

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

In the Matter of

LATHAM CENTERS, INC.

Employer¹

and

SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 509, a/w SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO

Petitioner

Case 1-RC-21655

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.

In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find:

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 here.
3. The labor organization involved claims to represent certain employees of the Employer.

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

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. The Employer is a Massachusetts corporation engaged in the operation of a school and human service program providing residential and day services to individuals who are emotionally, intellectually, physically or otherwise challenged. The petition, as amended in its brief, seeks to represent a unit consisting of all full-time and regular part-time² and substitute professional³ and non-professional employees who provide direct client care services, but excluding all other employees, including business office clerical employees, administrative employees, maintenance and housekeeping employees, confidential employees, managers, guards, and supervisors⁴ as defined in the Act. The Employer agrees that the classifications sought to be included are appropriate in a unit, but maintains that the unit must include non-direct care employees in the classifications of accounting specialist, accounts payable/HUD project manager, accounts receivable manager, payroll manager, maintenance, housekeeping, Latham administrative assistant, Gilbough administrative assistant, Gilbough social services coordinator, information systems specialist, human resources assistant, and summer interns. In addition, the Petitioner contends that the classifications of Latham medical coordinator and Gilbough nurse coordinator must be excluded from the unit as the individuals in those positions are supervisors within the meaning of the Act and, further, that summer interns must be excluded as temporary employees. The Employer takes the contrary position on these three classifications. There is no history of collective bargaining among the employees at issue.

I find that the unit of professional and non-professional direct care employees sought by the Petitioner is an appropriate unit for collective bargaining. I find that the position of Gilbough social services coordinator should be included in that unit, that summer interns should be excluded as temporary employees, and that other

² The parties stipulated that per diem employees who averaged 4 hours of work per week in the quarter immediately preceding the election would be eligible to vote in the election.

³ The parties stipulated that the job classifications of teachers, registered nurses, Latham social service therapist, Latham social service case managers, and Gilbough case worker are professional employees.

⁴ The parties stipulated to the exclusion of the following job classifications as being supervisors under the Act: Michael Marchese, Associate Executive Director; Dianne Walsh, Finance Director; Victoria Barnes, Human Resources Director; Christine Gallant, Training Director; Anne McManus, Executive Director; Monica Bienert, Gilbough Vocational Coordinator; Jill Bouton, Latham Social Services Clinical Coordinator; Ellen J. Brown, Gilbough Residential Coordinator; Karen Danskin, Latham Program Coordinator; Shauna Kelly, Latham Program Coordinator; Susan LaCombe, Latham SPED Coordinator/Principal; Lucinda Loring, Gilbough Residential Coordinator; Octavia Ossola, Latham Program Director; Nancy R. Guertin, Gilbough Program Director; Nancy A. Adle, Latham Residential Supervisor; Holly Hanlon, Latham Residential Supervisor; Cindy Hummell, Latham Residential Supervisor; Diane Racine, Latham and Gilbough Day Program Supervisor; and Timothy Semple, Maintenance Director. The parties further stipulated that Executive Assistant Carol Sullivan be excluded from the unit as a confidential employee.

classifications proposed by the Employer need not be included. I further find that the Petitioner has failed to carry the evidentiary burden necessary to establish that the positions of Latham medical coordinator and Gilbough nurse coordinator are supervisors under the Act. I will therefore direct an election in the petitioned-for unit as described below.

FACTS

Background

The Employer's operation is comprised of three programs, all of which operate under Executive Director Anne McManus. The Latham School operates in a three to four acre campus in Brewster, Massachusetts, providing services for 32 females, ranging in ages from eight to 22. The Latham School campus includes an administration building, school building, recreation building, and dormitories. The Latham School is headed by Program Director Octavia Ossola. The Gilbough Center consists of an administrative building and a social service building located on Route 134 in Dennis, Massachusetts, about four miles from the Latham campus, that services the needs of individuals with Prader-Willi Syndrome.⁵ The clients of the Gilbough Center reside in eight or nine group homes located throughout Lower Cape Cod. The S.A.I.L. Program also has administrative and clinical offices in the buildings on Route 134 in Dennis. The program is comprised of several community based group homes for young adults working to make the transition to independent living. The Program Director for both the Gilbough Center and the S.A.I.L. Program is Nancy Guertin.

