

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Eighteenth Region

MARINER POST-ACUTE NETWORK, INC.,  
d/b/a HERITAGE REHABILITATION & HEALTH  
CARE FACILITY<sup>1</sup>

Employer

and

GENERAL TEAMSTERS AND TRUCK DRIVERS,  
HELPERS AND WAREHOUSEMEN,  
LOCAL UNION NO. 90<sup>2</sup>

Petitioner

Case 18-RC-16420

**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 the provisions of 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, the undersigned finds:

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

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> The name of Petitioner appears as amended at the hearing.

2. 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.<sup>3</sup>

3. The labor organization involved 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 Petitioner, in its petition as amended at the hearing, seeks a unit of all full-time and regular part-time service and maintenance employees at the Employer's facility located at 5608 Southwest Ninth Street, Des Moines, Iowa, including nurses' aides, medication aides, housekeeping, laundry and dietary and kitchen employees; excluding managerial employees, office clerical employees, registered nurses, licensed practical nurses, guards and supervisors as defined by the Act, as amended. The Employer contends that the unit should include not only employees working out of the 5608 Southwest Ninth Street facility, but also employees working in four other facilities in the Des Moines, Iowa metropolitan area. In its post-hearing brief, the Employer otherwise agreed on the appropriateness of the unit.<sup>4</sup>

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<sup>3</sup> The Employer, Mariner Post-Acute Network, Inc., d/b/a Heritage Rehabilitation & Health Care Facility, is a Delaware corporation engaged in the operation of a nursing home with rehabilitation services at its 5608 Southwest Ninth Street, Des Moines, Iowa facility. In the past calendar year, the Employer has received gross revenues in excess of \$100,000, and has purchased and received goods valued in excess of \$5,000 directly from suppliers located outside the State of Iowa.

<sup>4</sup> The Employer contends that Petitioner inadvertently omitted the classification of **activities assistant** from the unit. Because Petitioner has not addressed the issue of the eligibility of **activities assistant** and as I am directing an election, I have not included that classification in the unit description. However, the Employer may include employees employed as activities assistants on the Excelsior list described in footnote 7 herein. If Petitioner disagrees with the Employer's contention that activities assistants should be in the unit, it may challenge their votes at the election.

Mariner Post-Acute Network, Inc. (herein Mariner), which has its corporate headquarters in Atlanta, Georgia, provides long-term care and rehabilitation services to the elderly at various facilities throughout the country. The State of Iowa is in the Western Area, which is headed by a senior vice president with overall responsibility for all three geographical areas utilized by Mariner (Eastern, Central and Western). The States of Iowa and Nebraska are the responsibility of a regional vice president, who reports to the senior vice president. Individual nursing home administrators report to the regional vice president.

Mariner operates seven nursing homes in Iowa, five of which are within 25 miles of the geographical center of Des Moines. It is those five that the Employer contends constitute the appropriate unit. Each nursing home, including the Employer, has its own administrator, responsible for the operation of the nursing home. Reporting to each administrator are a director of nursing and the department managers who work for only that particular nursing home. According to the Employer, it "might" occur that a manager from one nursing home would work at another, but the record is silent regarding how frequently or under what circumstances such an event would occur.

The administrator at each of the five nursing homes at issue is responsible for hiring, firing, scheduling hours, and approving wage rates and wage increases (as long as within the budget provided by the corporate office) for employees at the nursing home the administrator is assigned to. Each nursing home advertises for its own employees; there is no shared advertising or consideration of applicants. According to the Employer, there is little sharing of employees among the five nursing homes, and such sharing has occurred less than six times in the last year. The only circumstance

described in the record where sharing might occur is if an employee wants extra hours, and the nursing home the employee is employed at is unable to provide the extra hours. It does not appear, therefore, that the Employer would require an employee at its facility to work at another Mariner nursing home in Des Moines. Each of the five nursing homes is individually licensed with the State of Iowa. While Mariner owns the facility that Petitioner seeks to organize, it does not own the remaining four facilities in the Des Moines metropolitan area, but instead has lease arrangements with the owners of the other four facilities.

