

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

JEFFERSON HEALTH SYSTEM D/B/A SOUTH
HILLS HEALTH SYSTEM HOME HEALTH
AGENCY, AND FAMILY HOSPICE, A WHOLLY
OWNED SUBSIDIARY OF SOUTH HILLS
HEALTH SYSTEM¹

Employer

and

Case 6-RC-11756

SOUTH HILLS HOME CARE NURSES
ASSOCIATION/PSEA HEALTH CARE

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before JoAnn F. Dempler, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.²

¹ The name of the Employer appears as amended at the hearing, and based on the record evidence presented at the hearing and the position taken by the Petitioner in its post-hearing brief. More specifically, at the hearing, the Petitioner amended its petition to reflect the name of the Employer as Jefferson Health System d/b/a South Hills Health System Home Health Agency (herein Home Health). The Employer contended that certain employees of a sister corporation, Family Hospice, should be included in the unit because Home Health and Family Hospice are a "single employer" or "joint employers." Home Health is a subsidiary of Jefferson Health System (JHS) which in turn is a subsidiary of South Hills Health System (SHHS). Family Hospice is a wholly owned subsidiary of SHHS. In its post-hearing brief, the Petitioner conceded that Home Health and Family Hospice, herein collectively referred to as the Employer, were "joint employers" and that the scope of the unit should include certain employees employed by both entities.

² 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 February 1, 2000.

Upon the entire record in this case,³ the Regional Director 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

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.

As amended at the hearing, and in its post-hearing brief, the Petitioner seeks to represent in a single unit all registered nurses including medical surgical nurses, mental health nurses, IV nurses, rehabilitation nurses and intake nurses employed by the Employer at its Pittsburgh, Pennsylvania facilities and other branch facilities located in Western Pennsylvania, excluding guards, other professional employees and supervisors within the meaning of the Act. The Employer contends that the petitioned-for unit is inappropriate in terms of composition, and that the only appropriate unit is a unit composed of all professional employees, including

³ The Employer and the Petitioner filed timely briefs in this matter which have been duly considered by the undersigned.

⁴ Notwithstanding the Employer's assertion to the contrary, the record evidence establishes, and I find, that the Petitioner constitutes a labor organization within the meaning of Section 2(5) of the Act. PSEA Health Care, of which the Petitioner is an affiliated local, exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, benefits, hours of work and other terms and conditions of employment. PSEA Health Care routinely negotiates labor agreements with employers on behalf of the employees whom it represents. PSEA Health Care currently has approximately 5,000 members and represents separate bargaining units at approximately 12 to 15 hospitals. Consistent with PSEA Health Care's practice, its local affiliate, the South Hills Home Care Nurses Association, will adopt a constitution and bylaws upon certification. Its members will then be "joint" members of the local and PSEA Health Care. As a practical matter, designation of the parent organization is a valid designation of its local affiliate. See, e.g., Up-To-Date Laundry, Inc., 124 NLRB 247 (1959). Moreover it is well established that structural formal ties, such as the existence of a constitution and by-laws, are not prerequisites to labor organization status within the broad meaning given that phrase in Section 2(5) of the Act. Yale New Haven Hospital, 309 NLRB 363 (1992); Yale University, 184 NLRB 860 (1970).

registered nurses, and nonprofessional employees employed by the Employer. In the alternative, the Employer argues that the only appropriate unit is a unit composed of all professional employees of the Employer.

The Petitioner does not seek to represent the nonprofessional employees of the Employer on any basis, and it would not proceed to an election in a combined professional-nonprofessional employee unit.⁵ In the alternative, the Petitioner would seek to represent all professional employees of the Employer, if that unit was found to be the sole appropriate unit for collective bargaining purposes. There are approximately 200 employees in the petitioned-for unit, and approximately 240 employees in an Employer-wide all professional employee unit.⁶ There is no history of collective bargaining for any of the employees involved herein.

