

Lutheran Welfare Services of Northeastern Pennsylvania, Inc. and Local 170, Union of Needle Trades, Industrial and Textile Employees, AFL-CIO, Petitioner. Case 4-RC-18697

November 30, 1995

DECISION ON REVIEW

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Acting Regional Director's Decision and Direction of Election (pertinent portions are attached). The Employer's request for review is granted with respect to the appropriateness of the single-facility unit and the supervisory status of the Employer's charge nurses. Having carefully examined the entire record, we find, contrary to the Acting Regional Director, that the petitioned-for unit of nonprofessionals at the Employer's St. Luke Manor facility is not appropriate. We also conclude that the issue of the LPN charge nurses' supervisory status may best be resolved through the challenge procedure.

The Employer operates a 104-bed facility named St. Luke Manor (the Manor) in Hazleton, Pennsylvania, that provides skilled and intermediate care to elderly residents with an Alzheimer's unit. The Petitioner seeks a unit that essentially includes all nonprofessional employees, including full-time and regular part-time nursing, dietary, housekeeping, laundry, maintenance, and activities department employees, at the Manor. On the same medical campus, the Employer also operates a 120-bed facility named St. Luke Pavilion (the Pavilion) that provides the same patient care services as the Manor, except it has no Alzheimer's unit. The Employer claims that the only appropriate unit must include nonprofessional employees at both facilities.

The Manor and the Pavilion are about 100-200 feet apart, and are separated by a parking lot used by both facilities. The Employer's director of human services is in charge of all personnel matters for both facilities. The disciplinary procedure applicable to employees at the Manor and the Pavilion is set forth in the Employer's handbook. Although corrective counseling starts at the supervisory level, suspensions or discharges must be reviewed by the director of human services and the corporate vice president who is responsible for both facilities. The Employer posts job openings at all its facilities, but prefers to fill vacancies with employees who work at the facility where the opening exists.

In July 1995, the Employer made Lynn Walter the head of an umbrella department, which includes laundry, housekeeping, maintenance, transportation (driv-

ers), and groundskeeping employees for both facilities. Laundry for both the Manor and Pavilion is done by nine employees working at the Manor. Another employee is stationed at the Pavilion and collects dirty laundry there. There are eight maintenance employees, with five stationed at the Pavilion, including two maintenance employees, two porter watchmen, and a groundskeeper. One of the Pavilion maintenance employees spends 75 percent of his time at the Manor; the porter watchmen take out the trash and perform various jobs for both facilities; and the groundskeeper takes care of the entire campus. Of the three Manor maintenance employees, two spend up to 2 days per week working at the pavilion. Two drivers, who report to Walter, are based at the Manor and provide transportation and delivery services for the entire Hazelton campus. There are eight housekeeping aides at the Pavilion and four at the Manor; two of the Pavilion aides work at the Manor 2 days weekly.

In the dietary department, there are 14 employees based at the Manor and 16 at the Pavilion. All these employees report to Diane Royce, who is the department head, and several dieticians float between the two facilities.¹ They attend weekly department meetings that Royce holds at the Manor. The Employer presently is consolidating the department so that the Manor will prepare cold foods and the Pavilion hot foods for patients at both facilities.

Although patient care itself, as the Acting Regional Director found, generally proceeds independently at the two facilities, the unit found appropriate by the Acting Regional Director includes pool nurses who worked at least 4 hours weekly during the calendar quarter preceding the eligibility period. The pool nurses are assigned to work at either facility, as needed. There have been only five permanent transfers of nurses between the two facilities since 1991.

In *Manor Healthcare Corp.*, 285 NLRB 224 (1987), and *Mercy Health Services North*, 311 NLRB 367 (1993), the Board reaffirmed the presumptive appropriateness of a single-facility unit in the health care industry. We find, however, that the Employer has successfully rebutted this presumption in this case. In *Child's Hospital*, 307 NLRB 90 (1992), the Board found that the employer's nursing home, hospital, and shared services entity were sufficiently integrated, both physically and operationally, to require that they be treated as a single facility. A single human resources department established and administered all employment policies. The personnel handbook covered all employees, and all employees received uniform benefits. Vacancies were posted employerwide. Further, the hospital and nursing home in *Child's Hospital* also demonstrated a considerable degree of integration of operations. Laundry, pharmacy, housekeeping, dietary,

¹ One dietitian works part-time only at the Pavilion.

maintenance, and engineering services were provided facilitywide, and the hospital provided lab work to the residents of the nursing home. There was also a fairly high degree of contact among the employees.

