pat’s Blue Ribbons and Trophies*, 286 NLRB 918 (1987). The Board has found part-time employees eligible to vote if they regularly averaged four hours of work per week in the thirteen-week period preceding the eligibility date. *Davison-Paxon Company*, 185 NLRB 21, 24 (1970).

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<sup>23</sup> As discussed supra p. 21, four *Excelsior* list employees were hired subsequent to the eligibility date.

Here, most of the *Excelsior* list employees did not meet the *Davison-Paxon* formula. As of the January 12 eligibility date, none had worked more than one week. Of the 41 *Excelsior* list employees who were employed during the eligibility week, only four appear to have worked full-time during that one week. Accordingly, as full-time employees, they were eligible voters. For the other 37, the total time worked for NY Center, during their entire working lives prior to the January 12 eligibility date, was between 0 and 8 hours. Thus, for those 37 *Excelsior* list employees, the average “work week” during the thirteen-week period preceding the eligibility date ranged from 0 to 37 minutes per week (i.e., 8 hours divided by 13 weeks). As noted earlier, all but 14 of the *Excelsior* list employees disappeared from NY Center’s payroll one week after NY Center began its operation.

***The Size of the Expected Ultimate Employee Complement***

Brachfeld testified that when he became the administrator of NY Center in January, 2002, he anticipated that he would be hiring approximately 300 employees, based on his analysis of the staffing requirements of a 280-bed facility.

***The Time Expected to Elapse before a Full Work Force is Present***

In November, 2001, Sieger projected that NY Center would be 80% full by October, 2002 (i.e., there would be 224 residents by October, 2002); such a patient count would require the employment of over 200 unit employees. Brachfeld testified that when he became the administrator of NY Center in January, 2002, he expected that filling a 280-bed facility would take 14 to 16 months if the Lyden patients transferred to NY Center, and two years if they did not. Sieger’s projection proved to be the more accurate

one. In actuality, it took less than six months (from the admission of NY Center's first two patients on April 29, until the transfer of Lyden's patients and employees to the new facility in October, 2002) for the unit to expand from about 40 to over 200 employees.

**The Rate of Expansion, including the Timing and Size of Projected Interim Hiring Increases Prior to Reaching a Full Complement**

During the payroll weeks ending January 12 through April 20, 2002 (a period encompassing the petition, the stipulated election agreement, the election, and the certification in Case No. 29-RC-9785), the employees in the job classifications encompassed by the Local 300S bargaining unit numbered 41 or less. However, after the NY Center began admitting patients on April 29, 2002, the employee complement began to expand. There were 54 unit employees during the week ending May 8, 63 unit employees during the week ending June 5, 102 during the week ending August 14, 138 during the week ending October 9, and over 200 from October 16, 2002, onward.

Thus, 5 ½ months elapsed between the commencement of NY Center's operations on April 29, and the expansion of the bargaining unit from about 40 to over 200, in October. Nine months elapsed between the January 12 eligibility date and the October expansion. These time periods are comparable to those deemed reasonable in *Clement-Blythe Companies*, 182 NLRB 502 (1970), and *Endicott Johnson de Puerto Rico, Inc.*, 172 NLRB 1676 (1968).

**The Certainty of the Expansion**

The expansion has occurred.

**The Number of Job Classifications Requiring Different Skills which are Currently Filled; the Number of Job Classifications Requiring Different Skills which are Expected to be Filled when the Ultimate Employee Complement is Reached**

By the January 12, 2002, eligibility date in Case No. 29-RC-9785, the payroll records indicate that all job classifications in the petitioned-for unit had been filled. However, immediately after the NY Center began admitting patients, the *Excelsior* list employees whose job titles entailed direct patient care--LPNs, aides, orderlies, transporters and recreation employees--disappeared from the payroll. During their brief tenure of employment, they primarily performed cleaning duties. Thus, the job titles set forth in the payroll records may not have been accurate.

**The Nature of the Industry**

This factor enabled Sieger and Brachfeld to predict, in November 2001 and January, 2002, respectively, the number of employees needed to staff a 280-bed facility, and the amount of time it would take to fill the facility (see above).

