

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

OPTUM MEDICAL CARE
Employer

Case 02-RC-313526

and

**1199SEIU UNITED HEALTHCARE
WORKERS EAST**
Petitioner

DECISION AND DIRECTION OF SECOND ELECTION

The election in this matter was held on April 12, 2023,¹ pursuant to a stipulated election agreement approved by the Region on March 27. The Petitioner filed the representation petition on March 7 for a wall-to-wall unit of professional and non-professional employees. The employees in the following groups voted on whether they wished to be represented by the Petitioner for the purposes of collective bargaining:

VOTING GROUP – UNIT A (PROFESSIONAL UNIT):

Included: All full-time, regular part-time, and per diem* Medical Technologists working for the Employer at its facility located at 2 International Boulevard, Brewster, New York, 10509.

Excluded: All non-professional employees, confidential employees, guards, managerial and supervisory employees as defined in the Act.

VOTING GROUP – UNIT B (NON - PROFESSIONAL UNIT):

Included: All full-time, regular part-time, and per diem* employees, working for the Employer at its facility located at 2 International Boulevard, Brewster, New York, 10509, including Bio-Med Assistant, Bio-Med Technicians, Clerical Support, Clinical Lab Assistants, Clinical Lab Technicians, Couriers, IT Lab Administrators, Lab QA Analysts, Microbiology Lab Assistant, Point of Care Coordinator, Purchasing Assistant, Receiving Clerks, Specimen Processors, and Warehouse Clerks.

Excluded: All professional employees, confidential employees, guards, managerial and supervisory employees as defined in the Act.

* Per Diem employees eligible to vote were those who averaged 4 hours or more during the 13-week period preceding March 19, per *Davison-Paxon*, 185 NLRB 21 (1970).

Pursuant to 29 U.S.C. § 159(b)(1), the election further determined whether professional employees wished to be included in a collective bargaining unit with non-professional employees. *Sonotone Corp.*, 90 NLRB 1236 (1950).

Since the election involved a question of self-determination, the ballots of professional employees

¹ All dates are 2023.

were opened and counted first, to determine whether they wished to be included with the non-professionals in a unit for the purposes of collective bargaining. Although a Tally of Ballots concerning inclusion was prepared at the conclusion of the election on April 12, a Corrected Tally of Ballots issued to the parties on April 14, showing that of approximately 25 eligible voters, 18 professionals cast ballots, of which 16 were for, and 2 against inclusion in a single unit with non-professionals. There were no void ballots or challenged ballots.

A second Tally of Ballots concerning overall representation was prepared at the conclusion of the election on April 12, showing that of approximately 82 eligible voters, 72 professionals and non-professionals combined cast ballots, of which 36 were for, and 36 against being represented for purposes of collective bargaining by the Petitioner. There were no void ballots or challenged ballots.

The Petitioner subsequently filed objections to conduct affecting the results of the election. Following a hearing on the objections, the Hearing Officer issued a report recommending that Objections 1-5, 7-9, and 11-15 should be sustained and that a second election be directed. In the absence of exceptions, I adopt pro forma the hearing officer's recommendation to overrule objections 1-5, 7-9, and 11-15 and direct that the election be set aside and a new election held.

DIRECTION OF SECOND ELECTION

The National Labor Relations Board will conduct a second secret ballot election among the employees in the same unit as in the first election. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by 1199United Healthcare Workers East . The date, time and place of the election will be specified in the Notice of Second Election that will issue shortly. That Notice shall also contain the following language:

NOTICE TO ALL VOTERS

The election conducted on April 12, 2023, was set aside because the National Labor Relations Board found that certain conduct by the Employer interfered with the employees' exercise of a free and reasoned choice. Therefore, a new election will be held in accordance with the terms of this Notice of Second Election. All eligible voters should understand that the National Labor Relations Act, as amended, gives them the right to cast their ballots as they see fit and protects them in the exercise of this right, free from interference by any of the parties.

Eligible to vote in the second election are those employees in the unit who were employed during the payroll period ending immediately before the date of the Notice of Second Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all unit employees who have averaged 4 hours per week for the last 13 weeks preceding the election eligibility date. *Davison-Paxon Co.*, 185 NLRB 21 (1970). 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 date of the first election, 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 date of the first election and who have been permanently replaced.

Voter List

The Employer must provide the Regional Director and parties named in the decision an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters, accompanied by a certificate of service on all parties. When feasible, the Employer must electronically file the list with the Regional Director and electronically serve the list on the other parties.

To be timely filed and served, the list must be received by the Regional Director and the parties by **November 17, 2023**. The list must be alphabetized and separated by voting group. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.** The Employer's failure to file or serve the list within the specified time or in the proper format is grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list in the specified time or in the proper format if it is responsible for the failure. Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov.

The list may be submitted to the Regional Director by E-filing through the agency's website at www.nlr.gov. To E-file the voter list, go to the Agency's website at www.nlr.gov, select E-file documents, enter the NLRB case number, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Notice Posting

The Employer must post copies of the Notice of Second Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least 3 full working days prior to 12:01 a.m. on the day of the election and must also distribute the Notice of Second Election electronically to any employees in the unit with whom it customarily

communicates electronically. The Employer's failure to timely post or distribute the election notices is grounds for setting aside the election if proper and timely objections are filed. However, a party is stopped from objecting to the nonposting or nondistribution of notices if it is responsible for the nonposting or nondistribution.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and may be filed at any time following this decision until 10 business days after a final disposition of the proceeding by the Regional Director. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: November 15, 2023

A handwritten signature in black ink that reads "John D. Doyle, Jr." with a stylized flourish at the end.

John D. Doyle, Jr.
Regional Director
National Labor Relations Board
Region 02
26 Federal Plaza, Suite 41-120
New York, NY 10278-3699