UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

341 JORDAN LANE OPERATING COMPANY II, LLC d/b/a WETHERSFIELD HEALTH CARE CENTER Employer[1] and NEW ENGLAND HEALTH CARE EMPLOYEES UNION, DISTRICT 1199, SEIU, AFL-CIO Petitioner	Case No. 34-RC-2126

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to 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, I find that: the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction; the labor organization involved claims to represent certain employees of the Employer; and a question affecting commerce exists concerning the representation of certain employees of the Employer.

The Employer operates a skilled medical care facility in Wethersfield, Connecticut (herein called the facility), where the Petitioner currently represents a unit of service and maintenance employees (herein called the Unit). The Petitioner seeks an election to determine whether the following employees, herein called the voting group, desire to be to be included in the Unit currently represented by the Union: four unit secretaries, two rehabilitative aides, one central supply clerk, approximately seven receptionists, and one scheduler. The Employer does not oppose the inclusion of the

[1] The Employer's name appears as corrected at the hearing.

unit secretaries, rehabilitative aides, and the central supply clerk in the voting group, but opposes the inclusion of the receptionists on the ground that they lack a sufficient community of interest with other Unit employees, and opposes the inclusion of the scheduler on the ground that she is either a confidential employee or a supervisor under Section 2(11) of the Act. The Employer also moved to dismiss the petition based upon the claim that the Petitioner waived its right to represent the employees in the voting group.

For the reasons noted below, I find that the Petitioner has not waived its right to represent the employees in the voting group. I further find that the receptionists share a sufficient community of interest with Unit employees to warrant their inclusion in the Unit, and that the Employer has failed to establish that the scheduler should be excluded either as a confidential employee or as a supervisor.

1. The Motion to Dismiss

The Unit currently represented by the Petitioner at the facility includes:

> All full-time and regular part-time, and per diem, service and maintenance employees, including certified nurses' assistants, nursing assistants, porters, activity assistants, housekeepers, dietary aides, cooks, cooks helpers, laundry aides, and maintenance employees, and excluding all professional employees, all technical employees, all business office clerical employees, and all guards and supervisors as defined in the National Labor Relations Act, employed at the Center, 341 Jordan Lane, Wethersfield, CT 06109.

The Petitioner has represented the employees in the Unit since 2001, when Sunbridge Healthcare Corporation (Sunbridge), the company that owned and operated the facility at that time, voluntarily recognized the Petitioner as such representative. The Petitioner and Sunbridge entered into a collective bargaining agreement in 2001 covering the Unit described above. The Employer assumed ownership, and became the licensee of the facility, in 2003, and later recognized the Petitioner and assumed the collective bargaining agreement, with no changes to the recognized Unit. The Employer and the Petitioner then negotiated the current collective bargaining agreement, effective from December 31, 2004 to March 16, 2011, once again with no changes to the Unit described above.

None of the employees in the voting group have ever been included in the Unit or covered by the terms of the collective bargaining agreement since the original recognition in 2001. However, there is no evidence in the record showing that the Petitioner ever agreed not to represent the employees in the voting group, or that the Employer ever sought such an agreement.

Although the Board will enforce a promise by a union not to represent certain employees, that promise must be express, for a reasonable period of time, and the result of bargaining between equals. *Women and Infants' Hospital of Rhode Island*, 333 NLRB 479 (2001); *Lexington House*, 328 NLRB 894, 897 (1999); *Briggs Indiana*, 63 NLRB 1270, 1272 (1945). Moreover, the Board has refused to find such an express promise not to represent even where the disputed employees were specifically excluded from a contractual recognition clause. *Women and Infants' Hospital of Rhode Island*, supra.

In the instant case, the employees in the voting group are neither included in, nor excluded from, the Unit. The Employer bases its claim that the Petitioner waived its right to represent the employees in the voting group on the fact that the Petitioner entered into collective bargaining agreements in 2001 and 2004 with recognition clauses that did not include such employees. Without more, this is insufficient to prove that the Petitioner made an express promise to the Employer that it would not seek to represent these employees. Accordingly, the Employer's Motion to Dismiss the Petition is denied.