**Conclusion**

Based on all the factors, the conclusion is inescapable that the *Excelsior* list employees were not a substantial and representative complement of NY Center's reasonably foreseeable and intended future work force. Rather, in the election held on February 22, 2002, a small group of ineligible voters selected the bargaining representative for a clearly anticipated unit of more than 200 employees.<sup>24</sup> Based on NY

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<sup>24</sup> At the time of the petition, the stipulated election agreement, and the election in Case No. 29-RC-9785, NY Center and Local 300S did not reveal that most of the individuals on the *Excelsior* list were temporary employees, who had worked only a few hours for NY Center prior to the eligibility date. Further, they concealed the fact that NY Center was not yet operational, and that the *Excelsior* list employees constituted

Center's payroll records and the record testimony, there is no evidence that more than four of the *Excelsior* list employees were eligible to vote.

Indeed, assuming the eligibility of the 41 employees on the *Excelsior* list who were employed during the eligibility week (the payroll period ending January 12, 2002),<sup>25</sup> those 41 did not constitute a representative complement, since it was reasonably foreseeable at the time that the stipulated election agreement was entered into (on January 31, 2002) that within ten months from that time (i.e., by November, 2002), NY Center would be employing in excess of 200 employees. Thus, in the "census and revenue" projection filed by Sieger on November 15, 2001, he predicted that the 21<sup>st</sup> Street facility, planned as a 280-bed facility, would have an 80% occupancy rate (i.e., 224 beds) within 12 months.<sup>26</sup> Based on their experience at Lyden, both Sieger and Brachfeld knew that they would need to hire approximately one employee for each patient. Indeed, after the transfer was completed at the end of October, 2002, there were 218 patients and 207 unit employees. Both Sieger and Brachfeld anticipated in late 2001, and early 2002, that the Lyden patients and employees would transfer to the 21<sup>st</sup> Street facility. There is nothing in the record to indicate that they expected a problem with the transfer, and virtually all of Lyden's patients and employees did, in fact, transfer. Based on all the evidence, I am compelled to conclude that the results of that election do not fairly represent the wishes

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only a small percentage of NY Center's reasonably anticipated employee complement. By concealing this information, NY Center and Local 300S secured the Board's imprimatur on a procedure which deprived employees of their Section 7 rights. This conduct was an abuse of the Board's processes, which was inconsistent with the Board's statutory obligation to conduct free and fair elections.

<sup>25</sup> As noted previously, four of the 45 employees on the *Excelsior* list were hired after the eligibility date.

<sup>26</sup> In January, Brachfeld anticipated a 100% occupancy rate in 14 to 16 months if the Lyden residents transferred. When NY Center's facility reached 100% capacity, he expected to employ approximately 300 employees.

of the bargaining unit as a whole.<sup>27</sup> See *K-P Hydraulics Company*, 219 NLRB 138 (1975); *St. John of God Hospital*, 260 NLRB 905 (1982).

### **Contract Bar**

In light of my conclusion that the certification issued to Local 300S was invalid, the collective bargaining agreement that flowed from that invalid certification does not bar Local 1199's petition in Case No. 29-RC-9937.

### **Accretion**

When employees at different locations of an employer, represented by different unions, are consolidated into a single location, the Board may find an accretion if there is "no reason to question the majority status of the predominant Union." *Boston Gas Company*, 235 NLRB 1355 (1978). In view of my decision herein to revoke the certification issued to Local 300S, Local 300S was not the lawful 9(a) representative of NY Center's employees at any time. Thus, there is no basis to impose Local 300S on any of the employees of NY Center, regardless of when they were hired.

### **Failure to Provide Notice of Local 1199's Interest**

In representation cases, "[a]ll parties are requested to submit copies of any presently existing or recently expired contracts covering any of the employees as well as pertinent correspondence, and to notify the Board agent of any other interested parties entitled to be advised of the proceeding." NLRB Outline of Law and Procedure in Representation Cases, Section 3-300 (2002); NLRB Casehandling Manual, Representation Proceedings, Section 11008.4. "Interested parties" include "labor

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<sup>27</sup> Notably, this is not the first time that Local 300S has engaged in similar conduct. *Elmhurst Care Center*, 2000 WL 33664115 (NLRB Division of Judges, January 21, 2000).

