

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

HEALTHCARE SERVICES GROUP, INC.¹

Employer²

and

Case 4–RC–19957

DISTRICT 1199C, NATIONAL UNION
OF HOSPITAL AND HEALTH CARE
EMPLOYEES, AFSCME, AFL-CIO³

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,⁴ the undersigned finds:

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

2. The Petitioner seeks an election among Healthcare's housekeeping and laundry aides working at Manor Care, a nursing home in Yeadon, Pennsylvania. Contrary to the Petitioner, Healthcare contends that it is not the employer of the petitioned-for employees.

Healthcare provides housekeeping and laundry services to nursing homes under two types of contracts. The first, which it calls a "turnkey" contract, is the choice of 80 percent of its

¹ This name appears as amended at the hearing.

² As discussed below, Healthcare Services Group, Inc., herein called Healthcare, claims not to be the employer of the petitioned-for employees.

³ The Petitioner's name appears as amended at the hearing.

⁴ The parties waived the filing of post-hearing briefs.

clients. Under a turnkey contract, the client pays Healthcare a fixed price, and Healthcare provides virtually everything required to handle its clients' housekeeping and laundry needs, including employees, supervisors and managers, chemicals and other cleaning products and sometimes even the machinery required to complete the work. Healthcare regards the employees it provides under a turnkey contract as its employees and they bear Healthcare's, and not the client's, name on their uniforms. Healthcare bears a financial risk under a turnkey contract. Whether it turns a profit or loses money on the contract turns on whether its expenses exceed the fixed price the client pays for its services.

The other type of contract is a "management agreement," under which Healthcare manages the home's housekeeping and laundry operations. The client obtains the employees and provides all of the chemicals and the required equipment. The employees' uniforms under such an arrangement would carry the nursing home's and not Healthcare's name. Healthcare regards the client as the employer of the employees under this type of contract.

On February 16, 2000, Healthcare and Manor Care entered into what it styled a "Service Agreement" (herein called the Service Agreement) to take effect on March 1, 2000 and to continue until terminated by either party upon 45 days notice. This agreement stated, inter alia, that:

Healthcare will provide all necessary personnel to perform the labor, as well as supervisory function in regards to the facility's housekeeping and laundry services requirements. Client [Manor Care] will retain responsibility for definitive management of all Healthcare personnel in performing its duties. Any repair of, replacement of, or addition to housekeeping equipment will be HCR Manor Care's responsibility. The value and utilization of the existing housekeeping equipment was a consideration in determining the service price. . . .

Another provision of the agreement provides:

Healthcare will be providing and paying Worker's Compensation, Liability, FICA, State and Federal Unemployment, Manager salary, employee hourly wages and benefits for its employees. Should any rate increase occur in any of these categories, the billing will be adjusted to reflect these changes. Healthcare and HCR Manor Care will meet prior to any changes. . . .

While there was a complement of housekeeping and laundry employees working at Manor Care at the time the parties entered into the Service Agreement, the record does not indicate how or by whom they were employed. Healthcare and Manor Care met with the employees at the time they entered into the Service Agreement and told the employees about the agreement.

According to Healthcare Regional Manager Frank Bennett, Healthcare was losing money on the Service Agreement. Consequently, in March 2000, only days after the Service Agreement

went into effect, Healthcare Division Vice President Mike McBryan and Manor Care representative Bill Morrison discussed several options for modifying the relationship between Healthcare and Manor Care. On March 24, 2000, at McBryan's direction, Bennett sent Manor Care a proposal for a management agreement. On April 5, McBryan reported to Bennett that Manor Care agreed to the proposal and that the new agreement went into effect on April 1. Bennett's proposal, which became the new agreement (herein called the new Agreement), says,

Healthcare Services Group, Inc., will provide the following:

- A full-time Executive Housekeeper
- A District Manager to oversee the operations
- A Regional Manager for support
- Payroll responsibilities for Manager to include Salaries
Taxes & Insurance – Fringe Benefits. . .

As part of this Proposal, Healthcare Services Group will manage the staff to ensure starting 6/1/2000 that the total payroll budget of [deleted] is met. As in the Full-Service Proposal [the Service Agreement], [deleted] was added due to budgeting of Manorcare/Housekeeping Director.

The parties entered into the new Agreement without regard to the 45-day notice for terminating the Service Agreement.

