

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

ADDICTION RESEARCH AND TREATMENT, INC.,
d/b/a BAY AREA ADDICTION RESEARCH AND TREATMENT
AND CALIFORNIA DETOXIFICATION PROGRAMS, INC.

Employer

and

Case 20-RC-17470

WAREHOUSE UNION LOCAL 6, INTERNATIONAL
LONGSHORE AND WAREHOUSE UNION, AFL-CIO

Petitioner

DECISION AND ORDER

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, hereinafter referred to as the 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.
2. The name of the Employer appears as stipulated at the hearing.
3. The parties stipulated, and I find, that Addiction Research and Treatment, Inc. d/b/a Bay Area Addiction Research and Treatment, herein individually called Addiction Research, and California Detoxification Programs, Inc., herein individually called California

Detoxification, are each corporations engaged in providing health care at various locations in the State of California. The parties further stipulated, and I find, that Addiction Research and California Detoxification, herein collectively called the Employer, constitute a single employer under the standards established by Board case law based upon their functionally integrated operations, common control of labor relations, common management, and common ownership or financial control. The parties further stipulated, and I find, that during calendar year 1997, Addiction Research and California Detoxification each derived gross revenues in excess of \$250,000 and purchased and received at their facilities within the State of California goods and materials valued in excess of \$1,500 which originated outside the State of California. Based upon the parties' stipulation to such facts, it is concluded that the Employer is engaged in commerce and it will effectuate the purposes of the Act to assert jurisdiction herein.

4. The parties stipulated, and I find that Warehouse Union Local 6, affiliated with the International Longshore and Warehouse Union, AFL-CIO, herein called the Petitioner or the Union, is a labor organization within the meaning of Section 2(5) of the Act.

5. The Petitioner seeks to represent a unit comprised of the Detoxification, Maintenance and FACET Counselors and the Intake Coordinator employed by the Employer at its two San Francisco, California clinics. The Petitioner stated its willingness to proceed to elections in separate single-facility units of all counselors and the Intake Coordinator employed at each of the two San Francisco facilities, if the Board finds that the petitioned-for unit is not appropriate. The Employer contends that the unit sought by the Petitioner is inappropriate for purposes of collective bargaining because of its limited geographical scope and because it does not include various classifications of nonprofessional employees engaged in providing health

care services to its patients. The Employer states in its brief, that the appropriate unit for the purposes of bargaining should be no less than a unit which includes the Employer's four clinical operations in San Francisco, Richmond and Pittsburgh. It is also the Employer's position that the following classifications of employees share such a close community of interest with the petitioned-for employees that they must be included in the unit: the Medical Assistant; the Medical Secretary; Dispensary Nurses; front office support staff employees including the Receptionist, Bookkeeper, and Data Entry Clerk; Child Care Teacher; the Outtake Coordinator; TB Specialist; and Chart Reviewers. With respect to the Chart Reviewers, the Petitioner contends, contrary to the Employer, that they are statutory supervisors and/or managerial employees and therefore should be excluded from the unit. The Employer also asserts that Board law may require the direction of an election in a unit of all professional and nonprofessional employees subject to a self-determination election for professional employees.

Addiction Research is a closely held for profit corporation owned by Ron and Judi Kletter. Addiction Research operates methadone maintenance clinics and is engaged in providing substance abuse services to patients who suffer from substance abuse problems. It also provides primary health care to such patients and eligible relatives. While the primary focus of the substance abuse services provided by Addiction Research is on heroin addiction, it also provides treatment for other forms of addiction, including alcohol. Addiction Research provides its services at 11 clinics located throughout the State of California. These 11 clinics consist of two clinics in San Francisco, one clinic in Pittsburgh, one clinic in Richmond, three clinics in Fresno and four clinics in Los Angeles County. The headquarters of Addiction Research is located at 1111 Market Street, San Francisco, California.

California Detoxification, a proprietary corporation, provides methadone detoxification services. In addition to providing short-term substance abuse treatment, California Detoxification also provides other health care services, including primary medical care, to its clients. California Detoxification provides its services at the same eleven clinics as Addiction Research and the headquarters of the two entities are located in the same place. According to the stipulation of the parties, Addiction Research and California Detoxification do not operate acute care facilities. The 11 clinics of Addiction Research and California Detoxification, which will hereinafter be referred to as the Employer unless otherwise indicated, are grouped into four Regions including San Francisco, Contra Costa, Fresno and Los Angeles. Each of the Employer's clinics is licensed. The Employer treats about 5,000 patients at its clinics and employs about 350 professional and nonprofessional employees. Its San Francisco clinics are located at 1111 Market Street and 1040 Geary Street. The distance between the Employer's San Francisco clinics is about one to two miles. The distance from the Employer's Market Street clinic to its Richmond clinic is about 15 to 20 miles. The distance from its Market Street clinic to its Pittsburgh clinic is about 40 miles. The distance from San Francisco to Fresno is about 200 miles and the distance from San Francisco to Los Angeles is about 380 miles according to the record evidence.