SHHS is a Pennsylvania not for profit corporation and is a large, complex health organization with a number of subordinate entities, engaged in the provision of health care services in the Western Pennsylvania area. Subsidiary nonprofit corporations of SHHS include Family Hospice, Long-Term Care Services Corporation, Health System Service Corporation,

⁵ Section 9(b)(1) of the Act provides that professional employees may not be included in a bargaining unit with nonprofessionals unless they vote in favor of such inclusion. In Leedom v. Kyne, 249 F.2d 490 (D.C. Cir. 1957), the District of Columbia Court of Appeals construed the limitation in Section 9(b)(1) as intended to protect professional employees and held that the professionals' right to this benefit does not depend on Board discretion or expertise and that the denial of this right must be deemed to result in injury. The United States Supreme Court, at 358 U.S. 184 (1958), affirmed this ruling. The operative effect of Section 9(b)(1) is that a mixed professional-nonprofessional employee unit cannot be found, as a matter of law, to be the sole appropriate unit for collective-bargaining purposes. Otherwise, the statutory limitations set forth in Section 9(b)(1) would be without meaning since professional employees would either have to be represented as part of an overall unit or not at all. In this case, no labor organization is seeking to represent the Employer's nonprofessional employees on any basis. Thus, the question of whether a mixed unit of the Employer's professional employees and nonprofessional employees is appropriate is not an issue to be decided, and I therefore find it unnecessary to consider in any further detail the Employer's contentions in this regard. The Employer's reliance on the Board's decision in Upstate Home For Children, 309 NLRB 986 (1992), in support of its mixed professional-nonprofessional unit contention is misplaced. In that case, the Board found that separate petitioned-for units limited to registered nurses and licensed practical nurses were inappropriate since other professional and nonprofessional employees shared a community of interest with the RNs and LPNs respectively. The Board did not hold that if the petitioner desired to represent the RNs, it had to do so only if the RNs were included in an overall unit with nonprofessional employees.

⁶ Although the record is not entirely clear, it appears that the Employer is one of a number of business units.

Jefferson Diversified Health Service Corporation and JHS. SHHS is under the overall supervision of Executive Vice President and Chief Operating Officer Gary Perecko. Reporting to Perecko are, inter alia, Judith Talbert, executive director of Family Hospice and Gary Retone, executive director of Home Health. SHHS is basically a management and service corporation which provides a variety of services to its subsidiary corporations, including administrative services, management services, and other support services.

The operations of SHHS and its subsidiary corporations are primarily located on two campuses, commonly referred to as the Jefferson Campus and the Homestead Campus. The Jefferson Campus is located in Jefferson Borough, in the South Hills section of Allegheny County, Pennsylvania. The main building on the Jefferson Campus is Jefferson Hospital, which is a five-story acute care facility. It appears that SHHS maintains its offices on the Jefferson Campus.

The Homestead Campus is located in Homestead, Pennsylvania, in the eastern section of Pittsburgh, Pennsylvania, approximately 12 to 15 miles to the northeast of the Jefferson Campus. A number of buildings are located on the Homestead Campus, including a five-story structure formerly known as Homestead Hospital and now designated as Building 24. Home Health's administrative offices are located on the fifth floor of this structure.⁷

In addition to its administrative office, Home Health maintains five branch offices located in the Western Pennsylvania area: the Homestead branch office, which is also located on the 5th floor of Building 24; Robinson Township; Monroeville; McMurray; and Pleasant Hills, which is located on the Jefferson Campus.

Family Hospice is not located at either the Jefferson or Homestead Campuses, but is rather located in Castle Shannon, a suburban area adjacent to the southern part of Pittsburgh.⁸

⁷ These administrative offices include offices for management and administrative personnel, the central intake department, the utilization review department, and the allied health department.

Other operations located at the Homestead Campus include, inter alia, a primary care facility, an emergency health care facility, a skilled nursing facility, and a personal care residence.

⁸ Family Hospice was "formed" in the early 1970s by a consortium of institutions including SHHS, Mercy Hospital, St. Clair Hospital and South Hills Health Ministries. It formally became a subsidiary of SHHS in

Home Health is licensed by the Commonwealth of Pennsylvania to provide health care, including nursing and allied health services,⁹ to patients in their homes or residences. Home Health is certified by Health Care Finance Administration (HCFA) as a Medicare certified home health agency.¹⁰ Family Hospice is a licensed Medicare hospice and home care provider that provides health care services to terminally ill patients, and a variety of “end of life” services to these patients and their families. These services take place in patients’ homes, nursing homes, hospitals, and hospices.¹¹