2. <u>Overview of Operations</u>

Administrator Drieu-Ann Connors is primarily responsible for the operation and overall supervision of the facility. The facility is divided into two clinical units, i.e., sub-acute and long-term care, and has several departments, including administration, nursing, recreation, respiratory, dietary, housekeeping and laundry, and maintenance. Reporting to Connors from the Administration Department are Administrative Assistant Patricia Raymond, along with the Assistant Administrator, Payroll Manager, Business Office Manager, and the Admissions Director. Reporting to Connors from the Nursing Department is Director of Nursing Marilyn Griffith, who has overall responsibility for the nursing department. Reporting to Griffith are Assistant Directors of Nursing Kadia

Myers, Cheryl Jackson, and Robert Roberge; an unspecified number of nurse supervisors (also referred to as shift supervisors); four unit managers; MDS Coordinators; Infection Control Nurses; Staff Development Nurses; and Charge Nurses.

The Employer's facility operates 24 hours a day, 7 days per week, and is staffed by about 450 employees, who work pursuant to the following three-shift per day schedule: 7:00 a.m. to 3:00 p.m. (day shift); 3:00 p.m. to 11:00 p.m. (evening shift); and 11:00 p.m. to 7:00 a.m. (night shift). The lobby directly faces the front door of the building. A receptionist desk is in the lobby. The Administrator's desk is located behind the receptionist's desk. Other receptionists work directly outside of the Administrator's office. The Assistant Administrator's office is next to the Administrator's office. Further down a hallway from the Assistant Administrator's office, there is another open lobby area, off of which are the offices for the payroll clerk and scheduler, the nursing office, recreation, and another administration office. At the end of that hallway, the facility opens into the clinical units. Off of those hallways are the nursing station and resident care areas. Another arm of the main rotunda area is a hallway where the rehabilitative therapy offices and gyms are located. The business office and two employee breakrooms are located in the basement.

3. <u>The Receptionists</u>

There is one full-time receptionist, one part-time evening receptionist, two part-time weekend receptionists, and three or four receptionists who are not regularly scheduled and are hired on a per-diem basis. The receptionists are directly supervised by Administrative Assistant Patricia Raymond. Raymond has sole authority for all hiring, scheduling, and leave requests relating to the receptionists. Raymond also evaluates their work performance and gives them work assignments.

The receptionists greet incoming visitors to the facility, request that these visitors sign a log at the receptionist's desk, and direct visitors to the appropriate room or department. They answer all incoming calls to the facility via the facility switchboard, transfer calls to employees, and make intercom announcements. The receptionists do not normally handle resident calls nor make phone calls on behalf of the residents. They also perform various clerical duties, including the sorting of incoming mail and putting postage on outgoing mail, light typing on a manual typewriter (they do not have

a computer), and copying. The receptionists are also responsible for distributing paychecks to all employees, which are delivered to the receptionists by the payroll clerk.

The receptionists are paid on an hourly basis, and utilize the same time clock and breakroom as Unit employees. Although the receptionists do not wear a uniform, neither do certain other employees in the Unit. The receptionists are generally required to be high school graduates and have general clerical experience, including typing. At least one, and perhaps two, of the current receptionists were formerly employed as certified nurses assistants (CNAs) at the facility. No receptionists have been transferred or promoted to other job classifications at the facility.

The business office employees, who are responsible for the accounts payable, accounts receivables, patient trusts, and Medicare and Medicaid billing, have a separate office located in the basement. The business office employees are separately supervised by Business Office Manager Patricia Ludwikow.

Receptionists have very limited work-related contact with business office employees. In this regard, each morning a business office employee hands the receptionist a money bag containing residents' funds. Family members who elect to maintain resident accounts interact with the receptionist for any deposits or withdrawals, and the receptionist documents those transactions. Receptionists generally handle about a half-dozen such transactions each morning, all of which are handled at the receptionist desk, and not in the business office. At noon, a business office employee retrieves the money bag from the receptionist. Receptionists also occasionally assist the business office with mass mailings, which includes stuffing envelopes.

Based upon the foregoing and the record as a whole, I find that the receptionists share a sufficient community of interest with Unit employees to warrant their inclusion in the Unit. See *Marian Manor for the Aged and Infirm, Inc.*, 333 NLRB 1084, 1091, 1094-1095 (2001); *Lincoln Park Nursing and Convalescent Home, Inc.,* 318 NLRB 1160, 1164 (1995); *Rhode Island Hospital*, 313 NLRB 343, 359 (1993). In reaching this conclusion, I note particularly that the receptionists have far more opportunities to interact with Unit employees than with employees in the business office. In this regard, the receptionists work in an open area that is commonly used by Unit employees, punch the same time clock and share the same breakroom with Unit employees, transfer calls

to Unit employees or their department, and distribute paychecks to all Unit employees. I also note that one or two of the current receptionists were formerly employed as CNAs at the facility. In contrast, the only regular interaction between the receptionists and business office employees is limited to the brief daily exchange of money bags containing resident funds. Moreover, the receptionists perform none of the distinct duties performed by business office employees in the geographically isolated business office, and are subject to separate supervision. See *Rhode Island Hospital*, supra.