The management staff at each of the clinics generally consists of a Clinic Director, a Medical Director, an Operations Director, a Counseling Supervisor and a Dispensary Supervisor. The record reflects that as of three days prior to the start of the hearing, the Employer's four Bay Area clinics were staffed as follows: the Geary Street clinic employed 18 Maintenance Counselors, 2 Detoxification Counselors, 1 Bookkeeper, 2 Receptionists, 1 Child Care Teacher,

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1 Clerk, 4 Dispensing Nurses, 2 Medical Assistants, 1 Outtake Coordinator, 1 Secretary, 1 Chart Reviewer, and 4 Nurse Practitioners; the Market Street clinic employed 16 Maintenance Counselors, 1 Detoxification Counselor, 1 Prenatal Counselor, 1 Receptionist/Bookkeeper, 4 Receptionists, 6 Dispensing Nurses, 2 Medical Assistants, 1 Data Entry Clerk, 1 Intake Assessment Specialist, 1 Medical Secretary, 1 Chart Reviewer and 3 Nurse Practitioners; the Pittsburgh clinic employed 6 Maintenance Counselors, 1 Detoxification Counselor, 1 Bookkeeper, 2 Receptionists, and 3 Dispensing Nurses; and the Richmond clinic employed 3 Maintenance Counselors, 1 Detoxification Counselor, 1 Bookkeeper, 2 Receptionists, 6 Dispensing Nurses, 1 Medical Assistant, 1 Secretary, 1 intake coordinator, 2 Nurse Practitioners and 1 physician.

The Employer's Market Street Clinic is open on weekdays from 6:00 a.m. to 2:00 p.m. The Employer's Geary Street Clinic is open on weekdays from 7:00 a.m. to 3:00 p.m. Some of the Employer's clinics are open on weekdays from 5:30 a.m. to 1 p.m. All of the Employer's clinics are also open on weekends.

Each of the Employer's eleven clinics provides a full range of methadone maintenance and detoxification services to its patients. Each clinic can provide these services using its own personnel and facilities without requiring support from other clinics. There are instances where patients in the Employer's programs transfer from one clinic to another. A clinic to which a patient transfers receives information concerning such patient's prior treatment from the clinic which first provided treatment.

Although California Detoxification and Addiction Research provide their respective services at the same eleven clinics and their headquarters are located in the same place, the two

entities are governed by separate boards of directors. The Board of Directors of Addiction Research consists of Ron Kletter and his wife Judi . The Board of Directors of California Detoxification consists of Ron and Judi Kletter and their three children, Evan Kletter, Jason Kletter and Michele Kletter. Ron Kletter is the Executive Director and CEO of both entities. The record reflects that Addiction Research and California Detoxification share common officers. Stephen Rosen, the Deputy Director of both entities, reports directly to Ron Kletter. Mr. Rosen is responsible for the non-fiscal aspects of the operations of both entities. The Program Administrator, Security Officer, Director of Purchasing and Facilities, Contracts and Grants Officer, Quality Improvement Coordinator, Human Resources Director, and Information System Director are responsible for the management of various aspects of the operations of both entities. Jason Kletter holds the position of Human Resources Director and is responsible for the performance of personnel functions with respect to the employees of both entities. The management functions in the areas of the purchasing of equipment, supplies and services, except for emergency supplies; the operations of the Employer's computer system; contracts and grants; quality improvement; billing and payroll are the responsibility of the Employer's central management and not of the individual clinics.

Addiction Research is a party to separate contracts with the four counties in which it operates methadone maintenance programs including the City and County of San Francisco, Fresno County, Los Angeles County and Contra Costa County. Each of the four contracts covers all the clinics within the particular county. The terms of these contracts extend for one year or a longer period but are subject to annual renewal and approval. The record shows that the provisions of the four contracts are not identical. However, the program operated by California

Detoxification is not regulated by contracts between that entity and the four counties. That program derives its revenues from the State of California Medi-Cal program which directly reimburses California Detoxification for the services provided to its patients and from private patients who pay fees for their detoxification treatment.

Addiction Research and California Detoxification provide the same health and insurance benefits to their employees in the San Francisco, Contra Costa, Fresno and Los Angeles Regions. The only difference shown by the record in the benefits received by the employees of the two entities is that there is a retirement plan for the employees of Addiction Research and a profit-sharing plan for the employees of California Detoxification. There is no retirement plan for the employees of California Detoxification and no profit-sharing plan for the employees of Addiction Research. The salaries of the employees of the two entities are established by the CEO of Addiction Research and California Detoxification. Salary scales for the employees of Addiction Research and California Detoxification are established on a regional basis. The employees of the two entities who work in the same job classification in the same region receive the same salary. The record establishes that identical salaries are paid to the employees of the Employer in the San Francisco and Contra Costa Regions. However, the salaries are not uniform throughout the four Regions. For example, as of the hearing, the starting salary for counselors in the San Francisco and Contra Costa Regions was \$24,255, it was \$23,100 in the Fresno Region, and \$22,000 in the Los Angeles Region. During the fall of 1998, the employees of the San Francisco, Contra Costa, and Fresno Regions received a five percent salary increase but the employees of the Los Angeles Region did not then receive a salary increase. The Employees of Addiction Research and California Detoxification receive separate employee handbooks but the

provisions of the two handbooks are substantially similar. The new employees in the San Francisco and Contra Costa Regions attend the same employee orientation sessions.

A patient who has been registered for the Employer's methadone maintenance or detoxification program speaks to the Receptionist upon entry into an Employer clinic or with the Bookkeeper if a patient has business with the Bookkeeper. The Receptionist greets the patient upon entry into a clinic and directs them to the areas where they will receive treatment on a particular day. A patient who is eligible to receive a dose of methadone during his or her visit will receive a dosing card from the Receptionist. Upon receiving a dosing card, a patient will be directed to the dosing room where he or she will receive a dose of methadone from the Dosing Nurse. A patient may also obtain counseling, medical treatment, or medical testing during a visit to the clinic. A medical record is maintained for each patient enrolled in one of the Employer's programs. The results of medical tests are reviewed by a doctor, processed by a Medical Assistant or Medical Secretary and then transmitted to a counselor for inclusion in a patient's record.