Home Health

As noted, with respect to Home Health, although patient care services are provided in patients’ homes, its administrative operations are located in Building 24 of the Homestead Campus. Reporting to Home Health Executive Director Gary Retone are: Lynn Setar, Director of Client Relations; Susan Navish, Director of Administration & Managed Care Services; Jill Johnson, Director of Clinical Operations; Christine Heasley, Director of Quality Management; JoAnn Parzick, Consultant for Special Projects; and Janet Rice, Financial Analyst. Reporting to Jill Johnson are the directors for each of Home Health’s five branch offices. In addition, reporting directly to Johnson are Donna Westerbeck, Manager of Rehabilitation; Jan Muschar, Manager for Social Work/Mental Health Nursing; Susan Keitzer, Manager of IV Therapy; and

1991. Family Hospice has its own Board of Directors which includes the chief financial officer of SHHS, a representative from Mercy Hospital, St. Clair Hospital and South Hills Health Ministries, respectively, and ten other “at-large” positions.

⁹ Allied health services include physical therapy, occupational therapy, speech therapy, mental health nurses and social work services.

¹⁰ Approximately 3000 patients located in the Employer’s geographical service area receive approximately 270,000 visits from Home Health personnel annually.

¹¹ Approximately ten percent of Family Hospice’s patients receive patient care services pursuant to Family Hospice’s home care license. These patients are all terminally ill but receive home care health services, rather than hospice services, because of the nature of some of the services received, e.g. chemotherapy, which services are not covered by Medicare if an individual is in a hospice program.

Patricia Ginsberg, enterostomal therapy.¹² Each branch office also has a clinical supervisor and a manager of operations, or patient care manager.¹³ The clinical supervisors are responsible for supervising patient care and managing care delivery teams. The patient care manager is responsible for managing authorization and reauthorization of care from the payee's standpoint. Each branch office also has a group facilitator, who is a registered nurse and who is primarily responsible for providing care to patients and coordinating care among care delivery teams, and for performing certain other tasks, such as telephoning physicians and laboratories.

Each branch office has assigned to it approximately 25 RNs, approximately eight nurses aides, and approximately 2 to 3 clinical employees. There are a total of approximately 130 RNs employed at the various branch offices. These RNs are designated as staff medical surgical RNs. In addition to these staff registered nurses, Home Health employs five or six IV RNs who report to Suzanne Keitzer, manager of IV therapy; approximately 18 to 20 mental health RNs who report to Jan Muschar, manager social work/mental health nursing; approximately 25 rehabilitation nurses who report to Denna Westerbeck, manager of rehabilitation, and an enterostomal therapy RN, Patricia Ginsberg, who reports directly to Johnson. Ginsberg, the IV therapy RNs, the rehabilitation RNs and the mental health RN all perform direct patient care functions and work in the geographical areas serviced by one or more of the branch offices.¹⁴ In addition to the aforementioned nurses, Home Health employs at its administrative offices five intake RNs who are responsible for processing new patient referrals, e.g. ensuring the referral is appropriate, obtaining information pertaining to each patient's physician(s) and medications,

¹² The parties stipulated, and I find, that the aforementioned individuals, with the exception of Ginsberg, are supervisors within the meaning of the Act inasmuch as they possess one or more of the authorities enumerated in Section 2(11) of the Act.

¹³ The parties stipulated, and I find, that the branch directors, clinical supervisors and managers of operations are supervisors within the meaning of the Act inasmuch as they possess one or more of the authorities enumerated in Section 2(11) of the Act.

¹⁴ The parties are in agreement that the medical surgical staff RNs, the IV therapy RNs, the mental health RNs, the rehabilitation RNs, and the enterostomal RN should all be included in the unit.

processing insurance and assigning patients to a specific branch office for care. These intake RNs report to JoAnn Parzick, consultant on special projects.¹⁵ All of Home Health's RNs are paid at an hourly rate, between \$16 and \$22 per hour.¹⁶

In addition to the RNs, it appears that Home Health's professional staff consists of two salaried account representatives, who report to Lynn Setar, Director of Client Relations,¹⁷ four occupational therapists, 18 physical therapists and four speech therapists who ultimately report to Denna Westerbeck;¹⁸ and four social workers who report to Jan Muschar, manager social work/mental health nursing. As noted, the Petitioner, contrary to the Employer, would exclude these positions from the petitioned-for unit.¹⁹

Once a patient referral is initially processed at the Homestead Campus, it is assigned to a branch office nearest the patient. Each branch office has a number of delivery teams comprised of staff RNs, aides and, to the extent necessary, personnel from each discipline, e.g., the various therapist occupations and/or social workers, and the specialized nurse occupations

¹⁵ The parties are in agreement that the intake nurses should be included in the unit.