All employees are governed by the agency's mission statement, which is included in all job descriptions. All staff members, whether or not they are involved in direct care, are governed by the same employee handbook and personnel manual. All employees in issue, unless stated otherwise, are hourly paid and receive the same benefit package.

The direct care staff includes teachers, child care workers, case workers, case managers, classroom aides, residential counselors, residential floats, nurses, medical assistants, program assistants, therapists, SPED aides, substitutes, and vocational counselors.⁶ These employees, who staff the Employer's residences 24 hours per day, are involved in providing support for the Employer's clients regarding education, therapy, and activities of daily living. Direct care employees are involved in weekly team meetings at which a client's progress and needs are discussed. At these meetings, decisions may also be made as to what vocational job opportunities would be appropriate for individual clients. Only direct care employees attend these meetings. There are also meetings concerning the client's individual education plan and individual service plan

⁵ Prader-Willi Syndrome is a genetic disorder characterized by an insatiable appetite, resulting in obesity and serious health problems.

⁶ The Petitioner also seeks to include cooks in the unit as direct care employees, as discussed below, due to their involvement in the client kitchen worker program.

attended by direct care staff, including nursing employees, case workers, and the program director. The record reflects that these meetings are seldom attended by administrative staff, though the circumstances and frequency under which they might ever attend are not explained. Finance staff attends such meetings only if a financial issue is involved. Maintenance and housekeeping staff never attend these meetings.

New direct care staff employees receive a five-day orientation and training program that includes several days of training in therapeutic crisis intervention (TCI), a portion of which involves training in the restraint of clients. Direct care employees also receive 24 hours of updated TCI training annually. Administrative staff and other non-direct care staff receive only a one-day orientation program and do not receive TCI training. While the Employer allows non-direct care staff to receive TCI training if they request it, the Employer discourages them from using it because of the infrequency with which they would utilize it. The record reflects two instances of administrative staff who have requested, and received, at least partial TCI training.

The Latham School program includes a pre-vocational program for clients who work as kitchen workers. Each client works one or more scheduled shifts in the kitchen per week under the supervision of the cooks, who also may conduct cooking classes. This is the only formal pre-vocational program operated by the Employer. The cooks report directly to the Latham school program director, Octavia Ossola. The job description for the cooks calls for them to have “active, constructive participation with students and student workers.” No other non-direct care job description contains such language.

THE UNIT SCOPE ISSUE:

The Employer emphasizes that all employees work in a team approach in which every interaction between staff and client can be important to that client’s progress. All employees are subject to the Employer’s mission statement, which is printed on the job descriptions for every job classification. All staff employees, whether or not they are direct care, are encouraged to ensure that their interactions with clients are positive in nature. For these reasons, the Employer contends the unit must include all employees. The Petitioner takes the position that a unit limited to direct care employees is appropriate.

The following positions are in dispute by the parties:

The Business Office Clerical Employees: The business office, also known as the accounting department, consists of four employees – the accounts payable manager, the accounts receivable manager, the payroll manager, and the accounting specialist – all of whom work under the Director of Finance, Diane Walsh. They work on the first and second floors of the administration building on the Latham Campus. The bottom floor of the building houses two classrooms. Their primary contact with clients comes by way of the Employer’s Muffin Hut program. The Muffin Hut is an on-campus coffee and baked

goods shop and is primarily run by clients as part of their vocational educational program. As part of the program, one or two students go throughout the Latham campus once daily, including the administration building, taking orders for goods sold by the Muffin Hut. Students may also come through the accounting offices on their way out of the building or to use the bathroom.

Jackie Pollack, the accounts receivable manager, is responsible for billing, accounts receivable and cash management for the agency. Her interaction with clients includes support for the Muffin Hut program. She has received a nomination for the Morgan Award, given annually to the employee who goes beyond their job duties to advance the agency's mission. The record does not indicate to what extent, if any, she interacts with direct care employees.

Payroll manager Joanne Tomlin is responsible for the Employer's payroll and benefits payments. She interacts with clients through the Muffin Hut program and has won the Morgan Award. She deals with staff in handling issues and questions concerning their payroll and benefits. The record does not reflect how frequently these contacts occur.