A Clinic Director is responsible for the day-to-day operation of each of the Employer's 11 clinics including the programs of Addiction Research and California Detoxification. Each of the 11 Clinic Directors possesses the same authority. According to the job description for the position of Clinic Director, that individual is responsible for "all aspects of clinic operation including the maintenance program, the detox program, primary care, medical staff, and front office administrative support." The Clinic Director is specifically responsible for all aspects of compliance and providing "on-going supervision" of the Clinic's operation and staff. These supervisory functions include performance reviews of each staff member at least annually,

completion of required reports to governmental agencies, review of contracts and grants, compliance with “OSHA requirements,” response to employee performance problems and grievances, and implementation of “corrective action and/or disciplinary action.” Moreover, the Clinic Director is responsible for insuring the “quality assurance of all aspects of programs” and identifying “problem areas” through feedback from staff and patients.

The record contains testimony from the Employer’s Director of Human Resources and the Directors of the two San Francisco clinics concerning the actual exercise of personnel functions by the Employer’s Clinic Directors. According to the testimony of these witnesses, the Clinic Directors interview applicants for employment, make recommendations concerning hiring, and make recommendations concerning salary increases. The Human Resources Director makes the final decision concerning whether a particular applicant will be hired based upon his independent review of the qualifications of the competing applicants. He has rejected the recommendations of Clinic Directors concerning the hiring of applicants. The Human Resources Director also approves disciplinary actions including written warnings and terminations against employees employed at the clinics. A Clinic Director does not have the authority to issue a written warning to an employee without the approval of the Human Resources Director. He makes his decision on disciplinary issues based upon an independent review of an employee’s conduct and has rejected the disciplinary recommendations of Clinic Directors. Furthermore, the Director of Human resources has rejected the recommendations of Clinic Directors concerning salary increases based upon his independent review of the employees’ job performance. The Human Resources Director is also responsible for performing various other personnel functions including, among others, administering the workers’ compensation program, responding to

employee claims filed with the California State Employment Development Department, and the administration of benefit programs.

A Maintenance Counselor is responsible for providing counseling and performing case management functions for his or her caseload of patients. The normal caseload for a Maintenance Counselor is about 40 patients but some counselors have smaller caseloads. A Maintenance Counselor is responsible for developing, documenting and implementing the initial clinical assessment and comprehensive treatment plan for the patients assigned to such counselor. The treatment plan defines the goals of treatment which may include finding housing or obtaining employment. A Maintenance Counselor is required to assess the situation of each patient. It is also the responsibility of a Maintenance Counselor to engage in counseling with his or her patients. Medi-Cal patients, which constitute a large majority of the counselors' caseloads, receive three 50 minute sessions each month. A Maintenance Counselor also attends conferences with other counselors to discuss their cases and maintains liaison with outside agencies to arrange housing, food and other needs of the patients. Moreover, a Maintenance Counselor processes all documents necessary for a patient's dose changes and processes the necessary discharge papers. Furthermore, a Maintenance Counselor prepares charts describing the treatment of the patients assigned to such counselor. A Maintenance Counselor also monitors a patient's medical profile including physical exams and lab reports.

A Detoxification Counselor performs intake functions including a preparation of a brief history of a patient. According to the job description for the position, a Detoxification Counselor is responsible for developing, documenting and implementing the initial clinical assessment and comprehensive treatment plan for each patient assigned to such counselor. The Employer

operates a 21-day methadone detoxification program during which one counseling session is held with a Detoxification Counselor and a patient. Such counselors refer patients to programs which may help them and monitor patients' medical profiles including physical examinations and lab reports. Moreover, a Detoxification Counselor maintains liaison with outside agencies such as probation and parole officers and social workers and prepares charts of the patients' treatment.

One of the programs operated by the Employer is called the Family Addiction Center for Education and Treatment (FACET). This program provides treatment for pregnant, addicted women and passively addicted newborns. It is housed in the same building as the Employer's Geary Street clinic. Two counselors work in the FACET program. The record does not show that any significant differences exist between the job duties of the FACET Counselors and the Employer's other counselors.

The job duties of a FACET Counselor are set forth in the job description for that position. A FACET Counselor is responsible for providing individual, couple and family counseling to his or her caseload of patients. Such counselor is also responsible for developing and implementing an initial clinical assessment and comprehensive treatment plan for patients. In addition, a FACET Counselor teaches and participates in perinatal classes and parenting care classes. He or she also charts the periodic counseling sessions and patient progress and completes annual reviews and other evaluations of the patients' treatments. Moreover, a FACET Counselor maintains liaison with the personnel of various outside agencies such as social workers, probation/parole officers and medical practitioners. The functions performed by a FACET Counselor other than counseling are classified as "case management functions."

The Intake Coordinator is responsible for providing information to patients concerning admission to the methadone maintenance and detoxification programs according to the job description for that position. The Intake Coordinator also conducts preliminary screening to determine eligibility for these programs and conducts intakes for admission. In addition, the Coordinator is responsible for coordinating counselor assignments of detoxification patients. Moreover, the Coordinator is responsible for obtaining treatment authorizations for Medi-Cal patients and serves as a Detoxification Counselor.

The Child Care Room Teacher and Interventionist, according to the job description for that position, is responsible for establishing and maintaining “a developmentally appropriate child care program for patients and their children.” The program involves providing “educational and developmental intervention for parenting and child development of high risk parents and their children.” The duties include, among others, the maintenance of necessary records and the monitoring of the children enrolled in the program. The Child Care Room Teacher works in conjunction with and reports to the Employer’s Developmental Specialist.

The Dispensary Nurses are responsible for providing prescribed medication by dispensing methadone in prescribed amounts to patients. The job description further states that the Dispensary Nurses observe each patient for possible signs of intoxication prior to dispensing and observing possible medication side effects. In addition it is the responsibility of the Dispensary Nurses to precisely record and audit the dispensing of methadone.