In support of its position that the only appropriate unit consists of the five nursing homes operated by Mariner in the Des Moines metropolitan area, the Employer provided evidence that all five provide a common service and serve similar customers and have administrators who report to the same regional vice president, who visits each facility at least monthly. The Employer also maintains that its Houston office handles all payroll, bill paying and accounting for all facilities, and that all five Des Moines facilities use the same bank and have the same payday. Moreover, all facilities have the same fringe benefits, workmen's compensation policy, business forms (including applications, evaluations, disciplinary and leave of absence forms), and newsletter; follow the same corporate policies and procedures, job descriptions and classifications, training and orientation; and must make purchases from an approved list of vendors provided by the corporate office. Because all bills from vendors are paid out of the Houston office, each facility has a petty cash fund limited to \$300.

On the basis of the foregoing and the record as a whole, I conclude that the presumption that a single-facility unit is appropriate has not been rebutted, and that the

petitioned-for unit—limited to employees at the 5608 Southwest Ninth Street facility in Des Moines—is *an* appropriate unit for bargaining.<sup>5</sup> In reaching this conclusion, I rely particularly on the facts that the employees of the Employer’s five Des Moines metropolitan area facilities are separately supervised on a day-by-day basis; that there is no meaningful functional integration among the facilities; that there is little substantive or ongoing contact among employees of the five facilities; and that there is at best sporadic interchange of employees among the five facilities. See J & L Plate, Inc., 310 NLRB 429 (1993) (single-facility presumption controls unless facility is “so effectively merged . . . or is so functionally integrated, that it has lost its separate identity”); Executive Resources Associates, 301 NLRB 400 (1991); Dixie Belle Mills, 139 NLRB 629 (1962). The components most strongly supporting the Employer’s position, as reflected both at the hearing and in its post-hearing brief, are that the facilities’ corporate and labor policies are centrally determined; that payroll, accounting and payment systems are centralized; and that there is some, albeit very limited, employee interchange among the facilities. However, I find that the evidence relating to these factors is insufficient to conclude that the petitioned-for single-facility unit is inappropriate. See, e.g., J & L Plate, Inc., *supra* (centralization of benefits insufficient to overcome presumption); General Mills Restaurants, Inc., d/b/a Red Lobster, 300 NLRB 908 (1990) (common benefits and upper-level authority over local management insufficient to rebut single-facility appropriateness). Cf. Neodata Product/Distribution,

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<sup>5</sup> Even if the single-facility presumption were eliminated from the analysis, the remaining factors as set forth herein support the appropriateness of a single-facility unit based on traditional community-of-interest considerations.

Inc., 312 NLRB 987 (1993) (employees of two facilities have daily contact with each other and comprise integral parts of order-flow process).

6. The following employees of the Employer 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 service and maintenance employees at the Employer's facility located at 5608 Southwest Ninth Street, Des Moines, Iowa, including nurses' aides, medication aides, housekeeping, laundry and dietary and kitchen employees; excluding managerial employees, office clerical employees, registered nurses, licensed practical nurses, guards and supervisors as defined by the Act, as amended.

#### **DIRECTION OF ELECTION**<sup>6</sup>

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit

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<sup>6</sup> 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. This request must be received by the Board in Washington by **March 15, 1999**.

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.<sup>7</sup>

Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by General Teamsters and Truck Drivers, Helpers and Warehousemen, Local Union No. 90.

Signed at Minneapolis, Minnesota, this 1st day of March, 1999.

/s/ Marlin O. Osthus

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Marlin O. Osthus, Acting Regional  
Director  
Eighteenth Region  
National Labor Relations Board

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<sup>7</sup> To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their 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); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, 234 Federal Courts Building, 110 South Fourth Street, Minneapolis, MN 55401, on or before **March 8, 1999**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.