Accounts payable/HUD project manager Jennifer Fairman is in charge of all reimbursements for the Employer, including requests for staff and client reimbursements, and petty cash. She also purchases office supplies and handles the processing of all applications for HUD reimbursements and certifications. In these latter tasks, she may have contact with employees and clients in the processing of reimbursement requests or the gathering of information. The record does not reflect the frequency of these contacts.

Accounting specialist Jillian Varetimos functions as an assistant to the others in the accounting office, performing filing, data entry, and analysis functions. There is no evidence on the record of any contacts between Varetimos and either students or direct care staff. At the request of Director of Finance Barnes, Varetimos did take three days of TCI training.

Gilbough Administrative Secretary: Shelley Reynolds is the Gilbough administrative secretary. She works at the Gilbough administration building in Dennis and functions as the primary administrative support person for the Gilbough program, performing clerical functions including typing, filing, making appointments, answering the phone, and completing purchase orders. She reports directly to Program Director Nancy Guertin. Reynolds takes notes at the team meetings held concerning clients' progress. She types employee evaluations for Guertin, but does not have access to personnel files. Others who work in the building, including the nurse, two residential coordinators, and the vocational coordinator, may give Reynolds work to perform by dropping it in her box. The nature and extent of this interaction is not described in the record. Gilbough students, who live in group homes and only occasionally come to the administration building for meetings, do not have reason to deal with Reynolds in her capacity as administrative secretary, though they may pass by her office and have contact with her in that manner. Similarly, direct care staff come to the administration building

infrequently and may, on those occasions, see Reynolds to drop off paperwork or to request purchases for their group homes. Reynolds took TCI training at her own request, but has never used that training to restrain a client.

Latham Administrative Secretary: The Latham administrative secretary, Barbara Chockey, is located in the upper floor of the school building on the Latham campus and reports directly to Program Director Octavia Ossola. She provides clerical support to the program director and the school principal. Her duties include typing, copying, shredding paper, answering the phone, and ordering supplies. She has contact with students and staff who may need supplies, though the extent of these contacts is not clear in the record. She may also assist students in operating the copying machine. On one occasion, the extent of which is not clear, a student worked with Chockey performing copying and shredding duties as part of her pre-vocational training.

Information Systems Specialist: Randy Starner is the information systems specialist and is responsible for the maintenance of the Employer's computer network. Starner reports directly to Executive Director Anne McManus. His office is in the basement of the Latham school building where the computer network equipment is located. Starner's services are accessed by use of a work order. There is no evidence of the nature or extent to which he interacts with other staff in the performance of his job functions. Though not in Starner's job description, there is testimony that Starner assists students with problems with their personal computers, though the nature and frequency of such efforts is not described. About 6-12 students have their own laptop computers. Starner is not, however, allowed to be alone with a student with a computer problem. The Employer also employs a computer teacher, Wayne McDonald, who assists students with their computer problems.

Maintenance and Housekeeping Employees: The Employer employs four maintenance employees who are responsible for the upkeep and safety of the buildings on the Latham campus, the two office buildings in Dennis, and nine group homes. Maintenance supervisor Jonathan Ward⁷ is full-time, while the other maintenance employees are part-time.⁸ These employees report to Maintenance Director Tim Semple. None of these employees possess a license. They receive their work assignments by a repair order, which is frequently initiated by staff and approved by their supervisor. The maintenance employees have limited contact with staff in the completion of their duties. The maintenance employees do not attend team meetings and do not receive TCI training. The job description for maintenance employees calls for respectful interaction with students.⁹

⁷ The parties stipulated that Ward is not a supervisor within the meaning of the Act.

⁸ The parties stipulated that two painters who work only in the summer be excluded from the unit.

⁹ This description contrasts with the "active, constructive participation with students" that is called for in the cooks' job description.

The Employer employs one housekeeper who is responsible for the cleaning of the buildings on the Latham campus and the Gilbough office buildings. She has no responsibility for cleaning the Gilbough group homes. She reports to Maintenance Director Semple. The housekeeper schedules her cleaning assignments for times when the students are not around. Like the maintenance employees, she does not attend team meetings or receive TCI training. While there is testimony that the housekeeper, with Semple's approval, might have a student assist her with simple tasks such as vacuuming, emptying trash, and washing windows, there is no evidence on the record as to whether this has ever occurred or how frequently.