¹⁶ Two other RNs work at Home Health's administrative offices at the Homestead Campus. Suzanne Resetar is a specialist of clinical systems who is responsible for developing education and training programs for Home Health's staff, and Margaret Santoro is the utilization review nurse. Both Resetar and Santoro report to Christine Heasley, director of outcome facility management. The record is not clear, whether the Petitioner seeks to include Resetar and/or Santoro in the unit. Accordingly, I shall permit Resetar and Santoro to vote subject to challenge in the election directed herein.

¹⁷ The two account representatives perform marketing functions, e.g., they are responsible for going to physician offices and other facilities to speak about the services offered by Home Health. The account representatives do not engage in direct patient care work.

¹⁸ The occupational therapists and physical therapists report to team leader Lisa Simon, while the speech therapists report to team leader Gerry Petro. Both Simon and Petro report to Westerbeck. The occupational therapists, speech therapists, and physical therapists, together with the rehabilitation nurses, work out of Home Health's allied Health Services department located at the Homestead Campus. Employees occupying these positions receive patient care assignments in geographical areas covered by one or more of the branch offices. Home Health also uses the services of a number of independent physical therapists, occupational therapists and speech therapists. The parties are in agreement that these independent contractors should not be included in the unit. The independent therapists conduct between 30 to 40 percent of the therapy visits.

¹⁹ The parties stipulated that the account representatives, occupational therapists, speech therapists, physical therapists and social workers are professional employees within the meaning of the Act.

(IV nurses, mental health nurses, rehabilitation nurses, and the enterostomal nurse).²⁰ The record reveals that each patient has a designated primary service provider (PSP) who is responsible for assessing the patient, developing and changing the plan of care, making necessary references, completing the bulk of the paperwork and for facilitating interdisciplinary communications between the staff RNs and the other occupational groups.²¹ Usually, the PSP is a staff RN, but in some cases the PSP may be from another nursing occupational group or from one of the therapist or social worker occupational groups. Each discipline, however, is responsible for providing an assessment of each patient receiving any specialized care, and for meeting goals and communicating with the patient's physician regarding a plan of treatment.²² It appears that approximately fifty percent of the patients receive care from multiple disciplines, with a small number receiving care from all of the various disciplines.²³

The professional employees of the various disciplines do not appear to interact with any degree of frequency on a day-to-day basis. Usually, staff RNs visit the branch office each day,

²⁰ According to Home Health, the multi-disciplinary team approach to patient care is mandated by the Joint Commission on the Accreditation of Health Care Organizations (JACHO) which requires that all of Home Health's services be coordinated, and that the services meet its standards.

²¹ In addition, each branch office also employs a group facilitator to help coordinate care aspects of home care. For example, a group facilitator would call a patient's physician to procure a walker or cane for the patient as requested by physical therapy. By way of further example, a group facilitator would call to request the use of an aide on behalf of either a physical therapist or another RN for the purpose of bathing and providing personal care.

²² The social workers, all of whom have master's degrees in social work, address the psycho-social needs of the patient and the patient's family. Mental health RNs deal with the psychiatric and psycho-social aspects of patient care, e.g. depression which results after a major change in a patient's health condition. When the PSP makes the initial assessment of a patient, it may be determined by the PSP that employees from other disciplines are also required to provide care. For example, if a patient has skin problems, the enterostomal nurse would be included on the delivery team, or, if the patient lives alone or appears to have been abused or neglected, a social worker may become involved. A physician's order is necessary before such additional care can be added.