Although the two facilities here are not physically contiguous, as in *Child's Hospital*, and there is no argument that the two buildings constitute a single facility, we stress that they are only 100–200 feet apart and separated by a parking lot that employees and guests of both facilities use. We conclude that, given the close proximity of the two facilities, there is sufficient evidence of functional integration and of employee interchange between the Manor and the Pavilion to require a finding that only a multifacility unit is appropriate. The Manor does the laundry for both facilities; all dietary employees work under common supervision, now preparing food for both buildings, and several dieticians float between the two facilities; and the pool nurses can work at either facility. The Manor and the Pavilion also share common labor relations and personnel policies. The Acting Regional Director's reliance on *Passavant Retirement & Health Center*, 313 NLRB 1216, 1218 (1994), and *Catherine McAuley Health Center*, 287 NLRB 1114, 1116 (1988), to support a contrary result is misplaced, as there was no substantial evidence or regular contact and interchange among the employees involved in those cases.

Accordingly, the Acting Regional Director's Decision and Direction of Election is reversed with respect to the single-facility unit found appropriate. Moreover, the Employer's 12 charge nurses will be permitted to vote under challenge in any election held, and the case is remanded to the Regional Director for further appropriate action.

APPENDIX

DECISION AND DIRECTION OF ELECTION

5. The Employer, a Pennsylvania corporation, provides long-term residential health, social, counseling and hospice services to residents at facilities located at its main campus in Hazleton, Pennsylvania, and at other locations in northeastern Pennsylvania. The Employer's Saint Luke Manor and Saint Luke Pavilion facilities² are involved in this proceeding. The Petitioner seeks to represent the Manor's full-time and regular part-time nursing, dietary, housekeeping, laundry, maintenance, and activities department employees. The employees in these departments include licensed practical nurses (LPNs), nursing assistants (CNAs), transportation aides, physical therapy aides, ward clerk, production cooks, dietary aides, salad preparers, sanitation aides, housekeeping aides, laundry aides, maintenance personnel, and an activities aide. The Petitioner would exclude the social service assistant and on-call or pool

employees at the Manor and all employees of the Pavilion. If the above unit is not found to be appropriate, the Petitioner seeks an election in a unit consisting of full-time and regular part-time employees in the nursing department at the Manor, including LPNs, CNAs, transportation aides, physical therapy aides and the ward clerk. The Employer takes the position that the only appropriate unit would include service and maintenance employees at the Manor and the Pavilion. Thus, in addition to the employees sought by the Petitioner, the Employer contends that drivers, porter watchmen, the groundskeeper, a social service assistant, a social service aide, and pool nursing employees should be included. The Petitioner is willing to proceed to an election in any unit found appropriate.

The Manor, a 104-bed facility with two wings on a single floor, opened in 1974 and provides skilled and intermediate care to elderly residents. It also contains a unit for residents with Alzheimer's disease. The Pavilion, a 120-bed facility, opened in 1983 and provides skilled and intermediate care on its second and third floors. The Pavilion's first floor contains offices, dietary department space, physical therapy facilities, and a maintenance area. The two facilities are on the same campus and are separated by a parking lot used by employees and others.

The Employer has nine major divisions two of which are the Manor and the Pavilion. A president-chief executive officer reports to the Employer's board of directors. There are two vice presidents for program services one of whom has responsibility for the Manor and the Pavilion as well as three hospices. Another vice president is responsible for advancement which involves marketing, communication, and development functions. A vice president is also in charge of finance including payroll. Director of Human Services Carl Faust is in charge of personnel matters. These individuals have offices in Steigerwalt Center or in Amity Lane which are on the Hazleton campus. They provide centralized administration services to all divisions. The Employer's personnel policies and procedures are established by its board of directors and an Employee Handbook is centrally prepared and issued to all staff. The record contains 19 job descriptions most of which bear the heading "Lutheran Welfare Service" but do not refer to a specific facility. Several other job descriptions are for positions at "St. Luke Pavilion/St. Luke Manor." One of the job descriptions is for the groundskeeper position and lists St. Luke Pavilion as the facility involved. Director of Human Services Faust testified that the administrators and/or supervisors, in coordination with the human resources department, are responsible for preparing job descriptions.

