

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

BEVERLY HEALTH AND REHABILITATION
SERVICES, INC. AND ITS WHOLLY OWNED
SUBSIDIARY, BEVERLY ENTERPRISES –
PENNSYLVANIA, INC., d/b/a BEVERLY
HEALTH CARE, INC. d/b/a BEVERLY
HEALTH CARE - MURRYSVILLE

Employer

and

Case 6-RC-12237

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

Petitioner

SUPPLEMENTAL DECISION ON CHALLENGED BALLOTS
AND
ORDER

By this Decision, I acknowledge receipt of the Petitioner's withdrawal of its challenge to the ballot of Janet McDivitt and order that her ballot be opened and counted.

On August 1, 2003,¹ the undersigned issued a Decision and Direction of Election in this matter. Thereafter, the Employer filed a Request for Review of that Decision and on August 26, the Board granted the Request for Review. Pursuant to the Decision and Direction of Election, an election by secret ballot was conducted on August 28, among employees in the unit heretofore found appropriate. Because the Request for Review was still pending before the Board at the time of the election, the ballots were impounded following the conclusion of the

¹ All dates referred to herein are 2003 unless otherwise indicated.

voting. Thereafter, the Employer withdrew its Request for Review and the ballots were counted on January 20, 2004. The results of the election are detailed below:²

1. Approximate number of eligible voters	14
2. Void ballots.....	0
3. Votes cast for Petitioner.....	7
4. Votes cast against participating labor organization.....	6
5. Valid votes counted.....	13
6. Challenged ballots	1
7. Valid votes counted plus challenged ballots	14
8. Challenges are sufficient in number to affect the results of the election.	

Inasmuch as the challenged ballot is sufficient to affect the results of the election, I have, pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, made an investigation during which the parties were afforded an opportunity to submit evidence bearing on the issues. Having duly considered the results thereof, I hereby make the following supplemental decision on the challenged ballot.

The Petitioner challenged the ballot of Janet McDivitt based on the contention that she is a supervisor. By letter of January 29, 2004, the Employer took the position that McDivitt is not a supervisor within the meaning of Section 2(11) of the Act and urged that her ballot be opened and counted.

By letter of February 10, 2004, the Petitioner withdrew its challenge to McDivitt's ballot and agreed that she is eligible to vote and her ballot should be opened and counted.³

McDivitt is an LPN and is classified as a rehabilitation nurse. The supervisory status of LPNs classified as head nurses was litigated at the pre-election hearing but neither party raised the supervisory issue as to the rehabilitation nurse classification.

In light of the Petitioner's withdrawal of its challenge to the ballot of McDivitt and in absence of any evidence that she is a supervisor or otherwise ineligible to vote in the election, I

² No objections were filed to the Tally of Ballots furnished to the parties nor to the conduct of the election.

³ Although the Employer adheres to its position as to McDivitt's eligibility, it declined to enter into a formal stipulation to resolve the challenged ballot.

find that McDivitt is eligible to vote and I shall recommend that her ballot be opened and counted.

ORDER

IT IS HEREBY ORDERED that the ballot of Janet McDivitt be opened and counted by an agent of the undersigned at a time and place to be determined by the undersigned and that an appropriate revised Tally of Ballots be prepared and served upon the parties. Thereafter, the appropriate certification will be issued.⁴

Signed at Pittsburgh, Pennsylvania, this 11th day of February 2004.

/s/ Gerald Kobell
Gerald Kobell
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
1000 Liberty Avenue, Room 1501
Pittsburgh, Pennsylvania 15222

⁴ Under the provisions of Section 102.69 of the Board's Rules and Regulations, a request for review to this Supplemental Decision may be filed with the Board in Washington, DC. The request for review must be received by the Board in Washington, DC, by the close of business at 5:00 p.m., on February 25, 2004. Under the provisions of Section 102.69(g) of the Board's Rules and Regulations, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and which are not included in the Report, are not part of the record before the Board unless appended to the exceptions or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.