

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

MERCY HOUSING AND
SHELTER CORPORATION

Employer

and

NEW ENGLAND HEALTH CARE EMPLOYEES
UNION, DISTRICT 1199, AFL-CIO

Petitioner

Case No. 34-RC-1790

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 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,¹ the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
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.²
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.

¹ The Employer and the Petitioner have stipulated to adopt as the record in the instant matter the record and briefs in *Mercy Housing and Shelter Corporation*, Case No. 34-RC-1785.

² See *Mercy Housing and Shelter Corporation*, Case No. 34-RC-1785, *supra*.

5. The Employer is a non-profit corporation with its administrative offices located at 45 Wyllys Street in Hartford, Connecticut, two facilities located at 118 Main Street and 117 Wethersfield Avenue in Hartford, and one facility located at 112 Bow Lane in Middletown, Connecticut. The Petitioner seeks to represent a unit consisting of the accounts receivable/payroll clerk (herein called the receivable clerk) and the accounts payable/payroll clerk (herein called the payable clerk) at the Wyllys Street facility. The Employer asserts that the petitioned-for unit is not appropriate because both clerks are confidential employees. There is no history of collective bargaining involving any of the petitioned-for employees.

The Employer's operations in Hartford includes homeless shelters, a soup kitchen, pre-school and after-school programs, family counseling, clothing and medical services. The Middletown facility provides a transitional living program (e.g., employment counseling and health services) for homeless adults with a goal toward placing them in permanent housing. The Wyllys Street facility serves as the Employer's administrative offices. No client services are provided at the Wyllys Street facility. The Employer occupies the first floor of the facility, a two story home which has been converted to office space.³ The first floor is divided into eight offices which surround a central area where the office manager is situated. Also working at the Wyllys Street facility are the Executive Director and the directors of development, finance, personnel, and quality assurance, all of whom the parties have stipulated to exclude from the petitioned-for unit. The payable clerk and the receivable clerk report directly to the director of finance, who is their supervisor and prepares their annual evaluations. The record reflects that the director of finance is also responsible for overseeing the Employer's budget, payroll, expenditures, financial statements and financial policies. In contrast, the Executive Director and the director of personnel are directly responsible for the Employer's labor relations and personnel policies.

The payable clerk, Art LaChance, is generally responsible for maintaining all accounts payable, payroll and personnel information. In so doing, he is required, inter

³ The Employer has purchased another building to which the administrative offices will be moved in January 2000.

alia, to process all payroll information necessary for the issuance of payroll checks to hourly employees,⁴ including the review of time sheets for proper calculation of time worked. The payable clerk also prepares and maintains a “time track spreadsheet” for each hourly employee based on time sheet information and applicable personnel policies regarding sick, vacation, holiday and personal time. With regard to accounts payable, the payable clerk codes all the invoices for payment, inputs them into the computer, provides such information to the director of finance for approval, and upon approval generates the check for payment of the invoice. The payable clerk is directly responsible for maintaining all employee personnel files. In this regard, he prepares a file for all new hires and places certain hiring documents into the file. He thereafter places other documents into the files as necessary, and retrieves documents from such files when requested by the Employer’s directors. Because of his responsibility to prepare all paychecks, the payable clerk receives advance notice if an employee is going to be terminated.

The receivable clerk, Sheri Shojaei, is generally responsible for collecting and maintaining all accounts receivable information, and serves as a back up to the payable clerk regarding hourly payroll processing duties, including the maintenance of time sheet information. The receivable clerk spends approximately 24 to 32 hours per month at the Employer’s other three facilities for the purpose of reconciling accounts and delivering the bi-weekly paychecks to the Middletown facility.

Both the payable clerk and receivable clerk have access to all files which are maintained in the central area at the Wyllys Street facility, as well as access to the Employer’s computer network where files are also stored. However, all secretarial and typing duties for the Employer’s directors are performed by the office manager. Neither the payable clerk nor the receivable clerk attend “Executive team” meetings which are held by the directors at the Wyllys Street facility. Other than the matter described below, the record reflects that the payable clerk and the receivable clerk only provide data gathering functions for the director of personnel and the Executive Director.