²³ The patients who do not receive specialized care, approximately 50 percent of the patients, only receive direct care from the staff RNs and the aides. In many other cases, only a social worker may be assigned to a patient in addition to a staff RN and aides. In this regard, Margaret Reynolds, a staff RN, testified that of her 33 current patients, only four are being seen by a physical therapist, and none are working with an occupational therapist or a speech therapist. Similarly, another staff nurse, LaVerne English, testified that of her current 20 patients, three or four require the services of a social worker and four require physical therapy, while none require occupational or speech therapy.

as do the other professional nurses, therapists, and social workers, who have patients in the branch offices' geographical area. It does not appear, however, that employees spend any significant degree of time with one another at the branch offices. In addition, it appears that employees from the various disciplines are discouraged from visiting the same patients on the same day.²⁴ Further, the different care givers make their own scheduling arrangements for patient visits.

The record reflects that the primary form of communication among employees providing care to the same patient is the Patient Interdisciplinary Communication Log (PIC Log) which remains in the patient's homes. This log provides a place for caregivers to leave messages regarding the patient or plan of care.²⁵ In some instances, another form of communication among the disciplines is the "case conference", a meeting of all employees giving care to a patient where particular problems arise with respect to the patient, e.g., a patient is not reaching the goals set by the individual team members.²⁶ These conferences are held for less than 25 percent of all patients.²⁷ If a team member cannot attend due to scheduling conflicts, the team member must submit a verbal/written assessment of identified patient problems to their clinical supervisor prior to the conference.

²⁴ There is a monthly schedule contained in the Patient's Care Folder which is kept at the patient's home. Each RN or other health professional is required to mark the calendar with anticipated dates of visits. The calendar is also used to denote those times when physician appointments are scheduled and when any medical procedures (e.g., blood work, chemotherapy) will be done.

²⁵ Several staff RNs testified, however, that they do not use the PIC Log on a regular basis.

²⁶ For example, at one team conference held in December, 1999, attended by a staff RN, an aide, a mental health RN, and an occupational therapist, discussions ensued concerning the use of a glucometer and about the patient's medications because issues had arisen about the patient's blood sugar. As a result of the conference, the patient was reassigned to a different PSP and a different staff RN.

²⁷ For example, Lisa Simon, team leader for physical and occupational therapy, testified that she has not participated in any care conferences in the last twelve months.

Each team conference is documented by a team conference record, and is documented on the most recent progress note/flow sheet which is contained in the Patient's Care Folder.

Family Hospice

Family Hospice employs approximately 14 RNs whom the parties agree should be included in the unit. In addition, Family Hospice's professional staff²⁸ appears to include four social workers and five employees holding various administrative positions.²⁹

As previously indicated, Family Hospice is a licensed Medicare hospice provider whose mission is to care for terminally ill patients. Reporting directly to Executive Director Judie Talbert are Michael Adametz, Manager of Business Services; Virginia Valentine, Manager of Clinical Operations; Marty Tiani, Manager of Development; Judie Speigel, Manager of Supportive Service; and Kay Falkenham, Manager of Planning and Program Development.³⁰ Reporting to Manager of Clinical Operations Virginia Valentine is clinical supervisor Jo Ellen Deasy to whom the RNs, aides, LPNs, and social workers report. Also reporting to Deasy is Patty Hartman, a registered nurse who acts as the intake coordinator for Family Hospice.³¹

At Family Hospice, services are also provided under a team-based approach, with staff divided into two teams, with each team having responsibility for patients within a specific

²⁸ Family Hospice also employs two LPNs, six home health aides and a number of clerical employees.

²⁹ These positions include the development coordinator, a position which is filled by Shirley Gautette, who is responsible for organizing all special events such as golf benefits and for writing all of Family Hospice's publications. The person holding this position must possess a bachelor's degree. The parties stipulated that the development coordinator is a professional employee within the meaning of the Act. The parties also stipulated that two part-time employees, Tom Foreman and Kirk Loadman-Copeland are professional employees within the meaning of the Act. These employees provide spiritual care to patients and their families and are required to possess a masters degree in divinity. Finally, the parties stipulated that two employees holding community liaison positions, Teresa Mervosh and Marjorie Wilder, and Marketing Service Coordinator Michelle Dreyfus, are professional employees within the meaning of the Act. Wilder is a registered nurse who also functions as an intake nurse at Mercy Hospital. Dreyfus is responsible for public relations for Family Hospice. The record is not clear whether the Petitioner would exclude Wilder from the petitioned-for unit. I shall, therefore, permit Wilder to vote subject to challenge in the election directed herein.

³⁰ The parties stipulated, and I find, that the aforementioned individuals are supervisors within the meaning of the act inasmuch as they possess one or more of the authorities set forth in Section 2(11) of the Act.