In addition to the Muffin Hut program and the kitchen helper program, the Employer also on occasion places students with the maintenance department. Direct care staff must give permission for clients to work with the maintenance crew. Maintenance Director Semple requires that, to be eligible to work with the maintenance crew, clients must be "Level 1,"¹⁰ a designation determined by direct care staff. Clients have assisted the maintenance crew by raking leaves and shoveling snow and have assisted in installing air conditioners. Students are not allowed to use any electrical equipment or anything requiring gasoline in these tasks. Students may be allowed to work with the maintenance crew in these tasks during one day for a total of about five hours. There is no evidence on the record of the frequency with which students perform these tasks. While there is generic testimony to "daily" contact between student and the maintenance crew, its nature is not explained. In addition, about six to ten clients assist the maintenance department each year in setting up the tents and chairs for the graduation ceremony. On one occasion, the maintenance department employees worked with students in assembling birdhouses. During spring, summer, and fall, the maintenance crew takes students on monthly hayrides. Maintenance Director Semple and his crew also attend the Latham Christmas party as Santa and his elves.

Human Resources Administrative Secretary: The human resources administrative secretary reports to human resources director Victoria Barnes. Barnes is responsible for all human resource activities, including the updating of the policies in the employee handbook, the development of benefit, compensation and employment programs, maintaining all personnel records, and coordinating the activities of the personnel committee of the Board of Directors. The human resources administrative secretary works 20 hours per week from 6:30 to 10:30 p.m., Monday to Friday. She works in the first floor of the administration building on the Latham campus, sharing Barnes' office. She is generally alone during her working hours, and the building is locked such that staff and students cannot enter. She is responsible for providing support to human resources and the associate executive secretary. Her duties include maintaining the Employer's personnel records, including placing employee evaluations and disciplinary reports in the files, and maintaining systems for tracking employee information. She has access to the CORI criminal records checks performed on employees and places them in the employees' files. Her duties also include answering

¹⁰ The significance of this designation is not explained on the record, though Semple analogized the designation to a reward for good behavior.

the phone and routing calls to the appropriate person, though there is evidence on the record that indicates many calls at night are answered by the Employer's voice mail system. The record does not reflect the nature or extent of any other contacts with staff or students. Under her job description, the human resources administrative secretary serves as a backup to the Executive Secretary, an admittedly confidential position. There is no evidence on the record of the frequency or nature of this backup function.

Gilbough Social Services Coordinator: Susan Sand is the Gilbough Social Services Coordinator.¹¹ She reports directly to Program Director Nancy Guertin, as do the social service caseworker, program coordinator, nurse, and program assistant. The position is required to have a Master's Degree in Social Work or in a related field. Sand's office, which she shares with the social service caseworker, is located in the social service building in Dennis. She is responsible for the coordination of service delivery to Gilbough clients and their families. She actively participates in weekly team meetings described above, along with residential counselors, vocational counselor, program assistant, medical assistant, social service case worker, and Guertin. She also attends ISP and IEP meetings and is considered an integral part of the treatment team. She acts as an advocate for clients and their families with outside agencies. She maintains the social service file for each client, which includes social service assessments, diagnostic assessments, psychiatric and psychological evaluations, and treatment plans. She makes entries in the client files of her daily contacts with staff, families, and outside entities. She also has frequent meetings with clients. Sand's job description calls for her to have active, constructive participation with other staff.

CONCLUSIONS ON UNIT SCOPE:

It is well settled Board law that a union need not seek to represent the most appropriate unit or most comprehensive unit, but only an appropriate unit. Transerve Systems, 311 NLRB 766 (1993); Morad Bros. Beverages Co., 91 NLRB 409 (1950). In determining unit scope, the Board first considers the petitioning union's proposals. If the unit sought is appropriate, the inquiry ends. If inappropriate, the Board will scrutinize the employer's proposals. Dezcon, Inc., 295 NLRB 109, 111 (1989). In deciding whether a unit is appropriate, the Board weighs various factors, including differences or similarities in the method of wages or compensation, hours of work, employment benefits, supervision, working conditions, job duties, qualifications, training, and skills. The Board also considers the degree of integration between the functions of employees, contacts with other employees, and interchange with other employees, as well as history of collective bargaining. Overnight Transportation Co., 322 NLRB 723, 724, citing Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962). The petitioner's desire as to the unit is a relevant consideration, though not dispositive. Florida Casino Cruises, 322 NLRB 857, 858 (1997), citing Airco, Inc., 273 NLRB 348 (1984). The fundamental

¹¹ In its brief, the Petitioner raises no issue that this position is supervisory, maintaining that the position lacks a community of interest to be in a direct care unit. Therefore, I consider any supervisory issue it may have raised to be abandoned.

factor in determining an appropriate unit is the community of interest among the employees. Vincent M. Ippolito, Inc., 313 NLRB 715, 717 (1994).