Accordingly, I shall permit the receptionists to vote on whether they desire to be included in the Unit.

4. The Scheduler

The scheduler is Olga Bonilla, who has been employed in that position for the past seven years. Prior to that she was a CNA at the facility for five years. She reports to the Director of Nursing and the Assistant Directors of Nursing in the nursing department.

Bonilla is responsible for scheduling work for the 246 employees in the nursing department. However, the record only contains evidence reflecting her scheduling of Unit CNAs and non-Unit licensed nurses, i.e., licensed practical nurses (LPNs) and registered nurses (RNs). In this regard, all full-time and part-time nursing department employees generally have a set schedule and unit to which they are assigned. Some per diem employees also have a previously established schedule and assigned unit. Bonilla utilizes these established schedules and unit assignments, coupled with all approved time-off requests, to create a monthly schedule, which she posts two weeks to one month in advance. However, because there are daily schedule changes due to employee call outs and leave requests, Bonilla also posts a handwritten daily schedule reflecting any changes to the monthly schedule.

In creating the monthly schedule, Bonilla gathers all time-off and vacation requests that employees have submitted to her, then reviews them with Director of Nursing Griffith or Assistant Director of Nursing Myers. Griffith or Myers then decide whether to approve or deny such requests, based on information Bonilla provides them regarding the proposed schedule and the seniority list. Bonilla then eliminates employees with approved time off or vacation requests from the monthly schedule.

There is no dispute that Bonilla has no authority to approve or deny vacation requests. However, there is conflicting record evidence as to whether Bonilla can grant or deny time off requests. In this regard, Director of Nursing Griffith testified that Bonilla can approve "last minute" time-off requests. In contrast, Bonilla testified that, except for the limited circumstances described below, she has no authority to grant or deny any time off requests**,** and that Griffith specifically told her that all time off requests must be authorized by Griffith. Documents in the record appear to support Bonilla's testimony. In this regard, a letter dated January 5, 2005, from Assistant Director of Nursing Myers, which Bonilla was instructed to distribute to all employees, states, in relevant part:

> Re: Scheduling Changes, Effective immediately any changes in staff members schedule must go through Cheryl Jackson or Kadia Myers. Changes include vacation requests, request to leave early, or last minute request.

The letter on its face indicates that it was copied to Bonilla, the Director of Nursing, and Assistant Director of Nursing Cheryl Jackson. According to Bonilla, a few weeks after she distributed the letter, Griffith approached her in the scheduling office and advised her that all time off requests should go through Griffith. Griffith denied any knowledge of the letter because it was issued prior to the time that she became the Director of Nursing. According to Bonilla, the only last minute time-off requests that Bonilla may approve is when an employee finds a replacement for themselves, provided that the replacement does not get overtime.

Bonilla follows established procedures in filling vacancies that occur due to call-outs or last minute time-off requests from CNAs, or to adjust their schedule due to particular patient needs. In evaluating how to fill such vacancies or to adjust schedules to accommodate patient needs, Bonilla is guided by the following: the staffing ratios set forth in Article 7 of the collective bargaining agreement; the resident to staff member ratios on each unit (also known as the census); whether CNAs are on light duty assignment; the acuity level on particular units; and whether a CNA is prohibited from working, or prefers not to work, on a particular wing.[2] The acuity levels are provided to Bonilla by the Assistant Directors of Nursing, unit secretaries, or charge nurses. Any restrictions on CNAs, such as light duty assignments or not being able to work on a

[2] The record does not reflect whether there is any difference between "units" and "wings."

particular wing, are provided to Bonilla by Griffith or the Assistant Directors of Nursing. Bonilla maintains a list of such work-related restrictions in her office.

Bonilla relies on information from the unit secretaries and unit managers concerning patient appointments when considering the impact of such appointments on the schedule. In this regard, the unit secretaries inform Bonilla as to how many appointments there are, and Bonilla notes these appointments on her calendar and maintains a list of these appointments on her bulletin board. CNAs may review the list and volunteer to assist a resident with an appointment. If unit secretaries make more than two non-emergency appointments in a day, she will tell them to reschedule such appointments. Bonilla was instructed to first schedule employees on light-duty status to assist patients with their appointments. For emergency appointments, Bonilla may schedule employees to handle such appointments without prior approval unless it would require paying overtime. According to Bonilla, she must get prior approval before scheduling any employee to work overtime.