The job description for the position of Medical Assistant states that the duties of the Medical Assistant include performing initial medical interviews and assessments on patients by reviewing their charts, taking vital signs, recording patients’ chief complaints, drawing blood for

laboratory tests and conducting testing for tuberculosis infection where applicable. The Medical Assistants also fill out lab slips, prepare urine and blood specimens and send them to laboratories. Moreover, the Medical Assistants assist the Medical Secretary in organizing files, retrieving medical charts, and locating patients for the scheduling of annual physical examinations. Furthermore, the Assistants help the Nurse Practitioners with physical examinations and checks of medical equipment and supplies.

The Employer employs an employee at the Geary Street Clinic who performs tuberculosis control work. The name of this employee is Diane Jung. While the classification of Tuberculosis Control Employee exists at the Geary Street Clinic, it does not exist at all of the Employer's clinics. The job classification of Ms. Jung is listed as a Medical Assistant on a list of the Employer's employees which was introduced at the hearing. However, there is testimony in the record that she does not actually perform the range of duties normally performed by the Employer's Medical Assistants. She carries out tuberculosis testing for patients as part of the intake process and at other times during their treatment. The patients are assessed for signs and symptoms of active tuberculosis.

The Medical Secretary, according to the job description for that position, is responsible for maintaining control over the medical appointment book and assisting patients with the scheduling of appointments. The functions performed by the Medical Secretary also include reviewing the primary care charts and billing information for completeness and maintaining adequate office supplies. Moreover, the duties of the position include providing secretarial support to the Employer's Clinic Director and department heads. Furthermore, the Medical Secretary tracks patient schedules to insure that annual physical examinations are conducted on a

timely basis and coordinates the filing of primary care charts. The record shows that the employee who held the position of Medical Secretary at the Geary Street Clinic, as of the hearing, was trained as a physician in a foreign country. While she is not authorized to practice as a physician in California, she is cross trained to perform the functions of a physician's assistant and is therefore capable of performing duties not normally required of a Medical Secretary.

According to the job description for the position of Secretary, that employee is responsible for working in conjunction with the Receptionist to maintain the "flow and organization" of the Employer's front office by coordinating patient schedules and performing reception and clerical duties. The Secretary is also responsible for facilitating the intake of patients by assisting them through the successive steps of the intake process. In addition, the Secretary manages all patient accounts by keeping accurate fee records and collecting all fees. The duty of maintaining a medical appointment book by scheduling and rescheduling patients for necessary medical services is also performed by the Secretary.

The Employer employs employees in the job classification of Receptionist. The duties of this position include greeting all patients and visitors and assisting patients by directing them to the appropriate staff for necessary services. The Receptionist also answers phones and directs calls to the appropriate personnel. Moreover, the Receptionist organizes the medical charts in the reception area for the next day's appointments and sets up new charts for all services. In addition, the Receptionist refiles dosing cards and copies and distributes no-show sheets to the Detoxification and Methadone Counselors at the end of the day. The Receptionist also performs filing and typing as requested by the Medical Secretary and the Clinic Director.

The Bookkeeper is responsible, according to the job description for that position, for collecting all payments for services rendered, issuing receipts to patients and positing transactions in the cash receipt journal. The Bookkeeper also completes all bank deposit transactions and keeps records of other transactions. Moreover, it is the responsibility of the Bookkeeper to process the required documents and photos of new clients who are seeking maintenance or detoxification treatment and to provide such clients with their dosing identifications. Furthermore, the Bookkeeper is responsible for collecting and keeping current copies of patient Medi-Cal cards for each month. In addition, the Bookkeeper assists the Medical Secretary in coordinating and administering the system whereby medical charts are pulled for each patient scheduled to be seen by the Employer's medical staff and prepares the monthly Drug Abuse Treatment Access Report for the detoxification and maintenance programs.

The Data Entry Clerk is responsible for the data input for various transactions and the function of the computer equipment. According to the job description, the Data Entry Clerk calls for repair or technical assistance for the county computer as needed, and prints out dosing sheets on a weekly basis. In addition, the Clerk generates computer reports and maintains the computer records for the detoxification and maintenance programs.

The Employer employs employees in the classification of Nurse Practitioner/Physician's Assistant. Although Nurse Practitioners and Physician's Assistants are certified by different agencies of the State of California and belong to different occupational groups, the Nurse Practitioners and Physician's Assistants perform the same duties for the Employer. According to the Employer's list of employees and their job classifications, the Employer employed four Nurse Practitioners at the Geary Street Clinic as of November 6, 1998, and three Nurse

Practitioners at the Market Street Clinic as of the same date. There were no Physician's Assistants employed at either Clinic as of that date. According to the job description for the position, the Nurse Practitioners are responsible for providing medical services for both the primary care program and the methadone program. They may also prescribe medications and call for refills under the supervision of the Medical Director. They may also dispense methadone as needed in place of the Dispensing Nurses. Furthermore, they provide health counseling services under the supervision of a medical doctor and order, interpret and document laboratory studies to determine treatment.

