

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8

THE CHILDREN'S AID SOCIETY¹

Employer

and

Case No. 8-RC-15845

**SOCIAL AGENCIES EMPLOYEES UNION
A/W DISTRICT 1199, SEIU, AFL-CIO**

Petitioner

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, 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,² the undersigned finds:

1. The hearing officer's rulings made at the hearing 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.

3. The labor organization involved herein 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. I find that the following employees of the Employer constitute voting groups appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act³:

VOTING GROUP A: THE NON-PROFESSIONAL EMPLOYEES

All health care employees including social workers, treatment specialists (formerly known as child care staff), licensed practical nurses, maintenance employees, custodial employees, housekeeping employees, and food service employees at the Employer's Cleveland, Ohio facility but excluding all office clerical employees, confidential employees and all professional employees, guards and supervisors as defined in the Act.

¹ The name of the Employer appears as amended at the hearing.

² The Parties filed briefs which have been carefully considered.

³ **Sonotone Corp.**, 90 NLRB 1236, 1241-1242 (1950).

VOTING GROUP B: THE PROFESSIONAL EMPLOYEES

All professional employees including registered nurses and therapists at the Employer's Cleveland, Ohio facility but excluding all nonprofessional employees, office clerical employees, confidential employees and all guards and supervisors as defined in the Act.⁴

The Employer, a non-profit Ohio corporation, is engaged in the operation of a social service agency specializing in the treatment of emotionally and behaviorally troubled children at its sole facility located in Cleveland, Ohio. There appears from the record to be a total of approximately 70 employees in the voting groups found to be appropriate herein.

The Employer, contrary to the Petitioner, contends that the individuals occupying the positions of Campus Coordinator (formerly known as cottage supervisor), Head Nurse, Day Treatment Coordinator/Recreation Coordinator and Assistant to the Executive Director are supervisors as defined in Section 2(11) of the Act. Moreover, the Employer asserts that the individual occupying the position of Administrative Assistant to the Executive Director is also a confidential employee. At the hearing, the Petitioner took the position that the Administrative Assistant to the Executive Director was not a confidential employee. In its post-hearing brief however, the Petitioner is now in agreement with the Employer's position that this classification is confidential and should be excluded from the unit found appropriate in this matter.

The Employer's Executive Director, Roberta King, is the highest ranking official at its Cleveland, Ohio facility. The Associate Director, Director of Clinical Services, Director of Out-of-Home Services, Chief Financial Officer, Assistant to the Executive Director and the Medical Director all report directly to her. Immediately subordinate to the Director of Clinical Services is the position of Head Nurse, currently occupied by a registered nurse (RN). There is one other registered nurse at the facility who reports directly to the Head Nurse. Reporting directly to the Director of Out-of-Home Services is the Program Manager and the Day Treatment Coordinator/Recreation Coordinator. The Campus Coordinators report directly to both the Program Manager and

⁴ After the close of the hearing in this matter, the Parties entered into a stipulation regarding the status of the Employer's approximately seven Therapists. Based upon that stipulation, which is made a part of the record and which I hereby approve, I find that the Therapists are professional employees as defined in Section 2(12) of the Act. With respect to the Registered Nurses, "RN's," I note that neither party asserts that they are *not* professional employees as defined in the Act. In the health care field, RN's are generally held to be professionals and I so find them to be in this matter. There are approximately eight employees in the professional voting group. **Centralia Convalescent Center, 295 NLRB 42 (1989).**

the Day Treatment Coordinator/Recreation Coordinator. Finally, directly beneath the Campus Coordinators are the Treatment Specialists.

Section 2(11) of the Act defines a supervisor as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to responsibly direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires independent judgement.

This Section is to be interpreted in the disjunctive and “the possession of any one of the authorities listed [in that section] places the employee invested with this authority in the supervisory class.” *Ohio Power Co. v. NLRB*, 176 F.2d 385, 387 (6th Cir. 1949), cert. Denied 338 U.S. 899 (1949). *Matheson Fast Freight*, 297 NLRB 63 (1989).

In a representational proceeding such as this, the burden of proving that individuals are supervisors rests on the party alleging that supervisory status exists. *Ohio Masonic Home, Inc.*, 295 NLRB 390 (1989). *Tuscon Gas & Electric Co.*, 241 NLRB 181 (1979).