organizations and individuals who claim or are believed to claim to represent *any* employees within the unit claimed to be appropriate and/or whose contractual interests would be affected by the disposition of the case.” NLRB Casehandling Manual, Representation Proceedings, Section 11008.1 (emphasis added). They include any labor organization that is “party to a currently existing or recently expired collective bargaining agreement covering *any* of the employees involved,” and any labor organization “which is a party to a currently existing or recently expired collective-bargaining agreement covering other employees of NY Center in other related units.” NLRB Casehandling Manual, Representation Proceedings, Section 11008.1(d), (g) (emphasis added). The showing of interest requirement is satisfied by any labor organization which is “the party to a currently effective or recently expired exclusive collective-bargaining agreement covering the employees involved *in whole or in part.*” NLRB Casehandling Manual, Representation Proceedings, Section 11022.1 (emphasis added); *see also Puerto Rico Marine Management, Inc.*, 242 NLRB 181 (1979); *Stockton Roofing Company*, 304 NLRB 699, 701 (1991)(petitioner’s recently expired 8(f) contract constituted a sufficient showing of interest to process its representation petition).

The Board may revoke a certification based on the failure to notify it of the existence of another interested labor organization, if this results in the exclusion of that labor organization from the ballot. *See St. Louis Harbor Service Company*, 150 NLRB 636 (1964); *U.S. Chaircraft, Inc.*, 132 NLRB 922 (1961); *Somerville Iron Works, Inc.*, 117 NLRB 1702 (1957); *but see W.C. DuComb West*, 239 NLRB 964 (1978).<sup>28</sup> In *St.*

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<sup>28</sup> In *DuComb*, in contrast with the instant case, none of the employees who transferred to NY Center’s new plant had been represented by the intervenor at the old plant. *DuComb*, 239 NLRB at 965. Moreover, the only issue before the Board was whether a newly certified unit was an accretion to the existing unit. *DuComb*, 239 NLRB at 964-66.

*Louis Harbor Service Company*, for example, NY Center failed to notify the Board that another labor organization represented employees of NY Center in a different bargaining unit from that set forth in the petition. *St. Louis Harbor*, 150 NLRB at 651. The previously certified labor organization received “no notice of the *later* representation proceedings and no ample opportunity to intervene.” *St. Louis*, 150 NLRB at 652 (emphasis in original). Accordingly, the Board revoked the petitioner’s certification. *Id.*

Similarly, in *American Can Company*, 218 NLRB 102 (1975), *enf’d*, 535 F.2d 180 (2<sup>nd</sup> Cir. 1976), the petitioner had been certified as the exclusive collective bargaining representative for a unit of production and maintenance employees, including lithographers, at NY Center’s new facility. The Board amended the petitioner’s certification to exclude lithographers, because NY Center had failed to inform the Regional Director that an incumbent union had a competing claim to represent them. This claim was based on the incumbent’s history of bargaining for the lithographers in a separate unit at the old facility, the expectation that some would be offered employment at the new facility, and the incumbent’s efforts to assert its claim. *American Can*, 218 NLRB at 104.<sup>29</sup>

In *U.S. Chaircraft, Inc.*, 132 NLRB 922 (1961), NY Center and petitioner had failed to inform the Regional Director that the intervening union had previously demanded recognition and may have been interested in the case. The Board vacated the petitioner’s certification, noting that, “NY Center had the duty to inform the Regional Director of any claims to representation of which it was aware. It is for the Regional

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<sup>29</sup> The Board’s alternative grounds for amending the certification in *American Can* are no longer valid, to the extent that the Board relied on *Midwest Piping and Supply Co., Inc.*, 63 NLRB 1060 (1945), which decision has been rejected by the Board. See *Bruckner Nursing Home*, 262 NLRB 955 (1982); *RCA Del Caribe, Inc.*, 262 NLRB 963 (1982).