There is evidence in the record concerning the qualifications for the position of Maintenance Counselor. According to the job description for the position, the minimum qualifications are as follows: "AA in Behavioral Sciences or equivalent. Two years of counseling/life experience in a related setting. Ability to develop comprehensive treatment plan and chart accurately. Excellent oral and written communication skills." The Employer does not require that an applicant for the position must possess a registration, license or certification in the field of counseling. Four of the Maintenance Counselors testified as witnesses at the hearing in the instant case. One of these counselors possesses a bachelor's degree in social work and another possesses a bachelor's degree in social welfare and psychology. The two other Maintenance Counselors who testified do not possess Bachelor's degrees. One of the four counselors also possesses a certification as an addiction counselor and another was certified in the field of alcohol and drug abuse studies. Two of the four Maintenance Counselors who testified do not possess a certification. The record does not show what percentage of the Maintenance Counselors possess a Bachelor's degree or a certification. However, according to

the testimony of the Director of the Geary Street Clinic, she guessed that at least half of the Maintenance Counselors possessed a bachelor's degree. Like the Maintenance Counselors, the FACET Counselors are required to possess an AA degree in Behavioral Sciences or its equivalent and to have "two years of counseling/life experience in a related setting." There is no testimony from any FACET Counselors concerning their academic credentials or certifications. The job description for the position of Detoxification Counselor does not state the qualifications for that position. However, the record shows that an employee may transfer between the positions of Maintenance Counselor and Detoxification Counselor and that the qualifications for the position of Detoxification Counselor do not differ from those of Maintenance Counselor. There is no testimony from any current Detoxification Counselors concerning their academic credentials or certifications.

The qualifications for other job classifications at the Employer's Clinics are also contained in the record. The Bookkeeper is required to have two years' experience with money handling and accounts receivable, to have working knowledge of Medi-Cal billing procedures, and to be computer literate. There are no educational or certification requirements stated in the job description. The Child Room Teacher is required to have "Early Childhood Education and two years experience working with children." There is no certification requirement. The Data Entry Clerk is required to have "at least one year of clerical/computer entry experience" and typing skills. There is no educational or certification requirement in the job description. The Dispensary Nurse is required to be a Licensed Vocational Nurse or a Licensed Psychiatric Nurse in good standing with the State of California. The Intake Coordinator is required to have an "AA in Behavioral Sciences or equivalent" and at least two years of counseling or intake experience

in a related setting.” The Intake Coordinator is also required to have a “Working knowledge of charting and other compliance procedures related to methadone administration and treatment.” The Medical Assistant is required to have “certification as a Medical Assistant either as a graduate of a 6 month program or comparable documented experience.” Phlebotomy experience is preferred. The Medical Secretary is required to have “two years of medical front office experience” and knowledge of patient charting systems and organization, scheduling experience and Medi-Cal billing experience. There is no educational requirement stated in the job description. The position of Nurse Practitioner/Physician’s Assistant requires licensure in good standing with the State of California and the ability to provide comprehensive, quality medical care. The Receptionist is required to have at least six months work experience as a receptionist or office clerk. There is no educational requirement for this position stated in the job description. The Secretary is required to have “two years of clerical/money handling experience” and “knowledge of patient charting systems and organization.”

The record shows the starting salaries for some of the classifications whose status is in dispute. These salaries were in effect as of October 1, 1998, for regular staff employees employed within the Employer’s San Francisco Region including the two San Francisco clinics, the Richmond clinic, and the Pittsburgh clinic who were working 20 hours or more a week. The starting salaries were as follows: Counselor-\$24,255, Bookkeeper-\$20,790, Dispensing Nurse-\$25,872, Clerk-\$18,900, Medical Assistant-\$19,767, Receptionist-\$18,900, and Secretary-\$20,790. The Dispensing Nurses who were part of the Weekend/On-Call/Per Diem Staff received a hourly wage of \$16.54 and the Security and Reception employees on that staff received an hourly wage of \$9.08.

The record contains an organizational chart of the Employer's Market Street facility which shows the individuals who are the immediate supervisors of the employees in the job classifications at issue in this proceeding. The Maintenance Counselors are subject to the immediate supervision of the Supervising Counselor. However, the Detoxification Counselors are subject to the immediate supervision of the Operations Director. The latter is also the immediate supervisor of the Medical Secretary, the Data Entry Clerk, the TB control employee, and other clerical employees. The Dispensing Nurses are subject to the immediate supervision of the Supervising Dispensing Nurse. The Nurse Practitioners and the Medical Assistants are subject to the immediate supervision of the Medical Director. The immediate supervision of the Maintenance Counselors and Detoxification Counselors at the Geary Street Clinic is vested in the Supervisory Counselor and the Operation Director respectively. The one FACET Counselor employed at the Geary Street Clinic is subject to the immediate supervision of the Supervising Counselor and the Clinic director. The Medical Director at Geary Street is the immediate supervisor of the Nurse Practitioners, the Medical Secretary, the Medical Assistants, and the TB Control Employee. The supervisory authority of the Medical Director with respect to the Medical Secretary and Medical Assistants is limited to their patient care functions. In addition to the Detoxification Counselors, the Operations Director at Geary Street is the immediate supervisor of the Data Entry employee and the clerical employees in the Front Office support staff. The Operations Director also exercises supervisory functions of the Medical Secretary and the Medical Assistants with respect to their support staff functions. The Dispensing Supervisor at Geary Street is the immediate supervisor of the Dispensing Nurses.

The record establishes that three employees in the job classifications of Maintenance Counselor, Detoxification Counselor and perinatal counselor transferred between the Employer's clinics during the 12 months prior to the hearing in the instant case. Two of these transfers were between the Richmond Clinic and the Geary Street Clinic. The other was between one of the Fresno clinics and the Geary Street Clinic. Nine additional employees in the Counselor Classification transferred in or out of the San Francisco clinics more than one year prior to the hearing or on a date not shown in the record. One of these transfers was between the Market Street Clinic and the Geary Street Clinic. The record also shows that seven individuals in non-counselor job classifications were involved in transfers between the Employer's clinics. Of these transfers, one occurred during the twelve months prior to the hearing and one was between the Geary Street and Market Street Clinics. Moreover, the record establishes that the Employer sometimes assigns employees to work at two or more clinics. They were referred to at the hearing as "shared" employees. According to the record evidence, there were four employees in this category at the San Francisco clinics, as of the hearing. Three were employed as dosing room nurses and one as a counselor. The record does not show any other instances of employees employed at one of the Employer's clinics being assigned to work at another clinic on a temporary basis.

