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June 3, 1997

The Honorable Lane Evans
Ranking Minority Member
Committee on Veterans' Affairs
House of Representatives

The Honorable William J. Coyne
The Honorable Mike Doyle
The Honorable Frank R. Mascara
House of Representatives

Subject: Beverly Enterprises, Inc.

In 1995 and 1996, we issued reports on the extent to which federal contractors violate the Occupational Safety and Health Act and the National Labor Relations Act (NLRA).[1] At your request, on May 14, 1997, we summarized the findings from these reports at a Congressional Town Hall Meeting in Pittsburgh, Pennsylvania. At that meeting, you asked us to respond for the record to a portion of the statement submitted by the Chairman and Chief Executive Officer of Beverly Enterprises, Inc. (In the Chairman's statement, he had disagreed with the characterization of his company in our 1995 report as one of the more "serious labor law violators" identified in our analysis.) This correspondence reviews the methodology used in our report and summarizes Beverly Enterprises' position and our response. In summary, the available facts support our identification of Beverly Enterprises, Inc. as a firm that met our criteria as a more serious labor law violator among all contractors with cases decided by the National Labor Relations Board (NLRB) during fiscal years 1993 and 1994.

[1]See Worker Protection: Federal Contractors and Violations of Labor Law (GAO/HEHS-96-8, Oct. 24, 1995) and Occupational Safety and Health: Violations of Safety and Health Regulations by Federal Contractors (GAO/HEHS-96-157, Aug. 23, 1996).

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STUDY METHODOLOGY AND FINDINGS

To assess the concerns raised by Beverly Enterprises, Inc., two aspects of our report's methodology--the time period covered and the criteria we used--are important considerations. First, our study methodology focused on violators over a specific 2-year period. The cases we examined were those that had received a final decision by the Board in fiscal years 1993 or 1994. This approach allowed us to report on cases that had been resolved--rather than those still being processed--and that were the most recent for which data were available. Had we chosen a different time period, we might have identified different employers as serious labor law violators. For example, of the 15 companies our report identified as more serious labor law violators, only 2 had cases also decided by the full Board during fiscal years 1990 and 1991.[2] Thus, if we had chosen the time period of fiscal years 1990 and 1991, most of the 15 companies we identified would not have been identified as serious labor law violators because they had no cases resolved in those years. On the other hand, other companies not identified as serious labor law violators on the basis of 1993-94 data might have been identified as serious labor law violators on the basis of 1990-91 data.

Second, because violations vary in their severity, we chose to classify an employer as a serious labor law violator if that employer met at least one of the following two principal criteria:

- The application of a comprehensive Board-ordered remedy: We considered a remedy to be comprehensive if the company received a broad cease-and-desist order,[3] a "Gissel bargaining order,"[4] or, in the absence of such broader orders,

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[2]Because we studied only cases decided in fiscal years 1993 and 1994, we did not analyze these decisions.

[3]The Board issues a broad cease-and-desist order, prohibiting the firm from engaging in a range of unlawful conduct, when the company has demonstrated a proclivity to violate the act or when its conduct has been widespread or egregious.

[4]A Gissel bargaining order, which derives from the Supreme Court decision NLRB v. Gissel Packing Co., 395 U.S. 575 (1969), orders an employer to bargain with a union that has not been certified through an election. The Board imposes a Gissel bargaining order as an extraordinary remedy when the company has committed unfair labor practices that have made the conduct of a fair election unlikely or have undermined the union's majority and caused an

a Board order for an employer to cease and desist from 10 or more types of unlawful actions against workers.[5]

- Employer actions affecting the job status of more than 20 workers: Examples of such actions would be the employer's unlawful firing of workers, not hiring in the first place, suspending, or transferring more than 20 individual workers.

If an employer met either of these criteria, we reviewed prior NLRB cases to determine whether the employer had a history of labor law violations, that is, at least one other adverse Board decision since 1980.[6]

We determined that Beverly Enterprises met two of these criteria: (1) the application of a comprehensive Board-ordered remedy and (2) a history of violations under the NLRA. In a Board case issued during fiscal year 1993,[7] the company was ordered to reinstate workers and to cease and desist from many unlawful actions designed to thwart union activity during organizing campaigns at 23 facilities. The company received an order to cease and desist from 10 or more types of unlawful actions against workers and a broad cease-and-desist order in which the Board ordered the company to comply with the terms of its order at all of its facilities nationwide. Our further examination of Beverly Enterprises, Inc.'s labor relations record also detected that the company had a history of violations under the NLRA.