Director or the Board, and not the parties, to determine whether a claim has sufficient validity or vitality to require that notice of the proceeding be given to the claimant and an opportunity be given to be placed on the ballot. . . .As a result of NY Center’s omission, [the Intervenor] was never notified of the proceedings nor afforded an opportunity to appear on the ballot. Under the circumstances, the election cannot be said to reflect fairly the desire of the employees.” *Chaircraft* 132 NLRB at 923; *see Somerville Iron Works, Inc.*, 117 NLRB 1702 (1957)(because employer-petitioner failed to inform the Board of the intervenor’s recognition demand and recognition picketing, rival union’s certification was revoked); *see also Lunardi-Central Distributing Co.*, 161 NLRB 1443, 1444 (1966)(election was defective because NY Center/respondent, “though knowing that [the intervenor] had secured a number of authorization cards from its employees, nevertheless failed to notify the Regional Director of such rival union activity.”).

In the instant case, at the time the petition was filed in Case 29-RC-9785, both Sieger and Brachfeld anticipated that all or most of the Lyden employees would be transferred to NY Center and would soon become part of the bargaining unit at that facility.<sup>30</sup> Both Brachfeld and Sieger were aware that these employees were covered by Lyden’s contract with Local 1199. The failure to notify the Board of Local 1199’s interest in the petitioned-for unit resulted in Local 1199’s exclusion from the ballot. This was an impermissible restriction on employees’ election choices.

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<sup>30</sup> On February 28, six days after the election, Local 1199 demanded, in writing, that the Lyden employees retain their rights under the Local 1199 contract when they transferred to NY Center. The failure to respond to the letter or deny its contents constituted an admission that Lyden employees would be transferring to the new facility. Notably, neither Lyden, NY Center, nor Rehab Management informed Local 1199, at the time of the February 28 letter, that there had been an election at the new facility which Local 300S had won.

## CONCLUSION

In sum, at the time of the petition, the Stipulated Election Agreement and the election in Case No. 29-RC-9785, Lyden, NY Center and Rehab Management all failed to inform the Board that the petitioned-for unit would greatly expand in the near future, that approximately 77 unit employees at the Lyden facility were to be transferred to NY Center, and that these employees were represented by Local 1199. This resulted in an election in which a small number of voters, most of whom were ineligible to vote, selected a bargaining agent for a unit of over 200 employees. Local 1199, which already represented many of the unit employees, was effectively precluded from appearing on the ballot. The 77 former Lyden employees, and over 100 additional employees who were hired after NY Center commenced operations, were effectively denied their rights as set forth in Sections 7 and 9 of the Act. To permit the election results to stand would be contrary to the Act's guarantee that employees have the right, of their own choosing, to select or reject a bargaining representative. I shall, therefore, order that the certification of representative which was issued in favor of Local 300S be revoked, and direct a new election to determine the desires of NY Center's present complement of employees. In reaching this conclusion, I am mindful that revocation of a certification of representative is a procedure that should be sparingly used, and only where necessary to protect the integrity of the election and certification process. *See Hughes Tool Company*, 104 NLRB 318, 324 (1953). Such action is essential here in order to ensure that employees have the opportunity to express their representational desires, rather than to have a bargaining representative forced upon them, in clear violation of the spirit of the Act.

**IT IS HEREBY ORDERED** that the certification of representative issued to Local 300S, Production, Service and Sales District Council, United Food and Commercial Workers Union, AFL-CIO, CLC, on March 13, 2002, be revoked, and the election conducted on February 22, 2002, is declared a nullity.

**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 they wish to be represented for purposes of collective bargaining by 1199, New York's Health and Human Service Employees' Union, Service Employees International Union, AFL-CIO, or Local 300S, Production, Service and Sales District Council, United Food and Commercial Workers Union, AFL-CIO, CLC, or by neither labor organization. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

**Voting Eligibility**

Eligible to vote in the election are those in the unit 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 any 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. Unit

employees in the 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 been discharged for cause since the designated payroll period; (2) 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 (3) employees who are engaged in an economic strike that began 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, NY Center 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.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One MetroTech Center North, 10th Floor, Brooklyn, New York 11201, on or before **January 15, 2004**. 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 by facsimile transmission at (718) 330-7579. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. 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, NY Center must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date 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 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., EST on **January 22, 2004**. The request may **not** be filed by facsimile.

Dated: January 8, 2004.

/S/ ALVIN BLYER

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Alvin Blyer  
Regional Director, Region 29  
National Labor Relations Board  
One MetroTech Center North, 10th Floor  
Brooklyn, New York 11201

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