In addition to the enumerated powers in Section 2(11) of the Act, the Board may also look to certain other factors as evidence of supervisory status, e.g. the individual’s attendance at supervisory meetings, the authority to grant time off to other employees, and the ability to evaluate employees. See *Flexi-Van Service Center*, 228 NLRB 956, 960 (1977).

In applying the traditional criteria for the establishment of supervisory status to the facts of the instant case, I find that certain of the Campus Coordinators are supervisors within the meaning of Section 2(11) of the Act as is the Head Nurse, Day Treatment Coordinator/Recreation Director and the Assistant to the Executive Director. Moreover, I find that in addition to being a supervisor, the Assistant to the Executive Director is also a confidential employee.

CAMPUS COORDINATORS

The undisputed testimony of the Employer’s Executive Director, Roberta King, established that the Employer’s physical plant is comprised of three cottages or “houses” in addition to an administration building which also serves as an “on-site” school. These houses or cottages are designated “Brown,” “Hanna Humphrey,” and “Wade.” Beyond providing a private room for each of the approximately twelve children who reside in each house, they also each contain a dining room, kitchenette and a recreational area. Each of the houses is staffed by three or four Treatment Specialists.

There is one Campus Coordinator specifically assigned to each house: **Laura Andrews** (Brown); **Kathy Dispenza** (Hanna); and **Chris Snider** (Wade). According to King and the job description of this position, these three Campus Coordinators are responsible for all activities that take place in the houses including the hiring, training orientation, evaluating, and disciplining/rewarding of the Treatment Specialists.

King's testimony provided a detailed description of the hiring process. Whenever a vacancy occurs in a house for a Treatment Specialist, the Campus Coordinator informs the Program Manager, Richard Melendez who relays this information to King through the Director of Out-of-Home Services, Robert Sharkody. It is the Campus Coordinator, however that initiates the search for a replacement. At the direction of the Campus Coordinator, an ad is placed in a local newspaper by the Assistant to the Executive Director, Barbara Zeszut. Due to the high rate of turnover among Treatment Specialists, the hiring process is an ongoing one.

Christopher West, Day Treatment Coordinator performs the initial screening of applicants. Those applicants warranting further consideration are scheduled by West for additional interviews with either the particular Campus Coordinator placing the ad or, in some cases, with a team of Campus Coordinators. During this interview process, the Campus Coordinator is authorized to offer a position to an applicant without further consultation with any other management official. In situations in which an applicant is interviewed by a team of Campus Coordinators, a recommendation is made by the "team" to West who thereupon notifies the candidate of the decision.

The starting salary for treatment specialists is uniform and is set without input from the Campus Coordinators. All employees of the Employer receive the same fringe benefits. The Campus Coordinators however, are paid approximately 25% more than are the Treatment Specialists.

With regard to employee evaluations, the record reflects that Treatment Specialists receive performance appraisals after the first six months of their employment and at annual intervals thereafter. These evaluations are prepared by the Campus Coordinator responsible for the house to which the Treatment Specialist is assigned.

The form utilized for the appraisal function, entitled "**Children's Aid Society Performance Evaluation,**" contains seventeen categories plus a provision for narrative comments. The categories are: *Active listening skills; Limit setting; Sensitivity to child's needs, feelings, struggles; Encourages children to discover strengths, talents and interests; Helps children set goals and examine problems with objectivity and respect; Implements treatment plans; Follows through on responsibilities (including routines and structure); Timely and effective written communication;*

Timely and effective verbal communication; Shows enthusiasm and creativity when engaging children in the planing and implementation of activities; Effective communication with other treatment team members; Fulfillment of shopper responsibilities; Reliability (absenteeism/tardiness); Knowledge of/adherence to agency policy and procedures; Use of supervision; Relationships with staff; and Teamwork. Each category is followed by three boxes: **Above Average; Average; and Below Average.**

In the past, the Campus Coordinator placed an “x” in the appropriate box after each category. The Employer has recently converted to a system whereby one of the three boxes after each category is assigned a number between 0 and 2. 2 = Outstanding; 1.5 = Exceeds Standards; 1 = Meets Standards; .5 = Needs Improvement. These numbers are totaled and applied to a formula which includes a numerical weighting system for the particular job description. This formula is utilized by the Campus Coordinator to determine the amount of the Treatment Specialist’s annual wage increase that can range from 0 to 5%. Upon its completion, the evaluation form is signed by the Campus Coordinator on the “supervisor” line and given to the employee for signature.