³¹ It appears that the parties are in agreement that Hartman should be included in the unit. Hartman works at Family Hospice's administrative office and performs all referrals and intake processing. There is also a full-time RN, in addition to Wilder, who works at various hospitals, primarily on the oncology floors, performing intake functions.

geographical area. Unlike Home Health, an RN is always the primary care giver or care manager, and the team itself is comprised only of RNs, aides and at times a social worker.³² Because of the type of services rendered, volunteers and clergy also assist staff members in providing palliative care in accordance with Hospice Medicare benefits.³³ More specifically, the record reflects that when a patient is referred to Family Hospice, an intake RN compiles as much information about the patient as possible, including the patient's condition, history and family structure. The clinical supervisor, Deasy, then schedules an RN case manager to make the initial patient visit. The RN case manager will coordinate the care for the patient, including spiritual care³⁴ or volunteers, as needed. In this regard, the case manager completes a series of paper work including paper work to assist other RNs in dispensing medications, a home health assignment form, and an initial spiritual assessment form. Nursing flow sheets and pain assessment flow sheets are also completed to document the patient's condition and are used by team members to coordinate and provide care.

Other Factors Relevant to the Unit Determination

SHHS's Human Resources Department, which is located at the Homestead Campus, serves all of SHHS's operations, including Home Health and Family Hospice. All personnel files of Home Health and Family Hospice employees are kept there. All employees of SHHS are subject to the same personnel policies which are set forth in SHHS's Employee Handbook and include such matters as time clock/record keeping requirements, orientation program, wearing of ID badges, and dress code and attendance policies, codes of conduct, discipline program,

³² An interdisciplinary Group Care Plan is prepared for each patient which has contributions from the Hospice medical director, RN case manager, social workers, and attending physicians.

³³ Much of the care Family Hospice provides occurs in acute care facilities, and Family Hospice is required to ensure that the plan of care is being followed in the hospital. The care manager must coordinate the services of Family Hospice with the hospital nursing staff, and other staff, for those patients admitted to acute care facilities.

³⁴ Social workers, in conjunction with clergy, provide bereavement counseling to patients and their families.

work reduction policy, uniform payroll periods, benefit programs, job bidding and transfer policies.

The record does not reveal any instances of Home Health and Family Hospice RNs transferring between the two entities. Further, the record does not reveal any instances of interchange between RNs and other professional staff.

Analysis and Conclusions

The Petitioner, contrary to the Employer, contends that a unit limited to RNs employed at Home Health and Family Hospice is appropriate for the purpose of collective bargaining.

Neither Home Health nor Family Hospice are acute care health care facilities. When determining the appropriate bargaining unit for non-acute health care facilities, such as Home Health and Family Hospice, the Board applies the “pragmatic or empirical community of interest” test set forth in Park Manor Care Center, Inc., 305 NLRB 872, 874-875 (1991). In this regard, the Board will consider community of interest factors, and factors deemed relevant by the Board in its rulemaking proceedings in collective bargaining units in the health care industry, the evidence presented during rulemaking with respect to units in acute care hospitals,³⁵ and prior precedent.

Specifically, the Board found during the rulemaking process that RNs in acute care hospitals constitute a discrete group because their distinctive interests warranted separate representation. The factors relied upon by the Board in making this determination included: (1) unique work schedules, (2) unique responsibilities, (3) common supervision by other nurses, (4) separate labor market and distinct wages from those of other professionals, (5) separate education, training and licensing requirements, (6) interaction with other RNs, (7) lack of regular and recurring contact with other professionals, (8) lack of interchange, and (9) history of representation and bargaining in separate units. 53 Fed. Reg. at 33911-33917, 284 NLRB at 1543-1552.

³⁵ See 53 Fed. Reg. 33900 (1988) and 54 Fed. Reg. 16336 (1989), set forth in 284 NLRB 1516, et. seq.