When a call-out or vacancy arises, Bonilla reviews the number of CNAs on the unit to which the employee is assigned. After considering the factors discussed above, she then calls the appropriate number of CNAs that are necessary to ensure that the staffing is not below the level provided in Article 7 of the collective bargaining agreement. She first calls, by seniority, part-time regular and per diem CNAs who work less than 40 hours per week, in order to avoid the payment of overtime. If there is still a shortage, she then calls full-time CNAs, again by seniority, which likely results in the payment of overtime. Under such circumstances, according to Bonilla, she must first get approval for the payment of overtime from Griffith. While Griffith claims that Bonilla does not need prior approval before calling in employees to work overtime, she acknowledged that she never told Bonilla that she has such authority. Moreover, it is undisputed that Bonilla has no authority to order any employee to work beyond their assigned shift, nor can she require employees work a shift to which they are not scheduled. Bonilla also has no authority to fill CNA vacancies by calling temporary staffing agencies.

Bonilla does have the authority to transfer a CNA from an overstaffed wing to an understaffed wing in the event of a staffing vacancy or due to patient needs. In deciding

whether such a transfer is required, Bonilla relies upon the staffing ratios set forth in the collective bargaining agreement. Usually, the floater will be reassigned. If there is no floater available, the least senior CNA will be transferred. Bonilla testified, however, that she does not have the authority to transfer any employee for other reasons, such as employee preference.

Bonilla's scheduling of LPNs and RNs differs from the scheduling of the Unit CNAs described above. In this regard, Bonilla is provided with a spreadsheet detailing the number of licensed nurses on each wing. Bonilla uses the spreadsheet as a guideline in scheduling the licensed nurses on each shift. Although the Employer again claims that Bonilla does not need prior approval to schedule licensed nurses for overtime, Bonilla testified that she has no authority to schedule such overtime. It is undisputed that when there is a need to schedule licensed nurses to work overtime, Bonilla does not go by seniority, and instead offers the overtime to the first licensed nurse who accepts the overtime. Although it is possible that Bonilla may have to transfer a licensed nurse to another wing when a nurse that is being called in to fill a vacancy refuses to work on a particular wing, there is no evidence that Bonilla has ever done so.

In the event that Bonilla is unable to fill a licensed nursing vacancy from regular or per diem employees, she fills the vacancy from an outside employment agency. This routinely occurs on about 12 shifts per week. According to Bonilla, she is not authorized to obtain agency personnel on her own, and must seek Griffith's approval before calling the agency for LPNs and RNs. The Employer contends that Bonilla can hire agency employees to fill vacant slots for licensed nurses without prior approval. In this regard, Griffith testified that she often reminds Bonilla to contact the agencies for personnel as soon as her calls to staff members are completed.

Although the Employer generally claimed that Bonilla is held accountable for all scheduling changes, and that employees may be disciplined should they not adhere to the posted schedule, no documentary evidence was provided in support of these claims.

Bonilla has the authority to resolve minor scheduling problems, such as an employee being put on the schedule when they are on vacation, or when an employee

who regularly works in a certain wing is scheduled to work in a different wing. In the event that a formal grievance is filed pursuant to the collective bargaining agreement that involves scheduling, the Administrator or the Director of Nursing may consult with Bonilla to obtain the underlying facts of the scheduling problem. There is no evidence that Bonilla is otherwise involved in the processing of such a grievance.

Bonilla's job responsibilities also require her to interact with the payroll clerk, who is a non-supervisory, non-Unit employee. In this regard, Bonilla cross-checks the nursing department schedule with payroll records to verify that all nursing department employees are working their scheduled number of hours, or to confirm whether an employee has worked overtime or has received a bonus. In other departments, the department head performs the cross-check between the payroll records and the schedule. Bonilla is not required to submit her verification of employee hours to management before she submits the records to the payroll clerk.