The Manor and the Pavilion have separate administrators, directors of nursing, assistant directors of nurs-

²Herein called the Manor and the Pavilion, respectively.

ing,³ and activities directors. There is a Social Service Manager at the Manor and a Social Service Director at the Pavilion.

In July 1995, Environmental Services Supervisor Lynn Walter became the head of an umbrella department which covers laundry, housekeeping, maintenance, transportation (drivers), and groundskeeping employees for all facilities on the Hazleton campus. Walter stations himself at the Pavilion but maintains a second office at the Manor. The laundry is done at the Manor. There is one laundry employee at the Pavilion who is responsible for collecting that facility's dirty linen. The financial information the Employer submits to the Commonwealth shows that the Manor charges the Pavilion for the laundry services it provides. The laundry employees punch timecards at their respective facilities. The financial information for the Manor lists no transportation equipment or salaries, whereas the Pavilion's information lists both. Eight maintenance employees report to Walter. Five are stationed at the Pavilion and are classified as maintenance employees (two), porter watchmen (two), and a groundskeeper. Of the two maintenance employees, one spends 99 percent of his time at the Pavilion whereas the other one spends 75 percent of his time at the Manor. The two porter watchmen take out the trash for both facilities, transport dirty laundry from the Pavilion to the Manor, and move oxygen supplies to the resident areas within both facilities. Of the three maintenance employees at the Manor, two spend from 1-1/2 to 2 days per week at the Pavilion. Two drivers also report to Walter. These employees distribute mail to all of the facilities on the Hazleton campus and transport residents to doctor appointments and activities. The Pavilion's groundskeeper maintains the areas outside all the buildings on the campus.

Volunteer Coordinator Lois Seip and Chaplain Joseph Heger provide services at both facilities. Susan Moore is the head of the Service and Education Department and has an office at the Manor and another at the Pavilion. Moore is in charge of coordinating mandatory and nonmandatory in-service training sessions which are held at the Manor and at the Pavilion and are jointly attended by employees from both facilities. Pool employees are invited to attend all nonmandatory educational sessions and are expected to attend all mandatory in-services.

Until recently, the Employer used the kitchens in the Manor and the Pavilion to prepare food for the residents at the respective facilities. The Employer has now entered into a contract with Marriott Management Services Corporation to consolidate and manage the

nutrition services for the Employer's patients, residents, employees, visitors, and guests at the Manor and the Pavilion. Pursuant to that contract, Marriott's Diane Royce has become the head of the Dietary Department for the Employer's 30 cooks and dietary staff at both the Manor and the Pavilion,⁴ and she has an office at each facility. Royce is responsible for budgeting and for the hiring and scheduling of all dietary staff. Each facility has its own kitchen. One of the dietitians works on a part-time basis and is dedicated to the Pavilion. The other dietitians float between the two facilities. All dietary employees attend biweekly department meetings which, at the time of the hearing, were being held in the Manor. Once the consolidation of the dietary service is complete, cold foods will be prepared at the Manor and hot foods will be prepared at the Pavilion. The food will continue to be delivered to residents by dietary aides at the respective facilities. One of the production cooks from the Pavilion will spend a portion of the day at the Manor helping in tray line production. Royce is reducing the number of vendors who will supply food to both facilities. Dietary staff will be cross-trained with the merging of the kitchen operations which was scheduled to occur on September 25 after the hearing closed.

The Manor's nursing staff includes 16 LPNs and 41 CNAs. The Pavilion's nursing staff includes 18 LPNs and 44 CNAs. In addition, the Employer utilizes a pool of 20 to 30 RNs, LPNs, and CNAs to fill in for nursing employees who are absent or on vacation. The employees in the pool were trained at the Employer's facilities and are used at the Manor and at the Pavilion. The pool now in use was developed by the Employer's project management team and was administered by the DON at the Pavilion. The pool employees receive a slightly higher wage rate than their full-time and regular part-time counterparts. However, they receive no benefits. They perform the same work, wear the same uniform, and are required to attend mandatory in-services. They are also invited to attend other educational presentations.