With regard to these various considerations, I find that a unit of professional and non-professional direct care employees is an appropriate unit. In sum, employees of the Employer that are not involved in direct patient care simply do not share such a community of interest with direct care employees as to require their inclusion in the unit. Rather, the direct care employees have a separate community of interest, sufficiently distinct from that of other employees that it permits their placement in a separate unit.

As a general matter, the Board has recognized that direct care employees can, in some circumstances, constitute a separate appropriate unit because their primary, pivotal role in providing care distinguishes them from other employees that may have infrequent or incidental contact with clients/patients or non-direct care employees. See, e.g., McLean Hospital, 309 NLRB 564, 576 (1992); Jewish Hospital, 305 NLRB 955 (1991); Ralph K. Davies Medical Center, 256 NLRB 1113, 1116 (1981); Addison-Gilbert Hospital, 253 NLRB 1010, 1011 (1981). Here, there is no similarity in the types of duties regularly performed by direct care and non-direct care employees. While non-direct care employees are encouraged to have positive interactions with students and to share in the objectives of the agency's mission, their primary duties do not involve the care of the clients. The demonstration of common courtesy and minimal assistance to clients, as commendable as it may be, does not transform non-direct care employees with other primary duties into direct care employees who must be included in the same unit. McLean Hospital, supra at 576. This is further underscored by the fact that direct care employees receive far more extensive training in dealing with clients than do non-direct care employees, particularly in therapeutic crisis intervention. Even those few non-direct care employees who take some form of TCI training are discouraged from using it. In addition, non-direct care employees do not attend treatment team meetings where the progress of clients is discussed. There is no evidence of transfers between direct care and non-direct care positions, which further supports a lack of community of interest. Moreover, with the exception of the two administrative secretaries, discussed below, all these direct care employees are supervised separately from the non-direct care employees.

The business office clericals clearly do not share a community of interest with the direct care employees such as to require their inclusion in the unit. These employees' duties involve clerical, payroll, finances, billing, reimbursement programs, and accounting functions. It is the Board's normal practice to exclude such business office clericals and administrative employees from bargaining units where they are not sought to be included, unless there is a demonstrably strong mutual interest with the petitioned-for employees. See e.g. Rhode Island Hospital, 313 NLRB 343, 359 (1993); Dinah's Hotel & Apartments, 295 NLRB 1100, 1102 (1989). The Employer has made no such showing here. In addition, the business office employees are separately supervised, as they report to the Director of Finance, are located on a separate floor of the administration building, and have minimal contact with direct care employees. Non-care

interaction by clerical employees, such as through the Muffin Hut program, is much too limited and sporadic to force their inclusion in the unit.

Like the business office clericals, the information systems specialist is in a fairly isolated location and has as his primary function the maintenance of a computer network rather than anything involved in client care. He is separately supervised from the direct care employees, and the record does not demonstrate that his contact with the students who own laptops is anything other than limited and sporadic.

Similarly, the human resources administrative secretary is also involved in activities unrelated to direct care, such as answering the phone, typing, and maintaining personnel records. These are in the nature of clerical and human resource tasks that provide a community of interest very different from the direct care employees. She works alone and does so in a context completely free of contact with other staff or students.

Although the Gilbough and Latham administrative secretaries share the same supervision as direct care employees, their primary duties are also clerical in nature and include business functions such as purchase orders, ordering supplies, typing, and answering the phone. They have little and infrequent interaction with either clients or unit employees. Their primary job focus is too dissimilar from those of direct care employees to warrant a finding they share the required community of interest. In addition, their interaction with the direct care employees is quite limited.