In February 2004, Bonilla was given a job description for the scheduler position by the management of Haven Health Center, the previous manager of the facility. The job description states, inter alia, that the primary purpose of her position is to "ensure adequate and appropriate staffing of the facility nursing department to meet the needs of the residents based on budget, census, and as may be directed by facility administration." The job description further states that as a scheduler, she is "delegated the administrative authority, responsibility, and accountability necessary for carrying out [her] assigned duties." Bonilla signed the job description, but testified that the description did not accurately reflect her current duties and responsibilities. Bonilla testified without contradiction that she is not responsible for the following duties that are listed in the job description: assisting with the completion and filing of designated reports in accordance with established policies and procedures; calling and interviewing job applicants; ensuring that new nursing staff has timecards and schedules prior to orientation; collecting, assembling, and compiling records for the Director of Nursing; preparing reports of Nursing Department labor issues; assisting in recordkeeping for

attendance and tardiness; maintaining records of license certifications; and supplying nurses with supplies.[3]

The Employer also claims that Bonilla, along with the nursing supervisors, unit managers, MDS Coordinator, infection control nurse, department heads, Director of Nursing, the Administrator, and the payroll clerk, have the authority to override the timeclock. This would occur because the timeclock will not ordinarily permit an employee to punch in before their normal shift or punch out after their normal shift. In such circumstances, one of the above-described individuals must enter a code to override the timeclock. However, there is no evidence or claim that Bonilla has ever overridden the timeclock in such instances.

Bonilla is paid on an hourly basis within the same range as that of the CNAs and other Unit employees. She does not attend supervisory or management meetings.

With regard to the Employer's contention that Bonilla is a confidential employee, the record reveals that she shares an office with the payroll clerk that houses employee personnel files. However, Bonilla is not authorized to access such files nor does she access them to perform her job. When the Employer is contemplating a reduction in hours that will necessitate the layoff of Unit employees, Bonilla prepares a list for the Administrator, based strictly upon seniority, identifying those scheduled Unit employees who would be laid off as a result of the reduction in hours. She prepares this list and passes it on to the Administrator before such information is provided either to the Union or employees. There is no evidence or claim that Bonilla is otherwise involved in the layoff of employees. However, following a layoff that occurred under the tenure of the former Administrator, Bonilla attended a grievance meeting involving scheduling changes that were implemented as a result of the layoff, because she was familiar with the schedule. There is no evidence or claim that Bonilla had any other involvement in the processing of that grievance.

With regard to Bonilla's alleged supervisory status, it is well established that the burden of proving supervisory status is on the party asserting it. *Kentucky River*

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[3] According to Bonilla, she requested and received written clarification of her current job duties and responsibilities apart from the job description. This document, however, was not introduced into evidence, and Bonilla testified that she could not locate it for the hearing. She says that she only signed the job description because she was told that she would be removed from the schedule if she failed to do so, but that she signed it only after receiving the written clarification.

Community Care v. NLRB, 532 U.S. 706 (2001). Based upon the foregoing and the record as a whole, I find that the Employer has failed to satisfy its burden of establishing that Bonilla possesses and exercises supervisory authority within the meaning of Section 2(11) of the Act. In reaching this conclusion, I note the absence of any evidence that Bonilla has the authority, in the interest of the Employer, to hire, suspend, layoff, recall, promote, discharge, reward or discipline other employees, or to effectively recommend any of these actions.

Thus, the only remaining basis for finding that Bonilla is a supervisor under Section 2(11) arises out of her scheduling of the work performed by CNAs, LPNs and RNs. In this regard, Bonilla's authority to schedule the work performed by CNAs and licensed nurses, to change the schedule and thereby affect the work performed by such employees, to resolve minor problems arising out of such scheduling, and to transfer such employees as a result of schedule changes, is routine in nature and does not require the exercise of independent judgment. *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002); *Clark Machine Corp.*, 308 NLRB 555, 555-556 (1992). More particularly, Bonilla schedules and re-schedules employees by implementing the nursing department's well-established policies, in conjunction with the staffing ratios in Article 7 of the collective bargaining agreement, as well as information provided to her by nursing management and the unit secretaries regarding the census and acuity levels of the clinical units. Bonilla has no authority to order employees to stay over another shift, nor can she require employees to work a shift to which they are not scheduled. Under well established Board law, the assignment of work and direction of employees within such fixed parameters constitutes routine functions which do not require the exercise of independent judgment. See *Parkview Manor*, 321 NLRB 477, 478 (1996); *Providence Hospital*, 320 NLRB 717, 727 (1996); *Quadrex Environmental Co.,* 308 NLRB 101 (1992). Moreover, Bonilla's ability to informally resolve minor employee complaints regarding the schedule is insufficient to establish her authority to resolve employee grievances within the meaning of Section 2(11). See *Illinois Veterans Home at Anna L.P.,* 323 NLRB 890, 891 (1997).