Although an employee does have the right to appeal such determinations, King testified that this rarely occurs. According to King, if no appeal is filed, the Campus Coordinator prepares a corresponding “employee action form” for the payroll department that she approves on a routine basis.

The record further reflects that Campus Coordinators possess the authority to discipline Treatment Specialists and that such authority has been exercised on more than a sporadic basis.

Campus Coordinators are responsible for and actively participate in the training of the Treatment Specialists hired for their particular cottage or “house.” Moreover they have exclusive authority to prepare daily work schedules and to make specific work assignments to the Treatment Specialists based upon the individual needs of a particular child. If a Treatment Specialist is unable to work a scheduled shift, it is the responsibility of the Campus Coordinator to either seek a replacement or ask an on-duty Specialist to work a double shift. No approval is required for this action.

The Board has consistently found that persons were supervisors within the meaning of the Act when they performed evaluations of other employees and it was apparent that the evaluations led directly to personnel actions affecting the employees such as a wage increase. See, e.g., *Northcrest Nursing Home*, 313 NLRB 491 (1993); *Health Care & Retirement Corp.*, 310 NLRB 1002, 1006-1007 (1993). It has always been the Board’s policy that

for evaluations to constitute evidence of supervisory status, they must *effectively* recommend personnel action. See *Northcrest Nursing Home*, *supra* at 498; *Bayou Manor Health Center*, 311 NLRB 955 (1993).

In *Bayou Manor Health Center*, *supra*, the Board found that the persons at issue were statutory supervisors *solely* because the evaluations they completed affected the salaries of the individuals being evaluated, as there was a direct correlation between the appraisals and the wage increase awarded. Such is the case in the present matter.

Based upon the above, I find that the Campus Coordinators in the instant case evaluate Treatment Specialists and that those evaluations affect the salary of the Specialists, as there is a direct correlation between the evaluations and the wage increase awarded. Because of their role in the hiring and training of the Treatment Specialists and in the preparation of the evaluations of the Specialists that directly affect their employment status, I find that the three Campus Coordinators, Laura Andrews, Kathy Dispenza and Chris Snider are supervisors within the meaning of Section 2(11) of the Act.

With regard to the three other Campus Coordinators not specifically assigned to a particular cottage or “house,” **Doug Bellville**, **Ed Powell** and **Sly Watts**, I note that there is insufficient evidence in the record regarding their specific duties and responsibilities to make a reasoned determination as to their status. Accordingly, I shall permit them to vote subject to challenge.

DAY TREATMENT COORDINATOR/RECREATION COORDINATOR

Roberta King testified without contradiction that the Day Treatment Coordinator/Recreation Coordinator, **Christopher West**, is responsible for the Employer’s entire program, known as “Day Treatment.” As part of his duties, West maintains lines of communication between the Executive Director and other members of the staff, including the Campus Coordinators. He is responsible for the establishment and implementation of a continuing education program for both Treatment Specialists and Campus Coordinators.

Furthermore, not only does West actively participate in the hiring process of the Treatment Specialists, he is also responsible for and actively participates in the hiring, training, evaluation and direction of the Campus Coordinators. The record reflects that in certain instances, West prepares and executes as “supervisor” the actual evaluation of the Treatment Specialists which directly results in a wage adjustment for the individual. This evaluation process not only includes the numerical portion of the process, as described above in detail, but also the

extensive narrative. Like the Campus Coordinators, West's position requires the possession of a Bachelors Degree as well as two years of field experience.

Based upon the above, particularly his overall responsibility for the operation of the Employer's Day Treatment program; his supervision of the Campus Coordinators; and his direct involvement in the evaluation process, I find that Christopher West, as the Day Treatment Coordinator, is a supervisor within the meaning of Section 2(11) of the Act.