The record shows that the Counselors engage in interactions with other classifications of employees at the Employer's clinics. The record contains examples of such interactions. Some of these examples are as follows: 1) a Counselor may discuss with the Medical Assistants, Nurse Practitioners and physicians, the proper level of methadone dosage for a patient; 2) a Child Care Teacher may call to a Counselor's attention that a patient's child is inappropriately dressed or

that a patient has used spanking in order to discipline a child; 3) a Child Care Teacher may call to a Counselor's attention that a patient's child has suffered physical injury; 4) a Counselor may discuss a patient's medical treatment with a physician or Nurse Practitioner; 5) a tuberculosis control employee may discuss with a counselor the need to obtain reports of X-rays which occurred prior to a patient's admission to the Employer's program; 6) a Bookkeeper might call to a Counselor's attention that a patient lacks medical coverage; 7) a Receptionist might call a Counselor to inform him or her that a patient appeared intoxicated; and 8) a Dosing Nurse may contact a Counselor when a patient loses self-control at the dosing room.

The Appropriateness of the Multi-Facility Unit Sought by the Petitioner

Pursuant to established Board law, a single-facility unit is presumptively appropriate in the health care industry. Manor Healthcare Corp., 285 NLRB 224 (1987); Brattleboro Retreat, 310 NLRB 615, 619 (1993). In Manor Healthcare Corp., supra, at page 225, the Board defined this presumption as follows:

The presumption we invoke here is substantive, not procedural. Based, as it is, on the Board's experience that a single-facility unit normally is appropriate for collective bargaining, the presumption is rebuttable, rather than conclusive or per se. Big Y Foods v. NLRB, 615 F.2d 40, 45 (1st Cir. 1981). Further, "appropriateness" being a term of art, no particular quantum of proof or specific factual showing can be said to be necessary for rebuttal, save that the facts presented be relevant to the policies of the Act. To pass muster, the rebuttal factors, like the presumption itself, must be rational. *Id.* at 45-46. Therefore, parties have the opportunity to present any evidence that reasonably tends to show the single-facility unit to be inappropriate, and the Board must consider the unique circumstances of a particular group of employees before reaching a final determination.

The Petitioner argues in its brief that the single-facility presumption has been rebutted and that the record establishes the appropriateness of a unit consisting of certain employees

employed at the Employer's two San Francisco facilities. In support of its position on this issue, the Petitioner relies upon the following factors: 1) the geographic proximity of the two San Francisco facilities; 2) the existence of a separate contract between the Employer and the City and County of San Francisco covering the Employer's San Francisco operations; 3) the administrative structure of the Employer which divides its clinic operations into four county-wide regions including, among others, the city and County of San Francisco; and 4) the Employer's maintenance of separate salary-range schedules for each of its four regions.

The Employer argues in its brief, that the single-facility presumption has been rebutted and that the geographical scope of the unit must extend to at least the two San Francisco clinics, the Richmond Clinic and the Pittsburgh Clinic. In support of this position, the Employer cites the following factors: 1) the Employer's centralized control of the day-to-day operations at its eleven clinics; 2) the Employer's centralized control of labor relations and the absence of authority on the part of the Clinic Directors with respect to such matters as the hiring and termination of its employees; 3) the uniform benefits received by the employees of the 11 clinics; 4) the similarity of the services provided at the 11 clinics; 5) the similarity of the skills possessed by the employees of the 11 clinics; 6) the same personnel policies and procedures apply to the employees of the 11 clinics; 7) the occurrence of employee transfers between the San Francisco facilities, the Richmond facility, and the Pittsburgh facility; 8) the sharing of some employees between different facilities; and 9) the transfer of patients between different facilities.

The record evidence establishes that the Employer maintains centralized control of the day-to-day operations at its eleven clinics and also maintains centralized control of labor relations. Moreover, the employees at the 11 clinics receive uniform benefits with the exception

of retirement benefits and profit sharing, and are subject to the same personnel policies and procedures. Furthermore, the Employer provides the same services at its 11 clinics and the employees at these clinics are required to possess the same skills. In addition, there are some transfers of patients between the different clinics. However, the record also establishes that each clinic is separately supervised by a Clinic Director. While a Clinic Director does not possess the authority to make final decisions with respect to matters such as the hiring and discipline of employees, a director is responsible for the day-to-day operation of the clinic and the direction of its employees. According to the job description for the position of Clinic Director, he or she is responsible for exercising significant supervisory authority, including all aspects of compliance, and providing “on-going supervision of the Clinic’s operation and staff.” A director prepares performance reviews of all staff members, recommends hiring, discipline and salary increases, and responds to employee performance problems and grievances. With respect to employee transfers, the record shows that four transfers occurred in and out of the San Francisco clinics during the twelve months prior to the hearing. This is not a substantial number in view of the number of employees employed at the two San Francisco clinics. Although the record shows that four “shared” employees worked at the San Francisco clinics, there is no evidence of other regular temporary interchange of employees. In view of the separate supervision of the two San Francisco clinics and the limited amount of transfers and temporary interchange, it is concluded that the presumption of the appropriateness of a single-facility unit has not been rebutted by the various factors relied upon by the Petitioner and Employer. Since the Petitioner is willing to proceed to elections in single units at the two San Francisco facilities, it is necessary to

determine whether the groupings of employees sought by the Petitioner at the two San Francisco clinics constitute appropriate units for purposes of collective bargaining.

