UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

KINGSBROOK JEWISH MEDICAL CENTER	)	
Employer	)	
and	)	Case No. 29-RC-11309
NEW YORK STATE NURSES ASSOCIATION	)	
Petitioner	)	

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

Kingsbrook Jewish Medical Center, herein called the Employer, operates acute and non-acute health care facilities. New York State Nurses Association, herein called the Petitioner, filed a petition with the National Labor Relations Board, herein called the Board, under Section 9(c) of the National Labor Relations Act, herein called the Act, seeking to represent a bargaining unit consisting of all full-time, regular part-time and per-diem patient care managers and case managers employed by the Employer, but excluding all other employees and supervisors as defined in the Act.

A hearing was held before Rachel Zweighaft, Hearing Officer of the Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me.

The Employer takes the position that the employees in the petitioned-for bargaining unit are "in their own residual unit." In addition, the Employer contends that an election would be premature at this time, because of a planned reorganization, which may result in the promotion of a substantial portion of the petitioned-for unit to supervisory positions.

The Petitioner takes the position that the election is not premature, and that the petitioned-for unit should be incorporated into an existing unit of registered nurses ("RNs") that is already represented by the Petitioner. Further, the Petitioner indicated that if the petitioned-for unit is found inappropriate by the Board, it is prepared to proceed to an election in any alternate bargaining unit that consists solely of RNs.

As its witnesses, the Employer called John McKeon, vice president of Human Resources, Gail Holtz, assistant vice president for nursing, and Tonya Richards, employee and labor relations manager. The Petitioner's witnesses were Sonia Echevarria, the Petitioner's nursing representative for the RNs in the existing unit, and unit employees Myron Phillips and Marlene Parsons. The Petitioner filed a brief, but the Employer did not do so. The Employer did not cite any case law in support of its position.

I have considered the evidence and the arguments presented by the parties. As discussed below, I have concluded that the Petitioner is correct in arguing that an election would not be premature at this time, and that the petitioned-for unit should be combined with the existing unit of RNs, if a majority of the unit employees select the Petitioner in a secret ballot election. The facts and reasoning in support of my conclusions are set forth below.

FACTS

The Employer's operations include an acute care facility, a skilled nursing home, a home health care delivery organization, and a number of outpatient clinics. About 2,400 individuals work in these various operations. Of these, approximately 2,100 employees are represented by four different labor organizations.

The petitioned-for bargaining unit consists of nine patient care managers ("PCMs"), one of whom is currently on a leave of absence. All of the PCMs are RN's employed in the acute care facility. Holtz, Phillips and Parsons testified that an RN license is necessary for this position, and that the PCMs are required to keep their licenses current.[1] The PCM title has been in existence for at least ten years.

Apart from the PCMs, who have never been represented by any labor organization, the Petitioner has been representing the Employer's non-supervisory RNs for over 30 years. There are more than 300 RNs in the existing unit.

The PCMs are currently assigned to the Employer's nursing department, where they report to the assistant vice president of nursing (Holtz). Their job duties include communicating with insurance companies and providing them with the medical justification for patients' hospital stays in order to obtain reimbursement. In addition, they help to coordinate patient care with other staff members. They are involved in determining whether new admissions are medically necessary, and whether a patient's plan of care is appropriate. The PCMs also participate in discharge planning, which encompasses clinical evaluations of patients, discussions with doctors and other RNs, and meetings with patients, relatives and social workers to discuss post-discharge plans for

[1] McKeon disagreed, while at the same time admitting that he is unfamiliar with the PCMs' job responsibilities.

continuing care. In addition, the PCMs complete Patient Review Instruments or "PRIs," which are used to assess patients' eligibility for nursing home admission. This entails conducting physical assessments of patients, as well as obtaining information from other RNs.

The record reveals that the Employer is planning to divide up the PCMs' job functions among two groups of PCMs, in a reorganization effort. McKeon testified that in the very near future, four of the PCMs will be promoted "into the supervisory ranks of nursing leadership" and will "migrate into a more traditional unit management role," focusing on case management. The four remaining PCMs[2] will "take primary responsibility for interface with the insurance carriers," and will report to a director of social services who has not yet been hired. McKeon acknowledged that the reorganization plans have not yet been formally announced, and there is no written plan of reorganization.

Holtz testified that she has begun to separate out the two groups of PCMs who will be performing these different roles. However, she indicated that PCMs in these two groups are still performing one another's job functions, because many of the PCMs have been calling in sick. Moreover, she conceded that there are still PCMs whose official assignments include both insurance review and discharge planning.

According to Holtz, the PCMs who are promoted to managers will be "co-supervisors" with the Employer's clinical nurse managers. In this regard, the Employer is "hoping to move forward with the management part" and is "trying to get [the PCMs] more authority."

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[2] The ninth PCM, who is currently on a leave of absence, has been "tentatively approved" for a supervisory position in the Employer's home care operation.

