

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

RES CARE TENNESSEE, INCORPORATED

Employer

and

Case No. 26-RC-8161

AFSCME, LOCAL 1733

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein 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 proceeding¹, 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 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 Act².
5. 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 Act³:

INCLUDED: All residential counselors employed by Res Care Tennessee, Inc. in Shelby County, Tennessee.

EXCLUDED: All managers, supervisors, office clerical, and guards as defined in the Act⁴.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the 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 the status as such during the eligibility period and their replacements. Those in the military services of the United States Government 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 AFSCME Local 1733.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in 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 directed that an eligibility list containing the full names and address of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. 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. **North Macon Health Care Facility**, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the National Labor Relations Board, Region 26, 1407 Union Avenue, Suite 800, Memphis, Tennessee 38104-3627 on or before April 12, 2000.

RIGHT TO REQUEST REVIEW

Under the provision 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 April 12, 2000.

DATED April 5, 2000, at Memphis, Tennessee.

Frederick J. Calatrello, Acting Regional Director
Region 26, National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627
(Telephone: 901-544-0018/0019)

CLASSIFICATION INDEX

177-8501-4000
177-8520-0800
177-8520-1600
177-8520-2400
177-8520-5500
177-8520-7800
177-8520-9300
401-2575-4250

¹ The Employer and the Petitioner each filed a brief which has been duly considered.

² The parties stipulated that Res Care Tennessee, Inc., hereinafter referred to as Employer, is a Tennessee corporation with an office and place of business in Bartlett, Tennessee, where it provides support services for mentally disabled individuals. During the past twelve months, a representative period, the Employer purchased and received goods and materials valued in excess of \$50,000 directly from points located outside the State of Tennessee. During the same time period, the Employer received in excess of \$100,000 in gross revenues.

³ The Unit appears as amended at the hearing.

⁴ The American Federation of State, County and Municipal Employees, Local 1733, hereinafter referred to as Petitioner, sought a unit of approximately 94 employees, including eight team leaders (also referred to in the transcript as “home managers”). The Employer maintains that the eight team leaders are supervisors under Section 2(11) of the Act. The individuals in question are: Irene Richardson, who is team leader for the Dagmar and Morning Flower facilities; Harold Campbell, who is team leader for the Old Field and Abiline Glen facilities; Carolyn Moss, who is team leader for the Kings Valley Cove facility; Cathy Green, who is team leader for the Elkwood facility; Irene Cook, who is team leader for the Athen Cove facility; Betty Douglas, who is team leader for the Butterfly facility; Lashonda Brooks, who is team leader for the Egyptian Cove facility; and Regina Mormon, who is team leader for the Chowning facility.

All the aforementioned team leaders report to Vernon Jones, the lead program manager for Shelby County, and Annie Stewart, a program manager for Shelby County. The team leaders and program managers are further supervised by Julie Pitsenbarger, the area director, and Debbie Newell, the Human Resources Coordinator.

The team leader job description entered into evidence by Petitioner provides that team leaders are responsible for supervising direct care staff members; completing all weekly, monthly and quarterly documentation to ensure program compliance; training staff; being available outside of regular working hours in the event of staff shortages, questions or consumer emergencies; preparing staff schedules in accordance with consumer need and budgetary constraints; reviewing time sheets of residential counselors and approving pay by signing off on time sheets; approving and allocating overtime as needed; monitoring staff performance; recommending disciplinary action; and participating in the hiring process.

Witnesses for both the Employer and the Petitioner agree that team leaders do prepare monthly schedules for the residential counselors. Further, Pitsenbarger, Newell and Stewart testified that the team leaders were responsible for holding monthly staffing meetings with the residential counselors; attending weekly team leader meetings with Jones and Stewart; completing required paperwork, including reviewing and approving medical charts, administrative records and the paperwork prepared by the residential counselors; and assigning work and daily chores to the residential counselors. These witnesses further testified that the team leaders were responsible for assigning and approving overtime as needed at the facility, including mandating overtime if necessary. Jones testified that Arlene Richardson had been disciplined for not using good judgment, exhibiting favoritism and misusing her discretionary authority in assigning overtime to her friends instead of having part-time employees work the extra time needed. Newell further testified that a complaint by a residential counselor had been filed against Carolyn Moss for unfairly reducing the residential counselor's hours while giving overtime to other residential counselors. These witnesses also testified that team leaders have the authority to approve leave requests and are ultimately responsible for maintaining proper staffing requirements when leave requests are granted or employees are unable to report for work.