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election to be set aside.

[5]These cease-and-desist orders are typically narrow and require only that the company not engage in that particular unlawful activity. The relatively large number of unlawful actions suggests, however, that the company is also a more serious violator.

[6]A history of violations refers to a company found to have violated the NLRA in at least one other case since 1980.

[7]Beverly California Corporation f/k/a Beverly Enterprises, 310 N.L.R.B. 222 (1993). The case was a consolidated case concerning allegations that the respondent committed "scores of unfair labor practices at 35 facilities throughout the United States." The Board affirmed an ALJ's finding that the respondent committed one or more unfair labor practices at all but 2 of the 35 facilities involved in this litigation during the 2 years between 1986 and 1988. The overwhelming majority of the violations occurred in the context of union organizing activity at 23 facilities.

BEVERLY ENTERPRISES, INC.'S
POSITION AND OUR RESPONSE

Beverly Enterprises disagrees with both of our determinations about the company's status as a serious labor law violator. Beverly Enterprises contends that it does not meet our criteria for being a serious labor law violator because a February 28, 1994, U.S. Court of Appeals decision reversed the previously cited fiscal year 1993 Board ruling.[8] This appellate case held that the broad cease-and-desist order issued by the Board was improper and also denied enforcement of three unfair labor practices. The February 1994 appellate decision modified the Board's original ruling, but it reaffirmed the enforcement of all uncontested violations and granted enforcement of 16 of 19 contested unfair labor practice findings. Beverly's statement disputes our characterization of the company as having a history of labor law violations on the basis of its interpretation of the effect of the 1994 Appeals Court decision on the 1993 Board ruling. In determining whether Beverly Enterprises had a history of violations, however, we identified a Board decision made before the 1993 case.

Even considering the 1994 Appeals Court decision, we believe that Beverly Enterprises met the criteria to be characterized in our report as a serious labor law violator because of (1) its fiscal year 1993 case in which the NLRB applied a comprehensive Board-ordered remedy and (2) its history of violations under the NLRA. The 1994 appeals court decision did disallow the broad cease-and-desist order issued by the Board. We still classified Beverly Enterprises, Inc. as a serious labor law violator, however, because it had received Board orders to cease and desist from 10 or more types of unlawful actions against workers, which were affirmed by the 1994 appellate decision. In our report, we supported our determination that Beverly Enterprises had a history of violations by citing a 1986 case in which the Board ordered the company to bargain with the union and restore wages and benefits that had been unilaterally changed at a nursing home in Waterloo, Iowa.[9] On August 16, 1995, before we issued our report on October 24, 1995, we contacted the administrator of NLRB's appeals database, who confirmed that as of that date that case had received no appeal decision.

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[8]Torrington Extend-A-Care Employee Assn. v. NLRB, 17 F.3d 580 (2d Cir. 1994).

[9]Beverly Enterprises, Inc. d/b/a Parkview Gardens Care Center, 280 N.L.R.B. 47 (1986). The Board affirmed an ALJ finding that Beverly had committed several unfair labor practices at Parkview Gardens Care Center. In addition, in its 1993 decision regarding Beverly Enterprises, Inc., the Board noted the company's history of violating the NLRA.

We hope this information responds fully to your request. We are sending copies of this letter to Senator Arlen Specter and Representative Ron Klink, who were present at the Town Hall meeting. In addition, we are sending copies to the General Counsel and Chairman of the National Labor Relations Board and to Beverly Enterprises, Inc. We also will make copies available to others on request. If you or your staff have any questions about this letter, please call Charlie Jeszeck, Assistant Director, at (202) 512-7036 or Jackie Baker Werth at (202) 512-7070.

Sincerely yours,

Carlotta Joyner

Carlotta C. Joyner
Director, Education and
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