DISCUSSION

The Board's Health Care Rule sets forth eight appropriate bargaining units applicable to acute care hospitals, in Section 103.30(a) of the Board's Rules and Regulations. It provides that these eight units "shall be…the only appropriate units," with just three exceptions: (1) where "extraordinary circumstances" are shown; (2) where there are "existing non-conforming units; and (3) where a labor organization seeks "various combinations" of these eight units. 29 CFR Section 103.30(a). The first of these eight appropriate bargaining units is a unit of "[a]ll registered nurses." 29 CFR Section 103.30(a)(1).

Section 103.30(c) of the Board's Rules and Regulations requires that, "Where there are existing non-conforming units in acute care hospitals, and a petition for additional units is filed…the Board shall find appropriate only units which comport, insofar as practicable, with the appropriate unit set forth in paragraph (a) of this Section." 29 CFR Section 103.30(c).

In the instant case, the existing unit represented by Petitioner, consisting of all RNs, exclusive of patient care managers, is an existing non-conforming unit. A unit of all RNs, including the patient care managers, would "comport, insofar as practicable, with the appropriate unit set forth" in Section 103.30(a) of the Board's Rules and Regulations. The record does not reveal any "extraordinary circumstances." Moreover, *St. John's Hospital*, 307 NLRB 767 (1992) is directly on point:

> Even in representation cases which do not involve health care facilities, the Board has long held that it will not entertain an incumbent's petition for a separate residual unit. Rather, an incumbent wishing to represent employees residual to those in its existing unit must do so by adding them to the existing unit, usually by means of a self-determination election. We see no reason to depart from this precedent in the face of the intervening [Health Care] Rule, particularly because

the Rule explicitly seeks to avoid undue proliferation of units. *St. John's Hospital*, 307 NLRB at 768 (citing *Budd Co.*, 154 NLRB 421, 428 (1965); *McKeesport Hospital*, 220 NLRB 1141 (1975)).

Under these circumstances, I shall direct an election[3] among the Employer's full-time and regular part-time[4] patient care managers and case manager. If a majority of the valid ballots are cast for the Petitioner, these employees will be deemed to have indicated a desire to be included in a combined unit along with the existing unit of registered nurses. In that event, the Petitioner will be certified as the collective-bargaining representative of the combined unit, consisting of all of the Employer's full-time and regular part-time registered nurses. If a majority of the valid ballots are not cast for the Petitioner, the employees will be deemed to have indicated the desire to remain unrepresented. In that event, a certification of the results of election will issue, and the Petitioner will continue to represent employees in the existing non-conforming unit.

CONCLUSIONS AND FINDINGS

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The parties stipulated that Kingsbrook Jewish Medical Center, herein called the Employer, a not-for profit domestic corporation with an office and place of

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[3] The Employer has failed to cite any legal authority requiring that an election be postponed because of unit members' possible future "migration" into the supervisory ranks. Since future promotions are a possibility in any bargaining unit, the rule proposed by the Employer could potentially preclude me from ever directing an election. Further, the Employer conceded that the reorganization plans have not been formally announced and no written plan for the intended reorganization currently exists. Accordingly, I find the Employer's position to be non-meritorious.

[4] In order to be eligible as regular part-time employees, voters must have worked an average of at least four (4) hours per week during the 13-week period prior to the issuance of this Decision. *Sisters of Mercy Health Corp.*, 298 NLRB 483 (1990); *V.I.P. Movers, Inc.*, 232 NLRB 14 (1977). The Petitioner did not define what it meant by the term "per diem," and the parties did not stipulate to a separate formula applicable to per diem employees.

business located at 585 Schenectady Avenue, Brooklyn, New York, is engaged in the operation of acute and non-acute health care facilities. During the past year, which period is representative of its annual operations generally, the Employer, in the course and conduct of its business operations, derived gross revenues in excess of $250,000. During the same period, the Employer purchased and received medical supplies, goods and other materials valued in excess of $5,000 directly from firms located outside the State of New York. The parties also stipulated that the Employer is a health care institution within the meaning of Section 2(14) of the Act and an acute care facility within the meaning of Section 103.30 of the Board's Rules and Regulations.

Based upon the stipulation of the parties, and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act. The labor organization involved herein claims to represent certain employees of the Employer.

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

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time patient care managers and case managers employed by the Employer, but excluding all other employees and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. 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. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls.

Ineligible to vote are 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 commencement thereof 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.

Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by New York State Nurses Association.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc*., 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor, Brooklyn, New York 11201 on or before **April 3, 2006**. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notices of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. The Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club*

Demonstration Services, 317 NLRB No. 52 (1995). Failure of the Employers to comply with these posting rules shall be grounds for setting aside the elections 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, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **April 10, 2006.** The request may be filed by electronic transmission through the Board's web site at NLRB.Gov but **not** by facsimile.

Dated: March 27, 2006, Brooklyn, New York.

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Alvin P. Blyer
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