The maintenance and housekeeping employees again have primary duties unrelated to client care. The record does not provide sufficient particularity regarding the frequency with which maintenance employees or the housekeeping employee works with students, but it appears from the record that this is limited in nature.¹² My conclusion is underscored by the fact that the maintenance and housekeeping employees do not attend team meetings or receive mandatory TCI training. These employees also have limited interaction with direct care employees, and contacts such as sending work orders to maintenance employees does not compel a finding of the requisite community of interest requiring inclusion in a single unit. They are contrasted, for instance, with the cooks, who are part of a formal pre-vocational program and who have specific language in their job descriptions concerning participation with students as one of their primary job responsibilities.¹³

The Employer contends in its brief that the decision on the appropriateness of the unit should be based on community of interest standards and not on the distinction of direct care versus non-direct care employees. The findings I have made are based on community of interest standards. The cases cited by the Employer do not warrant a different result. In Mount Airy Foundation, 217 NLRB 802 (1975), a case decided prior

¹² I note that the housekeeper schedules her cleaning assignments for times when students are not around.

¹³ The parties agree that the cooks should be included in the unit.

to the implementation of the health care amendments, the Board rejected the dichotomy of direct and indirect patient care as a per se basis upon which the Board could fashion appropriate units, finding the dichotomy to be insufficiently viable to warrant its utilization. The Board did not, however, prohibit consideration of direct care versus indirect care as a consideration in a community of interest analysis. In fact, as discussed above, the Board has considered employee involvement in direct patient care as a factor in determining community of interest in a variety of cases subsequent to Mount Airy. I further note that in Mount Airy itself, the Board excluded the business office clericals from the unit as not possessing a sufficient community of interest to be included with other non-professional employees.

The Board's decision in Upstate Home for Children, 309 NLRB 986 (1992), is similarly distinguishable. In that case, the Board dismissed a petition where the petitioner sought a separate unit of registered nurses, finding that the nurses' community of interest was insufficient for them to constitute a unit apart from professional and non-professional employees who were also engaged in patient care. Here, the Petitioner seeks a unit of all professional and non-professional employees engaged in patient care, including nurses. I have found this unit to be appropriate based on community of interest standards, a finding consistent with that of Upstate Home for Children.

Contrary to the Petitioner, however, I conclude that the Gilbough/S.A.I.L. social services coordinator shares a community of interest with other direct care employees and, therefore, belongs in the unit. The Petitioner contends that the social services coordinator lacks a community of interest with other direct care employees. It cites the fact that her office is located in the social service building in Dennis where only the social services caseworker is located, and that staff and students visit that location infrequently. I find, however, that her primary job functions involve the care of clients. She is an active part of the treatment team and shares the same supervision with other direct care employees. She has frequent contacts with clients and other staff in the care of clients. While the Petitioner contends she has limited contact with direct care employees, I find that, in fact, she has regular contact with direct care employees by virtue of the nature of her duties, her attendance at various team meetings and the fact that she shares an office with a direct care employee. Accordingly, I conclude that she shares a community of interest with direct care employees. In view of the requirement that she possess a Master's Degree in Social Work and the nature of the duties she performs, I also conclude that the Gilbough/S.A.I.L. Social Services Coordinator is a professional position and should be included in the professional unit. I note that social workers are routinely found by the Board to be professional employees. See e.g., Mt. Airy Psychiatric Center, 253 NLRB 1003 (1981); Gnaden Huettgen Memorial Hospital, 219 NLRB 235 (1975).

As to the human resources assistant, I conclude that, even had I found she possessed a community of interest with direct care employees, which she does not, I would exclude her from the unit as a confidential employee. A confidential employee is one who assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. NLRB v. Hendricks County Rural Electric Membership Corp., 454 U.S. 170 (1981); B.F. Goodrich Co., 115

NLRB 72, 724 (1956). As the Goodrich case makes clear, these considerations are to be assessed in the conjunctive. Holly Sugar Corp., 193 NLRB 1024, 1025 (1971). The Board contemplates that a confidential employee is involved in a “close working relationship with an individual who decides and effectuates management labor policy and is entrusted with decisions and information regarding this policy before it is made known to those affected by it.” Intermountain Electric Assn., 277 NLRB 1 (1985). In addition, the Board has developed the alternative test that employees who have regular access to confidential information concerning the anticipated changes that may result from collective-bargaining negotiations may be confidential employees. Crest Mark Packing Co., 283 NLRB 999 (1987). The percentage of time spent performing confidential duties does not affect one’s status as a confidential employee. Reymond Baking Co., 249 NLRB 1100, 1101 (1980). The party asserting confidential status has the burden of proving its assertion. Intermountain Electric Assn., supra.