⁴ According to the Employer’s Executive Director, the payroll duties for salaried employees were recently removed from the responsibility of the payable clerk because such payroll information was considered “confidential”. Those payroll duties are now performed directly by the Finance Director.

On one recent occasion the payable clerk became involved in a discussion of a policy issue. In this regard, the Employer maintains a policy prohibiting employees from carrying over unused vacation time from one calendar year to the next. As a result, during the first pay period of November every year, the payable clerk sends a memo to every employee who is in a “use it or lose it” status regarding their vacation leave balance. In November 1999, the payable clerk received a courtesy copy of a memo sent by a program director in the mental health department to the director of human resources requesting that an employee be allowed to carry over vacation time into the next calendar year. As a result of the memo, the payable clerk requested a meeting with the directors of finance and personnel, during which he advised them of the Employer’s vacation use policy.⁵ He also complained that the program director in mental health wasn’t doing her job because she had failed to keep track of the employee’s excessive vacation leave balance. In the course of the meeting there was a discussion of three options regarding the vacation leave use policy: to leave the policy unchanged; allow employees to carry over one week of vacation leave to the following year; or convert any unused vacation leave into short term disability leave. The payable clerk expressed his opinion that there should be no change to the vacation leave policy, and that the carry over option would cause an accounting problem. The meeting ended with the understanding that the director of personnel would “formulate” the ideas discussed and “get back” to the payable clerk and the director of finance, after which a recommendation would be forwarded to the Executive Director. To date, no further meetings or discussions have been held, nor any action taken, regarding the vacation leave issue.

Based upon the foregoing and the record as a whole, I find that neither the payable clerk nor the receivable clerk are confidential employees. More particularly, I note that neither of them work in a confidential capacity to persons who formulate, determine and effectuate management policies in the field of labor relations. *The B. F. Goodrich Co.*, 115 NLRB 722, 724 (1956), cited with approval in *N.L.R.B. v. Hendricks County Rural Electric Membership Corp.*, 454

⁵ Both the directors of finance and personnel were new to their positions and were not fully cognizant of all of the Employer’s personnel policies.

U.S. 170 (1981); *S.S. Joachim & Anne Residence*, 314 NLRB 1191, 1195-6 (1994); *Los Angeles New Hospital*, 244 NLRB 960, 961 (1979); *Chico Community Memorial Hospital*, 215 NLRB 821, 823 (1974). Rather, I note that they report directly to, and are supervised by, the director of finance, who the record reflects does not formulate, determine and effectuate management policies in the field of labor relations. Moreover, the payable clerk and the receivable clerk are specifically excluded from attending director meetings, and they perform no secretarial duties which might expose them to confidential labor relations information. The payable clerk's mere participation in a discussion of the Employer's vacation leave policies, the application of which directly impacts upon his duties and responsibilities, is insufficient to confer confidentiality status. See *S.S. Joachim & Anne Residence*, supra. Finally, the access of payable clerk and the receivable clerk to employee personnel files and other internal documents located throughout the Employer's administrative offices is also insufficient to confer confidentiality status. See, e.g., *Lincoln Park Nursing and Convalescent Home, Inc.*, 318 NLRB 1160, 1164 (1995); *Los Angeles New Hospital*, supra; *Ernst and Ernst National Warehouse*, 228 NLRB 590 (1977); *Chico Community Memorial Hospital*, supra. In view of the above, I shall include the accounts payable/payroll clerk and the accounts receivable/payroll clerk in the petitioned-for unit.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time accounts receivable/payroll clerks and accounts payable/payroll clerks employed by the Employer; but excluding all other employees, the office manager, the Executive Director, the directors of finance, personnel, quality assurance, and development, and guards, professional employees, and other supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit described above 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 employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, 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 employees who have quit or been discharged for cause, 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. These eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by New England Health Care Employees Union, District 1199, AFL-CIO.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should

have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned an eligibility list containing the *full* names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before January 4, 2000. No extension of time to file the list shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

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 may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by January 11, 2000.

Dated at Hartford, Connecticut this 28th day of December, 1999.

/s/ Peter B. Hoffman
Peter B. Hoffman, Regional Director
National Labor Relations Board
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