

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION FIVE**

**BEVERLY ENTERPRISES-PENNSYLVANIA,
INC., d/b/a WEST SHORE HEALTH AND
REHABILITATION CENTER**

Employer

and

Case 5-UC-391

**SERVICE EMPLOYEES INTERNATIONAL
UNION, DISTRICT 1199P, AFL-CIO, CLC**

Petitioner

DECISION AND ORDER CLARIFYING UNIT

Service Employees International Union, District 1199P, (herein Petitioner) filed the instant unit clarification petition under Section 9(b) of the Act, Section 101.17 of the Board's Statements of Procedure, and Section 102.61 (e) of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, seeking to include into the bargaining unit all full-time and part-time van drivers.¹

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act for the Board to assert jurisdiction herein. Based on an administrative investigation and the facts from that investigation, I will clarify the unit as requested by the Petitioner to include the van drivers in the existing bargaining unit.

I. BACKGROUND AND BARGAINING HISTORY

Pursuant to a Stipulated Election Agreement, a secret ballot election was conducted under the supervision of the Regional Director of Region 4 at the Employer's premises in Camp Hill, Pennsylvania, to determine if the petitioned-for employees desired to be represented by Petitioner² for purposes of collective bargaining. A majority of the ballots in that election were cast in favor of the Petitioner. Accordingly, on December 24, 1984, the Petitioner was certified as the exclusive bargaining representative of the following unit:

¹ By letter dated June 2, 2004, the Petitioner amended its petition by deleting the classification of secretaries-receptionists.

² At the time of the election and certification, the Petitioner was Service Employees International Union Local 668 (Pennsylvania Social Services Union) which subsequent to the election and certification became Service Employees International Union, District 1199P, AFL-CIO, the instant Petitioner.

Included: All full-time and regular part-time service and maintenance employees including nursing assistants, housekeepers, floormen, dietary aides, cooks, laundry aides, physical therapy aides, unit secretaries, central supply room clerks, medical records clerks, patient care coordinators, activities coordinators and graduate practical nurses employed by the Employer at its 770 Poplar Church Road, Camp Hill, Pennsylvania facility.

Excluded: All other employees, including professional employees, managerial employees, RN's, LPN's, business office clerical employees, caseworkers, secretary-receptionists, guards and supervisors as defined in the Act.

At the time of certification, there was no employee classification of "van driver," as the position had not yet existed. Following certification, the Petitioner and the Employer met, conferred, and negotiated with respect to the unit employees' wages, hours, and other terms and conditions of their employment. The parties embodied their final understandings from their negotiations in an initial collective-bargaining agreement. The parties have entered into and executed successive collective-bargaining agreements thereafter, the most recent of which became effective on January 1, 2004 and will remain in effect through July 16, 2007.³

Negotiations for this most recent agreement began in November 2003. The parties had approximately six (6) negotiating sessions. During bargaining for this collective-bargaining agreement, Petitioner raised the status of the single van driver. The Employer did not want to pursue the status of the van driver in bargaining and instead advised the Petitioner to file the instant unit clarification petition. The Employer further advised Petitioner it would not oppose the inclusion of van drivers during the unit clarification proceedings.

II. POSITION OF THE PARTIES

A. PETITIONER'S POSITION

Regarding the investigation for this petition, the Petitioner argues that van drivers share a community of interest with the other unit employees, and, given the absence of other legal arguments or factual reasons for their exclusion, should be included in the unit. The Petitioner also argues there are no other factual or legal reasons warranting the van drivers' exclusion from the unit. No evidence was uncovered during the investigation indicating the Petitioner abandoned its position on the placement of the van drivers in the unit in return for a contract concession from the Employer during bargaining.

³ The collective-bargaining agreement before this most recent agreement was effective July 17, 2001 through July 16, 2004. That agreement had a unit description virtually identical to the description in the 1984 certification except that "regular" after "and" and before "part-time" is omitted. The unit description in the agreement is couched in broader terms and includes "all full-time and regular part-time employees employed at employer facilities in the state of Pennsylvania where the union has been certified or otherwise selected as majority representative of its employees." Significantly, the description does not exclude van drivers.

B. EMPLOYER'S POSITION

By letter dated May 28, 2004, the Employer stated it does not oppose the inclusion of the van drivers, and proffered the van driver "does and/or would have a community of interest with bargaining unit employees."

III. LEGAL PRINCIPLES

Section 9(c)(1) of the Act expressly empowers the Board to certify results of a Board representation secret ballot election. The authority of the Board to both police and clarify such certifications when it effectuates the policies of the Act is a corollary to the expressed grant of power in Section 9(c)(1). See 102.60 (b) National Labor Relations Board Rules and Regulations, Series 8, as Amended. So as not to disrupt an established bargaining relationship, the Board will not generally entertain unit clarification petitions in the midterm of a collective-bargaining agreement; however, the Board has, on proper petition, clarified an existing unit shortly after a contract is executed where the parties could not reach agreement on the disputed classification but did not wish to press the issue at the risk of not reaching agreement, as long as the petitioner did not abandon its position with respect thereto for a *quid pro quo* contract concession from the respondent. *St. Francis Hospital*, 282 NLRB 950, 951 (1987). See also *Baltimore Sun Co.*, 296 NLRB 1023 (1989).

IV. CONCLUSION AND ORDER

Based on the investigation of the instant petition and the foregoing facts, IT IS HEREBY ORDERED that the Petitioner's petition for unit clarification be, and is, granted, and the existing bargaining unit be clarified to include all full-time and regular part-time van drivers employed by the Employer.

V. 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 **JULY 29, 2004.**

Dated JULY 15, 2004
At Baltimore, Maryland

/s/ WAYNE R. GOLD
Regional Director, Region 5