With regard to Bonilla's alleged status as a confidential employee, it is well established that the burden of proving confidential employee status is on the party

asserting it. *Intermountain Electric Assn.,* 277 NLRB 1, 4 (1985). It is also well established that the Board will exclude confidential employees from a bargaining unit only if those employees assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. *Rhode Island Hospital*, supra, 313 NLRB at 351; *PTI Communications*, 308 NLRB 918 (1992); *B. F. Goodrich Co*., 115 NLRB 722 (1956). The Board also considers an alternative test, finding that employees who have "regular" access to confidential information concerning anticipated changes that may result from collective-bargaining negotiations are confidential employees. *Pullman, Inc.,* 214 NLRB 762, 762-763 (1974).

I find that under the Board's traditional and alternative confidential employee tests, the Employer has not met its burden of establishing that Bonilla's duties are sufficient to render her a confidential employee. Under the traditional test, there is no evidence that Bonilla acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. In this regard, Bonilla reports to the Director of Nursing and the Assistant Directors of Nursing, but there is insufficient evidence in the record establishing that any of those officials formulate, determine, and effectuate the Employer's labor relations policies, or that Bonilla acts in a confidential capacity vis-à-vis such officials. Moreover, her mere potential access to employee personnel files is an insufficient basis to confer confidential employee status. See *Lincoln Park Nursing and Convalescent Home, Inc.,* supra, 318 NLRB at 1164; *Ernst and Ernst National Warehouse,* 228 NLRB 590 (1977).

Under the alternative test, there is insufficient evidence to establish that Bonilla has regular access to confidential information concerning anticipated changes that may result from collective-bargaining negotiations. Rather, in limited instances arising out of the potential reduction of work hours, Bonilla compiles information regarding employees who would be laid off as a result of the proposed reduction of work hours. In compiling such information, Bonilla presumably relies upon information that is available to both the Union and employees, i.e., the existing schedule and employee seniority dates. Without more, Bonilla's infrequent assistance to the Administrator regarding potential layoffs, even if it aided the Administrator in reaching administrative determinations regarding those layoffs, is insufficient to establish that Bonilla assists in a confidential capacity

regarding labor relations. See *S.S. Joachim & Anne Residence*, 314 NLRB 1191, 1195-1196 (1994); *PTI Communications*, 308 NLRB 918, 929.

Based upon the foregoing, I shall permit the scheduler to vote on whether she desires to be included in the Unit.

Accordingly, I find that the following employees of the Employer constitute an appropriate voting group for the purposes of determining whether they desire to be included in the Unit currently represented by the Petitioner:

> All full-time, regular part-time, and per diem unit secretaries, rehabilitative aides, the central supply clerk, receptionists, and the scheduler.

In view of the above, my unit determination is based on the results of the vote among the employees in the appropriate voting group. Thus, I find that if a majority of the voting group vote for inclusion in the Unit, the following employees will constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time, and per diem, service and maintenance employees, including certified nurses' assistants, nursing assistants, porters, activity assistants, housekeepers, dietary aides, cooks, cooks helpers, laundry aides, maintenance employees, unit secretaries, rehabilitative aides, the central supply clerk, receptionists, and the scheduler, and excluding all professional employees, all technical employees, all business office clerical employees, and all guards and supervisors as defined in the National Labor Relations Act, employed at the Center, 341 Jordan Lane, Wethersfield, CT 06109.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the appropriate voting group at the time and place set forth in the notices of election to be issued subsequently.

Eligible to vote: those employees in the appropriate voting group who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were in the military services of the United States, ill, on vacation, or temporarily laid off; and employees engaged in an 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.

Ineligible to vote: employees who have quit or been discharged for cause since the designated payroll period; employees engaged in a strike who have been discharged for cause since the strike's commencement and who have not been rehired or reinstated before the election date: and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

The eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by the New England Health Care Employees Union, District 1199, SEIU, AFL-CIO. If a majority of valid ballots are cast for the Petitioner, they will be taken to have indicated the employees' desire to be included in the existing service and maintenance Unit currently represented by the Petitioner. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights 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-GorDirector of NursingCompany*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before June 22, 2005. No extension of time to file this list shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570, or electronically pursuant to the guidance that can be found under “E-gov” on the Board”s web site at www.nlrb.gov. This request must be received by the Board in Washington by June 29, 2005.

Dated at Hartford, Connecticut this 15th day of June, 2005.

/s/ Jonathan B. Kreisberg
Jonathan B. Kreisberg, Acting Regional Director
National Labor Relations Board
Region 34