Pitsenbarger, Newell and Stewart further testified that team leaders, as "front line supervisors," have authority to discipline and counsel residential counselors for any type of rule infraction. The forms for preparing written disciplinary actions are available to the team leaders in the homes which the team leaders supervise. These witnesses further testified that team leaders are not required to get the approval of a program manager or other management personnel before issuing the disciplinary action to a residential counselor. The record is replete with documents entered into evidence and specific testimony where past and present team leaders disciplined residential counselors for various infractions or recommended specific disciplinary action against a residential counselor, which recommendation was later implemented without additional independent investigation by more senior management. Specifically, the Employer entered into evidence three separate disciplinary warnings issued by current team leader Arlene Richardson to Mary Jones, a residential counselor, for failing to report to work or call in to report her absence. The Employer also presented into evidence a disciplinary warning issued by current team leader Carolyn Moss to Eboni Gaters, a residential counselor, for refusal to follow instructions. The Employer further entered into evidence two disciplinary warnings issued by Annie Stewart, who was at the time a team leader, to residential counselors and one disciplinary warning issued by Michael Warren, a former team leader, to a residential counselor. None of these forms are signed by any other supervisor of the Employer. Newell and Stewart testified that each of these disciplinary warnings was issued by the team leader without the approval of another supervisor and implemented without any later independent investigation by any other supervisor.

The witnesses at the hearing for both the Employer and the Petitioner agree that team leaders are paid a higher rate of pay per hour (\$8.50) than residential counselors (\$7.50). Further, the team leaders are required to carry pagers at all times so that residential counselors can reach the team leader to discuss problems or questions during the hours outside of the team leader's regular shift. These witnesses agree that team leaders are contacted on a routine basis regarding problems or issues in the homes.

Pitsenbarger and Stewart also testified that, in Shelby County, there are ten homes with approximately eighty to eighty-five residential counselors working in these homes. If team leaders are not supervisors, then the two program managers would be responsible for direct supervision of eighty to eighty-five residential counselors and eight team leaders. Further, the program managers visit each of the homes for only approximately forty-five minutes to one hour each week and have little direct oversight or interaction with the residential counselors.

The Petitioner's witnesses, Carolyn Moss and Cathy Green, testified that they spend at least half their shift in the homes performing the same or similar work as the residential counselors. Both acknowledged that they are paid a higher hourly rate of pay, are required to carry pagers after hours, and assist in preparing work schedules. Both witnesses denied that they have the authority to approve or assign overtime, recommend or authorize transfer, approve leave or discipline any residential counselors. Both witnesses further testified that they were only recently told that they had the authority to discipline residential counselors. However, based on the testimony and exhibits presented at the hearing, including the disciplinary warnings, all of which were issued between March 2, 1999 and September 22, 1999, these denials are not supported by any credible evidence.

In view of the foregoing and the record as a whole, I find that the eight team leaders possess supervisory indicia and are supervisors within the meaning of Section 2(11) of the Act. The team leaders have disciplinary authority over the residential counselors, including preparing, signing and delivering the disciplinary notices to the residential counselors. Heartland of Beckley, 328 NLRB No. 156 (1999); Venture Industries, 327 NLRB No. 165 (1999); J.K. Electronics, 232 NLRB 479 (1977). The team leaders direct and assign work to the residential counselors, prepare monthly schedules, assign and approve overtime and approve leaves of absence. Allen Services Co., Inc & Peatross Service Co., Inc., 314 NLRB 1060, (1994); Trans World Airlines, 211 NLRB 733 (1974); Custom Bronze & Aluminum Corp., 197 NLRB 397 (1972). The team leaders receive a higher rate of pay than the residential counselors and are required to carry pagers so that the residential counselors can call team leaders outside of the team leader's regular work hours. Illini Steel Fabricators, 197 NLRB 303 (1972). The team leaders attend regular management meetings. Formco, Inc., 245 NLRB 127 (1978), Trans World Airlines, supra. Team leaders provide the only on-site

supervision of the residential counselors and, if team leaders are not supervisors, the ratio of supervisors to rank-and-file employees would be unrealistic and unmanageable. Pennsylvania Truck Lines, 199 NLRB 641 (1972). While the Petitioner contends that the team leaders spend at least fifty percent of their time in work identical to that of the residential counselors, this evidence is not dispositive in light of the whole record. Rose Metal Products, Inc., 289 NLRB 1153 (1988).

There are approximately eighty to eight-five employees in the unit found appropriate herein.