When a position becomes vacant in any of the facilities the administrator of that facility is notified. The administrator sends a request for a replacement to the Human Resources Department which posts the position at all facilities for 10 days and lists a key person to receive applications. The Employer may also advertise the position in local newspapers and applications from outside individuals will be funneled to the key person. The advertisement will indicate which facility has the opening. The department head conducts the initial interviews with applicants and offers employment to the successful candidate after consulting the human resources department for salary guidelines. Only after the

³Herein called the DON and ADON. At the time of the hearing the DON position at the Pavilion was vacant and Frances Bobis, the ADON, was in charge of the Pavilion Nursing Department. The DON position has since been filled.

⁴The parties stipulated that, with respect to the dietary employees, the Employer and Marriott are joint employers.

applicant has been hired does the department head introduce the new employee to the facility administrator.⁵ The Employer prefers to fill vacant job positions with employees from the same facility. The Employer usually tries to promote from within and employees awarded new positions at a different facility will carry their seniority and pay increments with them. Employees may be laterally transferred to closely related positions without a wage or salary adjustment. When an employee's status changes, the supervisor or facility administrator requiring that change completes a report which must be approved by the program/facility administrator and the vice president for administration. The record contains an application form for the Manor and another which does not list any facility.⁶ Employees are evaluated after their 90-day probationary period and again at their anniversary date. The evaluations are completed by their department heads and forwarded to the administrator. The evaluation form, which is the same for all facilities, is placed in the employees' personnel files which are kept only in the facility in which they work.

The record contains evidence of five permanent transfers between the Manor and the Pavilion since July 1991, all of which were done at the request of the employees. Only one of these was from the Pavilion to the Manor. Of the eight housekeeping aides stationed at the Pavilion, two work at the Manor 2 days each week. No housekeeper from the Manor has performed services at the Pavilion. As noted above, several maintenance employees work at both the Manor and the Pavilion although they are based at only one of these facilities. There is a physical therapist at the Manor and one at the Pavilion. They cover for each other during vacations. Instances in which a nursing employee from one facility has been asked to work at the other facility are rare. Every sixth weekend, one of the administrators has on-call responsibility for both the Manor and the Pavilion.

The Manor and the Pavilion have separate budgets which are initially prepared by the department heads in the respective facilities and checked by their respective administrators. The budgets, which show the salary totals for employees at each facility, are forwarded to the vice president of finance for approval. Faust makes recommendations to the Employer's executives concerning base wage rates and benefits for all employees.

⁵This description of the hiring process offered by Faust differs from the one set forth in the Employer's Personnel Policies and Procedures Manual. According to the manual, supervision at the facility refer certain applicants to the facility administrator who conducts an additional interview or designates someone to do so. After these interviews, the administrator or designee selects the successful applicant.

⁶Faust testified, and the Employer contends, that the generic form is currently in use, but that form is copyrighted in 1991 whereas the form bearing the Manor's name was revised in March 1993.

The disciplinary procedure applicable to all employees is set forth in the handbook. Corrective counseling starts at the supervisory level, followed by written warning, suspension, and discharge. Oral counselings and written warnings are reviewed by department heads and the administrators. Suspensions or discharges must be reviewed by Faust and the vice president of the program or service involved. Similarly, grievances are initially presented to the supervisor although the employee has the option of starting with the department head or administrator.

The Employer publishes a newsletter which is prepared by the human resources department and disseminated to all employees. There are social functions which are held for all employees and others which have been held for employees of one facility only although all staff are allowed to attend. Medical equipment such as geri-chairs, wheel chairs, tube feeding supplies, and other equipment such as televisions and videorecorders are shared by the Manor and the Pavilion. The equipment usually is transported between the facilities by maintenance employees. The two facilities once used different colored linens, but that practice has ceased. Physicians have privileges at both facilities. The facilities have separate licenses from the Department of Health. The record shows that employees have worn name tags that indicated the Manor or the Pavilion and there may also be tags without such designation of facility. There is no history of collective bargaining at either facility.