The Appropriateness of a Unit Limited to Counselors

On April 21, 1989, the Board set out the appropriate units for acute care hospitals in a rule-making procedure, which was reported at 284 NLRB 1515, et seq. Under this rule, there are eight presumptively appropriate units in acute care health facilities including, among others, a unit of all technical employees. However, the Board subsequently determined that this rule would not apply to bargaining unit determinations in non-acute health care facilities, such as the facilities involved in the instant case, and that such determinations would continue to be made on a case-by-case basis. Park Manor Care Center, 305 NLRB 872 (1991).

In Park Manor Care Center, supra, the Board also held that the test to be applied for determining the appropriateness of bargaining units in non-acute health care institutions is a “pragmatic or empirical community of interest test.” Under this test, the Board considers traditional community of interest factors, including similarity in wages and hours, extent of common supervision, frequency of contact among employees and area practice and patterns of bargaining. Id. at 875. In addition, the Board also considers background information gathered during its rule making process and prior precedent involving the type of unit sought and type of health care facility involved. The Board also considers comparisons of the workforce at the non-acute care facility with those at an acute care hospital. In making such determinations, the Board is guided by the principle that it should avoid finding a unit that is either too large or too small due to the undesirable consequences to the parties.

In Brattleboro Retreat, supra, a labor organization sought to represent a unit of all the technical employees employed by a non-acute health care institution engaged in the treatment of psychiatric and addictive diseases and in providing long-term care and vocational rehabilitation. The technical employees of the institution included, among others, Discharge Counselors and Chemical Dependency Counselors. The Regional Director of Region 1 applied the criteria set forth in Park Manor Care Center, supra, and dismissed the Petition on the ground that a unit limited to the Employer's technical employees was not appropriate and that there was a community of interest between the technical employees and the other nonprofessional employees. The Board granted a request for review in Brattleboro Retreat, supra, and affirmed the Regional Director's dismissal of the Petition.

In Brattleboro Retreat, supra, the Regional Director analyzed the factors which supported the conclusion that a unit of technical employees was not appropriate as follows: 1) the employer's technical employees were highly integrated with other employees and all employees were trained in relating to patients; 2) there was a great deal of overlap and contact between the employer's technical employees and other nonprofessionals; 3) the employer's technical employees did not have substantial educational advancement beyond the other nonprofessional employees, and often shared the same level of educational advancement with the other nonprofessional employees, 4) there was not a wide gap between the pay structure of the two groups; 5) the two groups shared identical working conditions; 6) the technical employees and other nonprofessional employees were close with respect to their skill levels; 7) the employer's technical employees were directly involved in patient care.

However, in Hillhaven Convalescent Center, 318 NLRB 1017 (1995), the Board affirmed the Regional Director's Decision and Direction of Election finding, among others, that the employer's technical employees at a non-acute care facility might be excluded from the overall nonprofessional unit found appropriate. The Board specifically determined that the Hillhaven case was distinguishable from Brattleboro Retreat, *supra*. The Board analyzed the similarities and differences between the two cases as follows:

There, similar to here, all nonprofessional employees shared common personnel policies, benefits, and overall working conditions; the employer's operations were functionally integrated; the technical employees had important and frequent work-related contact with non technical, nonprofessional employees; some technical employees shared common supervision with some non technical, nonprofessional employees; some employees in both groups performed common functions; and the technical employees were involved in direct patient care. In Brattleboro, however, unlike here, the wage differentials between technical employees and non technical employees were fairly small, and technical employees shared wage classifications with many non technical, nonprofessional employees. Also, many of the technical employees were required to have only a high school education and did not acquire their skills through technical schools or colleges, and many non technical employees were required to have high school educations. In addition, the incidence of transfers between technical and non technical classifications in *Brattleboro* suggested a lack of strong distinction between technical employees and other nonprofessionals; there is no evidence of any such transfers here.

The Petitioner asserts that the Employer's Detoxification, Maintenance and Perinatal Counselors qualify as technical employees and therefore possess a separate community of interest from the other employees at the Employer's San Francisco facilities. However, neither party stated a position at the hearing concerning whether the Counselors are technical employees and no stipulation was entered into concerning their status. The issue whether the Counselors are

technical employees was not litigated at the representation hearing in the instant case. Moreover, the Employer's attorney did not discuss in his brief whether the Counselors are technical employees.

Technical employees are those "who do not meet the strict requirements of the term 'professional employee' as defined in the Act but whose work is of a technical nature involving the use of independent judgment requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses." Barnest Memorial Hospital Center, 217 NLRB 775, 777 (1975), quoting Litton Industries of Maryland, 125 NLRB 722, 724-725 (1959). While technical status is frequently evidence by the fact that an employee is certified, licensed or registered, the presence of such qualification is not determinative. Rhode Island Hospital, 313 NLRB 343, 353 (1993).

In support of its contention that the Counselors are technical employees, the Petitioner states in its brief that the Counselors "are required to have specialized education in the field of substance abuse treatment" and that they perform "specialized assessment, counseling and case management functions." However, the record does not support the Petitioner's contention that the Counselors are required to have specialized education in the field of substance abuse treatment. Rather, the record shows that the Employer does not require its counselors to be certified, licensed or registered. Moreover, there is no requirement for the completion of any course of study in substance abuse counseling. While some of the Employer's counselors do possess bachelor's degrees and have completed training in substance abuse counseling, such education and specialized training are not requirements for the position. Furthermore, the record does not establish the factors which are taken into account by the Counselors when performing

their functions and the degree of independent judgment required. Since the technical status of the Counselors cannot be established based upon requirements for certification, licensing or registration, there must be a showing that their work requires the exercise of independent judgment. William W. Backus Hospital, 220 NLRB 414, 418 (1975). However, the record does not establish that the performance of the counselor's job functions requires the exercise of independent judgment to a degree sufficient to qualify them as technical employees.

