

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

MODEL CITIES HEALTH CENTER, INC.

Employer

and

SERVICE EMPLOYEES INTERNATIONAL UNION
LOCAL 113

Union/Petitioner

Case 18-UC-339

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, careful investigation and consideration took place.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in connection with this proceeding to me. Upon the entire record in this proceeding, I find:

1. 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.¹

2. The Union/Petitioner, contrary to the Employer, seeks to clarify the existing bargaining unit to include the classifications of the administrative assistant/utilization tracker, the patient flow manager and the Hmong interpreter services coordinator/case manager. This

¹ The Employer, Model Cities Health Center, Inc. (“Model Cities”), is a Minnesota corporation with an office and place of business in St. Paul, Minnesota, where it is engaged in the provision of community health care. During the past 12 months, a representative period, the Employer has purchased and received at its Minnesota facility goods and materials valued at approximately \$2500 directly from sources located outside the State of Minnesota, and has earned gross revenues in excess of \$1,000,000.

decision addresses only the patient flow manager position and the Hmong interpreter services coordinator/case manager position, as shortly after the filing of the petition the parties agreed that the administrative assistant/utilization tracker should be included in the unit. The Employer, contrary to the Union/Petitioner, contends that the Hmong interpreter services coordinator/case manager and patient flow manager are both professional employees within the meaning of Section 2(12) of the National Labor Relations Act and should therefore be excluded from the non-professional unit.

The Employer is a non-profit, community-based health clinic located in St. Paul. The Employer and the Union/Petitioner are parties to a collective-bargaining agreement effective from March 1, 1998 through February 29, 2000. The agreement contains a recognition provision, which recognizes the Union/Petitioner as the bargaining representative for all full-time and regular part-time non-professional employees.

The Union/Petitioner has represented a non-professional bargaining unit of the Employer's employees for about seven years. The job classifications included in the wage schedule of the parties' current contract are receptionist, clerk typist, office assistant, patient accounts clerk, data entry, medical records, medical assistant, certified medical assistant, medical lab tech, certified medical lab tech, dental assistant, certified and regular dental assistant, outreach worker, van driver and janitor. At the time the petition herein was filed, there were 18 employees in the existing bargaining unit. There is one incumbent each in the patient flow manager and the Hmong interpreter services coordinator/case manager classifications.

The Hmong Interpreter Services Coordinator/Case Manager

The incumbent in the Hmong interpreter services coordinator/case manager (hereinafter called "coordinator") position is Zia Moua, who assumed the position in December 1998. The

coordinator position replaced the outreach worker classification, which was in the bargaining unit. The first person to fill the coordinator position was Deu Yang, who, after receiving her associate degree in nursing, was promoted in about February 1998 from outreach worker to the then-newly created coordinator classification.² The salary for the coordinator position is about 16 percent higher than the maximum wage level for the outreach worker position.

While, during the investigation, the Employer submitted a job description for the coordinator position which indicates that a bachelor's degree in human services is required--along with an interpreter certification and two years' experience in community health care--these conditions are not fulfilled by Moua, who signed a different job description. The coordinator job description signed by Moua in December 1998 requires, as part of the "minimum qualifications," an associate degree in human services; a medical specialist interpreter certificate and/or court interpreter certificate; the ability to speak and interpret the Hmong language; and two years of experience working in a community health care setting. Of these stated minimum requirements, Moua fulfills only the ability to speak and interpret Hmong, a language in which she is fluent.³

Moua describes her work week as consisting of two and one-half to three days of assisting Hmong-speaking patients in the clinic; one-half to one day of home visits and/or patient transport to prenatal medical appointments; and one day of paperwork. When making home visits, Moua is often asked by patients to assist with reading and handling mail, making telephone calls and assisting with food relief programs. She also provides health education to patients in their homes on prenatal care, family planning and nutrition.

² The Employer suggests that the Union/Petitioner knew or should have known about the creation of the coordinator position during the contract negotiations in early 1998. The Union/Petitioner, on the other hand, denies that it learned that a new, non-unit position had been created prior to the completion of the negotiations for the current agreement.

³ Moua has a bachelor's degree in food and nutrition, a field which she states has nothing to do with the work she now performs for the Employer. When she assumed the coordinator position, she had neither two years' experience in community health care nor any interpreter certification.

Moua's immediate supervisor as coordinator is Dorii Gbolo, although Moua also frequently has called her predecessor (Yang) with questions. The Employer asserts that the coordinator--unlike the former bargaining unit position of outreach worker--assists in monitoring the work performance of the Employer's Hmong-speaking staff. However, the investigation failed to establish that the coordinator actually does so. The Employer also asserts that the coordinator works very independently and rarely within a set schedule. However, the investigation established that the coordinator is scheduled to work in the clinic all or part of four days per week and can only vary her remaining hours.