The Board reaffirmed the applicability of the rebuttable presumption of the appropriateness of a single-facility unit in the health care industry in *Manor Healthcare Corp.*, 285 NLRB 224 (1987). In *West Jersey Health System*, 293 NLRB 749, 751 (1989), the Board stated that it would weigh the factors of geographic proximity, employee interchange and transfer, functional integration, administrative centralization, common supervision, and bargaining history in deciding whether the presumption had been overcome. The Board addressed the concerns underlying the congressional admonition against undue proliferation of health care bargaining units by requiring the employer to rebut the presumption with evidence "demonstrating that approval of the single-facility unit will threaten the kinds of disruptions to continuity of patient care that Congress sought to prevent." *Manor Healthcare*, supra at 225. The potential for adverse consequences resulting from a labor disruption involving the single-facility unit was found nonexistent where two facilities offered "largely duplicative health care." *Children's Hospital of San Francisco*, 312 NLRB 920, 929 (1993). Even where an employer has an integrated system of management and centralized labor policies, unless the evidence shows a "real danger that the separate bargaining unit . . . will cause more work stoppages than

would be the case with a larger unit or that it would in any other way impede continuity of patient care” the presumption will not be deemed rebutted. *Mercywood Health Building*, 287 NLRB 1114, 1116 (1988). Lack of interchange between employees is of far greater significance than the fact that facilities are located on the same campus, *Passavant Retirement & Health Center* 313 NLRB 1216, 1218 (1994), and an employer will not succeed in rebutting the presumptive appropriateness of the single-facility unit unless it presents substantial evidence of regular contact and interchange between the employees involved. *O’Brien Memorial*, 308 NLRB 553, 554 (1992); *Mercywood Health Building*, 287 NLRB 1114, 1116 (1988); *Manor Healthcare*, supra at 228.

Based on the foregoing, I find that the Employer has not overcome the presumption that the single-facility unit at the Manor is an appropriate unit for the purposes of collective bargaining. The facilities have separate administrators, directors of nursing, assistant directors of nursing, and other directors or managers. The administrator and department heads are key figures in the day-to-day operations of each facility. Interviewing and hiring are effectively done separately by managers and directors of each facility. Employees are evaluated by individuals within their respective facilities and discipline short of suspensions or discharges are handled by the separate administrators and department heads. Personnel files are kept at the separate facilities and not centrally. While job vacancies are posted at all facilities and there is a policy of filling positions from within, there is also a preference given to employees at the facility with the vacancy. The fact that employees may fill these positions without loss of seniority is relevant but not dispositive. *Manor Healthcare*, supra at 228. The Environmental Services Department employees have a common supervisor, but they punch separate timeclocks. While one of the Pavilion’s maintenance employees spends most of his time at the Manor and two of the Manor’s maintenance employees spend up to 2 days per week at the Pavilion, the great majority of employees within this umbrella department spend their time at only one facility or, like the groundskeeper and drivers, perform duties throughout the Hazleton campus and not just at the Manor and the

Pavilion. The dietary department is in the midst of consolidation, but even there, the record does not show that the dietary aides will perform their primary duty of distributing food to residents in a manner different from that which existed before Marriott took over managing the kitchens. Permanent transfers between facilities have been negligible. *Deaconess Medical Center*, 314 NLRB 677 fn. 1 (1994). Common in-services, shared social events, a single handbook and newsletter, borrowing of equipment and a shared volunteer coordinator and chaplain all show that the employees have a community of interest which would make the two-facility unit also an appropriate one, but these factors do not outweigh the other evidence set forth above showing that the Manor’s separate identity has not been negated. *Staten Island University Hospital*, 308 NLRB 58, 61 (1992). Moreover, the record contains evidence that the identity of the Manor as a separate facility has been preserved through advertisements for job vacancies listing that facility, the use of some employee name tags and application forms which bear the Manor’s name and the social functions which are held for the Manor’s employees. Finally, for the most part, patient care proceeds independently at the two facilities. *Manor Healthcare*, supra at 228. Despite the projected partial merger of dietary operations (which will nevertheless leave the two separate dietary operations intact), and the common laundry operation, the fact remains that the Manor and the Pavilion operate substantially as independent entities. The Employer has not shown that, as a result of the finding that the Manor comprises a separate appropriate unit, continuity of health care will “necessarily” be jeopardized to a greater extent than would be the case if the two-facility unit were found appropriate. *Mercywood Health Building*, supra at 1116; cf. *Brattleboro Retreat*, 310 NLRB 615, 620–621 (1993). Based on the foregoing, I find that a unit limited to employees at the Manor is appropriate.⁷

⁷In view of this finding, the drivers, groundskeeper, porter watchmen, laundry aide and maintenance employee who spend do not spend any or a majority of their working time at the Manor are excluded. The Pavilion maintenance employee who spends 75 percent of his time at the Manor is a dual function employee who should be included in the unit found appropriate herein.