Since Park Manor, the Board has not had occasion to consider whether a unit limited to registered nurses at a non-acute care home health facility, rather than a unit of all professional employees, is appropriate for collective bargaining purposes.³⁶

The Employer argues that a unit limited to RNs, apart from other professionals of Home Health and Family Hospice, is not appropriate because the RNs constitute only a segment of the panoply of professionals interacting with one another to provide multi-disciplinary team-based care to patients. Thus, the Employer argues that this multi-disciplinary team approach demonstrates “an overwhelming degree of community of interest” among the professionals at issue herein. More specifically, the Employer argues that the utilization of PSPs, group facilitators, and care managers to coordinate patient care, the PIC Log process, and other forms of written communication and documents prepared for each patient clearly establishes the high degree of functional integration of the workforce.

For the reasons set forth below, I find that the petitioned-for unit is appropriate for the purposes of collective bargaining. In this regard, I first note that there are a number of professional employees at Home Health and Family Hospice who the Employer seeks to include in the unit who do not provide direct patient care services and are not part of any multi-disciplinary health care team.³⁷ Further, unlike, the therapists and social workers, RNs are paid by the hour and, generally, are the primary caregivers who are responsible for assessing the patients, making necessary referrals, and developing and changing the plans of care. Significantly, the record clearly establishes, as set forth previously, that RNs are part of every delivery team, while therapists and/or social workers are part of delivery teams for approximately 50 percent of the patients. In addition, there is little face-to-face contact between

³⁶ In Visiting Nurses Association of Central Illinois, 324 NLRB 55 (1997), the issue presented was whether a single facility, rather than a multi-site unit of home health care registered nurses was appropriate. The Board was not presented with the issue of whether other professional employees must be included in the unit.

³⁷ E.g., the administrative assistants at Home Health, the mandatory service coordinator, the development coordinator, and at least one community liaison person employed at Family Hospice.

RNs and other professional groupings. There is little, if any, overlapping of time spent with a patient.

Although social workers and therapists are part of the “team approach” utilized by the Home Health and Family Hospice, the argument made by hospitals during the rulemaking process that a “team approach” compels a conclusion that RNs must be combined with other professionals was rejected by the Board. Specifically, the background data reviewed by the Board in the rulemaking process revealed that there are sometimes cross-over duties between RNs and other professionals, the evidence also established that licensing and other regulations clearly prevent RNs from doing much of the work of other professionals--and other professionals from doing RN work. 53 Fed. Reg. at 33912, 284 NLRB at 1544-1545. Thus, the Board concluded the fact that some hospitals utilize a multi-disciplinary team concept did not “detract from the separate appropriateness of RN units.” 53 Fed. Reg. at 33913, 284 NLRB at 1546-1547. In this regard, the Board emphasized that the utilization of a multi-disciplinary team approach is a process to ensure that the elements of patient care are organized but that such a consideration did not “alter each licensed professional’s responsibility for his or her individual scope of practice.” *Id.* Additionally, the Board noted that the participation of some RNs in team care did not affect wages, hours, benefits, training, skills or functions of RNs on or off the teams. *Id.*

Based upon the above, and the record as a whole, it does not appear that to the extent Home Health and Family Hospice provide multi-disciplinary care, such a consideration compels a conclusion that a combined unit of RNs and other professional employees is the only unit appropriate for collective bargaining purposes. Accordingly, in accordance with the “pragmatic or empirical community of interest test” set forth in Park Manor, I find a unit of RNs employed by Home Health and Family Hospice to be a unit appropriate for the purposes of collective bargaining.

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

All full-time and regular part-time registered nurses employed by Jefferson Health System d/b/a South Hills Health System Home Health Agency, and Family Hospice, a wholly owned subsidiary of South Hills Health System, at their facilities located in Western Pennsylvania; excluding office clerical employees and guards, other professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit set forth 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.³⁸ Eligible to vote are those employees in the unit who were employed during the payroll period immediately preceding the date below, 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 and 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.³⁹ Those eligible shall vote whether

³⁸ Pursuant to Section 103.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed. The Board has interpreted Section 103.20(c) as requiring an employer to notify the Regional Office at least five (5) full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.

³⁹ In order to assure 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 the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In

or not they desire to be represented for collective bargaining by South Hills Home Care Nurses Association/ PSEA Health Care.

Dated at Pittsburgh, Pennsylvania, this 18th day of January 2000.

/s/Gerald Kobell

Gerald Kobell
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
Room 1501, 1000 Liberty Avenue
Pittsburgh, PA 15222

470-1733-4000

order to be timely filed, such list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before January 25, 2000. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.