Under the new agreement, the Executive Housekeeper became Healthcare's only onsite representative. The Executive Housekeeper, charged with "overseeing" the housekeeping and laundry departments, is responsible for managing the staff to make sure that the payroll stays within the amount budgeted by Manor Care. The Executive Housekeeper schedules employees, including approving vacation requests, tracks the budget on a daily or weekly basis and recommends any changes that may be necessary in order to stay within the budget. Manor Care assumed responsibility for employee payroll and determining wage rates. The Executive Housekeeper, in conjunction with Manor Care's Human Resources Department, will conduct employee interviews in the event of future hiring and they will also jointly decide whether there should be any changes in the existing shifts. In the event it is warranted, the Executive Housekeeper will recommend discharge to Manor Care's Human Resources Department. It was not clear at the time of the hearing whether the Executive Housekeeper would be involved in other disciplinary matters. At the time of the hearing, the change from the Service Agreement to the new Agreement had not been formally announced to employees, although some employees learned about it informally. A formal announcement was planned for later that day or the following day.

It is well settled that two otherwise separate employers are joint employers if they "share or codetermine those matters governing the essential terms and conditions of employment." *TLI, Inc.*, 271 NLRB 898 (1984), citing *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117 (3d Cir. 1982). Sharing or codetermining essential terms and conditions of employment involves "meaningfully affect[ing] 'matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction.'" *Riverdale Nursing Home*, 317 NLRB 881, 882 (1995),

quoting *TLI*, supra, 271 NLRB 898; accord: *Southern California Gas Co.* 302 NLRB 456, 461 (1991). The determination of whether two entities are joint employers “is essentially a factual issue.” *Boire v. Greyhound Corp.*, 376 U.S. 473, 481 (1984). Under the terms of the new Agreement, Healthcare and Manor Care share important supervisory functions. Although Healthcare regards employees working under a management agreement as Manor Care’s employees, the Executive Housekeeper nonetheless “oversees” the housekeeping and laundry departments, “manage[s]” the staff and, more specifically, schedules the employees and approves their vacation requests. Healthcare’s Executive Housekeeper, along with Manor Care’s Human Resources Department, will conduct employee interviews when the need to hire arises and they will jointly decide whether there will be any changes in existing shifts. The Executive Housekeeper also has authority to recommend discharge to Manor Care’s Human Resources Department. Accordingly, I find that Healthcare and Manor Care share and codetermine “essential terms and conditions of employment” and that Healthcare’s Executive Housekeeper “meaningfully affect[s] ‘matters relating to the employment relationship such as hiring, firing, . . . supervision, and direction.’” *Riverdale Nursing Home*, supra, 317 NLRB at 882.

Accordingly, I find that Healthcare is an employer of the petitioned-for employees, is engaged in commerce within the meaning of the Act and that 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. I further find that a question affecting commerce exists concerning the representation of certain employees of Healthcare within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act notwithstanding the absence of the other Joint Employer, Manor Care. It is well established that the Board may issue a bargaining order against only one of two (or more) joint employers notwithstanding the absence of the other joint employer. *Quality Motels of Colorado*, 189 NLRB 332, 334 (1971), enfd. 462 F.2d 1375, 80 LRRM 3434 (10th Cir. 1972); *K-Mart*, 162 NLRB 498 (1966), enfd. sub nom. *Gallenkamp Stores v. NLRB*, 402 F.2d 525, 69 LRRM 2024 (9th Cir. 1968).⁵ Because the Board may impose a bargaining order on only one of two or more joint employers, it necessarily follows that the Board may direct an election among the employees of that joint employer even in the absence of the other employers. See *Quality Motels of Colorado*, supra, 189 NLRB at 334 (joint employer was not identified in election proceeding).

⁵ See *Radio Officers Union v. NLRB*, 347 U.S. 17 (1954). In *Radio Officers*, the Supreme Court rejected the respondent union’s argument that the General Counsel could not prosecute a Section 8(b)(2) complaint against the union without also prosecuting a Section 8(a)(3) complaint against the employer. In rejecting that argument, the Court relied, in part, on the fact that the charging party had not filed a charge against the employer and that the General Counsel has no authority to issue a complaint without a charge. *Id.* at 53–54. The Board likewise cannot issue a direction of election without an underlying petition and the Petitioner in the instant petition did not identify Manor Care as one of the joint employers.

5. The parties stipulated and I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All housekeepers and laundry aides employed by the Employer working at Manor Care at 600 South Wycombe Avenue, Yeadon, Pennsylvania, excluding all other employees, managers, department heads, Administrator, Assistant Administrator, 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 unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,⁶ subject to the Board's Rules and Regulations. Eligible to vote are those 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 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

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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 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 7 days of the date of this Decision 3 copies of an election eligibility list, containing the *full* names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list

⁶ Your attention is directed of Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

must be clearly legible, and computer-generated lists should be printed in at least 12-point type. In order to be timely filed, such list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **August 21, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **August 28, 2000**.

Signed August 14, 2000

at Philadelphia, PA

/s/ Dorothy L. Moore-Duncan

DOROTHY L. MOORE-DUNCAN

Regional Director, Region Four

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