HEAD NURSE

I note from the record that the Employer has two registered nurses, "RN's," on its staff, **Melissa Granert** and **Rhonda Rhodes-Jones**. Granert has been employed by the Employer for approximately three years and has occupied the position of Head Nurse since September 1, 1998. Her immediate superior is the Director of Clinical Services, Dr. David Steinwick. Reporting directly to Granert is the other staff RN, Rhonda Rhodes-Jones.

Granert's duties include operating the Employer's medical clinic and the supervision of its staff. In this regard, she is responsible for overseeing the distribution, management, and security of the medications used at the facility as well as providing nursing care to the residents and other clients.

King testified that the previous Head Nurse, Carol Redman, recommended Granert as her replacement following Redman's decision to the Employer. According to King, a significant amount of weight was given to Redman's recommendation when the decision was made to promote Granert to the Head Nurse position. After becoming Head Nurse, Granert placed newspaper ads, interviewed candidates and selected Rhodes-Jones as her replacement without any significant input from other Employer management personnel. Although Granert has not held the position of Head Nurse long enough to have had the opportunity to evaluate Rhodes-Jones, the record reflects that during her tenure as Head Nurse, Redman evaluated Granert on two occasions.

These evaluations parallel the appraisal system, described above, pertaining to the Campus Coordinators and Treatment Specialists. They contain the same numeric formulae and calculations required of Redman that resulted in the determination of the amount of Granert's wage increase, within a pre-determined range. According to King, Granert will perform the same evaluation function with respect to Rhodes-Jones when the time arises. Additionally, although she has not had the need to exercise such authority, Granert is also responsible for disciplining Rhodes-Jones.

Based on the foregoing, particularly her ability to directly, and on a regular basis, affect the salary of the RN reporting to her, I find that **Melissa Granert** is a supervisor within the meaning of Section 2(11) of the Act.

ADMINISTRATIVE ASSISTANT TO THE EXECUTIVE DIRECTOR

The Employer maintains that **Barbara Zeszut**, Roberta King's Administrative Assistant, is a supervisor within the meaning of Section 2(11) of the Act and/or a confidential employee.

"Confidential employees" are defined as employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations, or regularly substitute for employees having such duties. Under Board policy, they are excluded from bargaining units. ***Ladish Co.*, 178 NLRB 90 (1969); *Chrysler Corp.*, 173 NLRB 1046 (1969).**

The record reveals that Zeszut has served as King's administrative assistant since November 1, 1998. In that capacity, according to King's uncontroverted testimony, Zeszut placed newspaper ads for, interviewed and hired the two office clerical employees who report directly to her. The decision to hire the two clerical employees was made without input from other management personnel. Although neither Zeszut nor the two clerical employees have been employed by the Employer for the requisite period of time, King testified that at the appropriate upcoming intervals, Zeszut will be exclusively responsible for the evaluation of these clericals. Moreover, although she has not been required to exercise it, King also testified that Zeszut possesses the authority to discipline those individuals who report to her.

In applying the Act's Section 2(11) definition of "supervisor" to this situation, the Board has consistently held that the possession of any one of the supervisory indicia set forth is sufficient to confer supervisory status. ***Valley View Nursing Home, Inc.*, 310 NLRB 1002, 1005 (1993).** In this regard, I am persuaded by the King's unrefuted testimony that Zeszut both possesses *and* has recently exercised the authority to hire the persons who report to her. While I am mindful that she has not exercised other primary aspects of supervisory authority to date such as evaluations and discipline of employees, I note that this is merely the result of the relatively short time she has held this position and not a lack of any such additional authority.

Based upon the above, I find that Zeszut is a supervisor within the meaning of Section 2(11) of the Act.

Concerning the confidential employee issue, I note that Executive Director, Roberta King, is responsible for the Employer's "Human Resource" function. In this capacity, King's office is the repository of all personnel

files. Zeszut is the only other person with access to them and possesses the only key to the filing cabinet in which they are kept.

All documents pertaining to personnel actions such as pay raises, evaluations and disciplinary reports are routed to Zeszut for filing. Additionally, Zeszut receives copies of all disciplinary write-ups which she is responsible for placing in the affected employee's personnel file.