On the basis of the foregoing and the investigation as a whole, I find that the bargaining unit should be clarified to include the position of Hmong interpreter services coordinator/case manager. In reaching this conclusion, I rely particularly on the facts that the coordinator's work does not meet any of the criteria delineated in Section 2(12) of the Act as constituting that of a "professional" employee, e.g., it is not primarily intellectual and varied in character; it does not involve the consistent exercise of discretion and judgment; and it does not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital. See Avco Corp., 313 NLRB 1357 (1994). Moreover, I note that the current Hmong interpreter services coordinator/case manager is not certified and does not possess any special education. I conclude that the coordinator is not a professional employee. The coordinator position should, accordingly, be included in the non-professional bargaining unit. Ohio State Legal Services Assn., 239 NLRB 594, 596 (1978) (accounting specialist not professional where no evidence incumbent has degree); J. Arthur Trudeau Center, 227 NLRB 1439, 1440 (1977) (teachers aides

not professionals where not certified by state or required to have specialized training or education).

The Patient Flow Manager

The patient flow manager job description signed by incumbent Elizabeth Simmons (the only individual to have filled this position for the Employer) indicates that a registered nurse license is required. While the Union/Petitioner asserts that Simmons--as patient flow manager--is not actually working as an RN, the Employer responds that an RN license is required for the triage work of the patient flow manager, a critical component of the job.

The primary duties of the patient flow manager, according to incumbent Simmons, are scheduling appointments; performing triage functions for same-day appointment requests; processing appointment cancellations and reschedulings; preparing monthly schedules for providers; making appointment reminder calls to patients; and following up on patients who have missed or cancelled appointments. Simmons also fills in, with some regularity (e.g., one evening a week and during day-shift lunch breaks and absences), for the front desk receptionists, who are in the bargaining unit.

The patient flow manager is immediately supervised by the clinical manager (Ann Jacobs), who supervises the clinic's nursing staff, rather than the billing staff supervisor (Priyangani Goonathilaka), who supervises the front desk personnel.

Simmons is a long-term former staff registered nurse for Model Cities who left for ten years to work in a private medical office. She then returned to the Employer in late 1998 as a receptionist, at a time when her RN license had expired. Although the receptionist position to which she returned was a bargaining unit position, she has never been treated as a bargaining unit member. When her receptionist position was converted into the patient flow manager

position in about November 1998, her \$10 per hour pay rate did not increase.⁴ The contractual wage range for bargaining unit receptionists is \$7.31 to \$9.41 per hour. The patient flow manager, unlike the front desk personnel, is a salaried position and is not compensated for overtime.

The triage function of the patient flow manager position requires that Simmons question patients who call into the clinic for a same-day appointment. Her questions concern the patients' symptoms, which information helps Simmons determine whether a same-day appointment is really warranted or whether a future appointment will be sufficient. If the latter, Simmons often gives information designed to help relieve the patients' symptoms until their appointment. Simmons performs these triage functions only for patients who phone in for same-day appointments. Triage functions for walk-in patients are performed by staff RNs summoned by front desk personnel, unless Simmons is filling in at the front desk. If Simmons is on duty at the front desk, she--as a licensed RN--can perform triaging for walk-ins as well. Under Minnesota state law, an RN license is required to perform triage functions.

On the basis of the foregoing and the record as a whole, I conclude that the petition herein should be dismissed insofar as the Union/Petitioner seeks to include the position of patient flow manager in its current unit. In reaching this conclusion, I rely particularly on the facts that the position requires an RN license; that until the current patient flow manager (Simmons) was relicensed, she was not allowed to triage patient calls; that one of the functions of the patient flow manager is to triage patient calls; that triage functions for walk-in patients are performed by staff RNs, or Simmons if she is at the front desk; and that the patient flow manager is supervised by the clinical manager, who supervises the rest of the nursing staff. Pocono Medical Center,

⁴ While Simmons was informed by the Employer in November 1998 that her receptionist position was being converted into the position of patient flow manager, she was not able to perform the triage portions of her job until August 1999, at which time her expired RN license was renewed.

305 NLRB 398 (discharge planner is a professional employee). The fact that some of the patient flow manager's duties are identical to those of non-professional bargaining unit employees is insufficient to compel a finding that the position is non-professional where it is clear that, by law, an RN license is required for triage work and non-professional employees do not triage patients. Illinois Valley Community Hospital, 261 NLRB 1048 (1982). Therefore, I conclude that the patient flow manager is a professional employee.

ORDER

IT IS HEREBY ORDERED that the petition for unit clarification is partially granted and that the unit exclusively represented for purposes of collective bargaining by SEIU Local 113 be, and it hereby is, clarified to *include* the position of Hmong interpreter services coordinator/case manager. However, the petition is dismissed insofar as it seeks to include in the unit the patient flow manager.⁵

Dated at Minneapolis, Minnesota, this 26th day of January, 2000.

/s/ Ronald M. Sharp

Ronald M. Sharp, Regional Director
Eighteenth Region
National Labor Relations Board

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⁵ 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 **February 9, 2000**.