The Petitioner argues in its brief that the dosing room nurses are technical employees. However, the Employer has not stated a position on this issue. The issue of the technical status of the dosing room nurses was not litigated at the hearing. The record does not establish the nature of the factors which the dosing room nurses consider when performing their job functions and the degree of independent judgment required. Accordingly, the record does not provide a basis for determining whether the dosing room nurses are technical employees.

Even if the Employer's counselors were found to be technical employees, their technical status, standing alone, would not establish that they constitute a separate appropriate unit. As the Board stated in Hillhaven Convalescent Center, supra, "a finding of technical status does not automatically lead to exclusion from the broader unit, or to finding appropriate a separate technical unit. Rather, whether or not technical employees may constitute a separate appropriate unit depends on their relationship to other nonprofessional employees." 318 NLRB at 1017.

As stated above, the Petitioner seeks to represent the employees in the counselor job classifications and the Intake Coordinator. The record shows and the parties agree that the Intake Coordinator performs substantially the same functions as the Counselors. The Petitioner has stated its willingness to proceed to an election in a unit which includes the Child Care Teacher at

the Employer's Geary Street facility but is not willing to proceed to an election in a unit which includes any other job classifications beyond those which it is seeking to represent.

The Employer provides counseling, medical care, and doses of methadone to its patients for the purposes of improving their health and their ability to function more effectively in their daily lives. The services provided by the Employer form a single program devoted to achieving these purposes and are available to patients in single clinic locations. Various classifications of the Employer's employees including the Counselors, Dispensing Nurses, Medical Assistants, doctors, Nurse Practitioners, and physicians' assistants are directly involved in providing the program services to patients. The highly integrated nature of the Employer's program closely resembles the operation of the employer in Brattleboro Retreat, supra.

The record establishes that all the Employer's nonprofessional employees share common personnel policies, benefits and overall working conditions except for the retirement plan which is not available to the Detoxification Counselors. Furthermore, although the Counselors spend a majority of their time in counseling sessions with patients which are not attended by the employees in the other nonprofessional job classifications, there are significant interactions between the counselors and other nonprofessional employees. However, the record does not establish the extent to which the exercise of independent judgment is required of the Counselors and the amount of independent judgment required of the employees in the other nonprofessional job classifications which the Petitioner is not seeking to represent. In addition, the record shows that the starting salary of the counselor position is lower by about \$1,600 than that for the dosing room nurses. It is about \$4,500 higher than that of the Medical Assistants and about \$3,500 higher than that for the positions of Medical Secretary and Bookkeeper. The Counselors and

Intake Coordinator are the only classifications subject to the requirement that they possess an associate of arts degree. The Maintenance Counselors, which constitute by far the largest grouping of counselors, are subject to separate immediate supervision. On the other hand, the Detoxification Counselors are subject to common immediate supervision with other classifications of nonprofessional employees. The Counselors are the only employees of the Employer who perform the functions of developing a treatment plan, preparing a clinical assessment, and counseling the patients. Although employees in the other nonprofessional classifications sometimes convey information to the patients about their treatment, they do not perform the same functions as the Counselors. There are factors in the record which support the Petitioner's position that the counselors and the Intake Coordinator constitute a separate appropriate unit. These include the existence of separate immediate supervision for most of the Counselors, the performance by the Counselors of functions which are not performed by the other nonprofessional employees, and the educational requirements applicable to the Counselors. However, under the criteria set forth by the Board in Park Manor Care Center, supra, as applied in Brattleboro Retreat, and Hillhaven Convalescent Center, supra, these factors are outweighed by the existence of common personnel policies, benefits and overall working conditions, the integrated nature of the Employer's operations, the significant interactions between the counselors and other classifications of nonprofessional employees, and the smallness of the disparity between the starting salary of the Counselors and that of the Dosing Room Nurses whom the Petitioner does not seek to represent. Accordingly, it is concluded that a unit limited to the Counselors and Intake Coordinator or a unit limited to those classifications plus the Child Care Teacher is not appropriate for the purposes of collective bargaining.

The record shows that individuals classified as Chart Reviewers are employed at the Employer at the two San Francisco clinics. They review the patient care charts prepared by the Counselors. The Petitioner contends, contrary to the Employer, that the Chart Reviewers are statutory supervisors and/or managerial employees. However, the Petitioner is willing to proceed to an election in units which include the Chart Reviewers if they are found not to be statutory supervisors and/or managerial employees. Since an election is not being directed in the instant case, it is unnecessary to decide whether the Chart Reviewers are statutory supervisors and/or managerial employees.

Having concluded that the units sought by the Petitioner are not appropriate for the purposes of collective bargaining, I shall dismiss the Petition herein.

ORDER

It is hereby ordered that the Petition in the instant case be, and it hereby is, dismissed.

Decision and Order
Addiction Research and Treatment, Inc.,
d/b/a Bay Area Addiction Research and Treatment
and California Detoxification Programs, Inc.
Case 20-RC-17470

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 and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street, NW Washington, DC 20570-0001. This request must be received by the Board in Washington by February 26, 1999.

Dated at San Francisco, California, this 12th day of February, 1999.

Robert H. Miller, Regional Director
National Labor Relations Board
Region 20
Market Street, Suite 400
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