In conjunction with her duties as King's Administrative Assistant, Zeszut attends meetings of the Employer's Board of Directors' personnel subcommittee. I note that in this role, she is responsible for the minutes of these meetings both as the recorder and custodian. Zeszut also works directly with King on a regular basis on budget matters. In this capacity, she is actively involved in discussions with King about employees' salaries and other benefits. King further testified that Zeszut's predecessor was responsible for the preparation of the current employee handbook.

The Board has held on a consistent basis that employees engaged in the duties outlined above are confidential employees. See, e.g., *Bakersfield Californian*, 316 NLRB 1211 (1995); *Firestone Synthetic Latex Company*, 201 NLRB 347 (1973); *Grocers Supply Co.*, 160 NLRB 485, 488-89 (1966). Of particular significance in this regard is Zeszut's attendance at the Employer's Board of Director's personnel subcommittee meetings, during which personnel matters are discussed and her close work with King in the preparation of budgets and the setting of employee salaries. See *ITT Grinnell*, 253 NLRB 584 (1980).

Consequently, based upon the above, the record as a whole, and the parties' agreement, I find that Zeszut is both a supervisor as defined in Section 2(11) of the Act and a confidential employee and therefore ineligible to vote in the upcoming election.

I find that the following employees may constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All health care employees including social workers, treatment specialists (formerly known as child care staff), licensed practical nurses, maintenance employees, custodial employees, housekeeping employees, food service employees and all professional employees including registered nurses and therapists but excluding all office clerical employees, confidential employees and all guards and supervisors as defined in the Act.

Because Section 9(b)(1) of the Act prohibits the inclusion of professional employees in a unit with employees who are not professionals unless a majority of the professional employees vote for inclusion in such a unit, I must ascertain the desires of the professional employees as to inclusion in a unit with nonprofessional

employees. Therefore, I shall direct elections in two separate voting groups, one for the nonprofessional employees (Voting Group A), and one for the professional employees (Voting Group B). The employees in Voting Group A will be polled to determine whether or not they wish to be represented by the Petitioner. The employees in Voting Group B will be asked two questions on their ballot: (1) Do you desire the professional employees to be included in a unit composed of all employees of the Employer for purposes of collective bargaining; and (2) Do you desire to be represented by the Social Agencies Employees Union A/W District 1199, SEIU, AFL-CIO?

If a majority of the professional employees vote “yes” to the first question, they will be so included, and their votes on the second question will then be counted together with those of the employees in Voting Group A. If, on the other hand, a majority of the professional employees vote “no” to the first question, their votes with respect to the second question will be separately counted to determine whether they want to be represented by the Petitioner in a separate professional unit limited to professional employees. ***Minneapolis Society of Fine Arts, 194 NLRB 371 (1971).***

My unit determination is based, in part, upon the results of the election among the professional employees. However, I now make the following findings in regard to the appropriate unit:

If a majority of the professional employees vote for inclusion in the unit with nonprofessional employees, I find the following will constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All health care employees including social workers, treatment specialists (formerly known as child care staff), licensed practical nurses, maintenance employees, custodial employees, housekeeping employees, food service employees and all professional employees including registered nurses and therapists at the Employer’s Cleveland, Ohio facility but excluding all office clerical employees, confidential employees and all guards and supervisors as defined in the Act.

If a majority of the professional employees do not vote for inclusion in the unit with nonprofessional employees, I find the following two groups of employees will constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

UNIT A

All health care employees including social workers, treatment specialists (formerly known as child care staff), licensed practical nurses, maintenance employees, custodial employees, housekeeping employees, and food service employees at the Employer’s Cleveland, Ohio facility but excluding all office clerical employees, confidential employees and all professional employees, guards and supervisors as defined in the Act.

UNIT B

All professional employees including registered nurses and therapists at the Employer's Cleveland, Ohio facility but excluding all nonprofessional employees, office clerical employees, confidential employees and all guards and 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 voting groups 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 units who were employed during the payroll period of eligibility 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 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. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the **Social Agencies Employees Union A/W District 1199, SEIU, AFL-CIO.**

LIST OF VOTERS

In order 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); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director 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, D.C. 20570-0001. This request must be received by the Board in Washington by **March 10, 1999**.

Dated at Cleveland, Ohio this 24th day of February 1999.

John Kollar
Acting Regional Director
National Labor Relations Board
Region 8

177-8520-0800
177-2401-6800
401-2575-1450