The status of the human resources assistant as a confidential employee is based primarily on her relationship with human resource director Barnes. It is evident that Barnes’ duties include developing and effectuating labor relations policies for the Employer. It appears from the record that the human resources assistant acts in a confidential capacity with Barnes in the performance of her duties. While not fully described in the record, this finding is further supported by the fact that the human resources assistant acts as a backup to the executive secretary, a position stipulated to be confidential. Accordingly, I conclude that the human resources assistant is a confidential employee and should be excluded from the unit on that basis as well.

For these reasons, I conclude that the accounts payable manager, accounts receivable manager, payroll manager, accounting specialist, Latham administrative secretary, Gilbough administrative secretary, information systems specialist, maintenance employees, housekeeping employee, and human resources administrative secretary do not share a community of interest with direct care employees and should be excluded from the unit found appropriate. The Gilbough/S.A.I.L. social services coordinator, on the other hand, shall be included in the professional unit.

SUMMER INTERNS

The Employer employs three college students as summer interns in the position of SPED teacher aides, an agreed upon unit position. They work days in the classroom as teacher aides. They are paid hourly at slightly less than the entry level rate for SPED aides, but, unlike regular SPED aides, do not receive any benefits. They are hired in response to advertisements for summer interns. They generally work for three months during their summer vacation from college, though students in a college cooperative program may work a longer period. The Employer views its summer intern program as a recruitment tool. While the Employer hopes to retain summer interns each year, they do not always return. Sometimes this is their choice and sometimes it is the Employer’s choice. Two of three interns hired for the summer of 2002 did not return for the summer of 2003. While one former summer intern now works for the Employer occasionally as a substitute, no summer intern has ever been hired to a permanent position.

The Petitioner contends that summer interns should be excluded as seasonal employees who do not have a reasonable expectation of reemployment. The Employer contends the interns should be included in the unit as they share a community of interest with other employees and have a reasonable expectation of future employment.

Summer employees who are hired to fill seasonal vacancies, did not enjoy the same fringe benefits, and had no commitment for rehire for subsequent summers have been found by the Board to be temporary employees and excluded from the unit. Fisher Controls Co., 192 NLRB 514 (1971). Summer employees have been found to be eligible to vote where, upon returning to school, their employment continues and evidences regular part time status. Crest Wine & Spirits, Ltd., 168 NLRB 754 (1968). See also Beverly Manor Nursing Home, 310 NLRB 538 fn. 3 (1993).

Based on the above, I conclude that the teacher aide summer interns should not be included in the unit. Each of these employees was hired only for the summer while on vacation from college, terminating after a period of generally about three months. Thus, their positions had a definite termination date, though its length might vary for each individual student. They are paid a slightly lower wage rate and do not enjoy the same benefits as regular employees. The facts further demonstrate that there is no reasonable expectancy of recall among this group of employees. The employees are given no assurances of future employment. While the Employer expresses a preference for using these summer internships as a recruitment tool for permanent employees, no summer intern has ever been hired into a permanent position. Nor are summer interns even guaranteed employment by the Employer in future summers. Either party may decide that the interns shall not return the following year. In fact, two of the three summer interns employed in 2002 did not return in 2003. These facts confirm that there is no reasonable expectancy of recall for summer interns. Therefore, I conclude that summer interns are temporary employees who are not eligible to vote in the election.

THE SUPERVISORY ISSUES:

Latham Medical Coordinator: Janet Treanor is the Latham Medical Coordinator, a position required to be filled by a registered nurse. She reports to Program Director Octavia Ossola. Her duties include medication administration and overseeing medication administration by staff, keeping medical records, providing medical training, and overseeing students' medical needs. Her job description further states that she will supervise medical related staff and attend supervisors' meetings as designated. The record provides no further description of these authorities or their exercise. While the Employer's organization chart indicates that the Latham nurses report to the medical coordinator, the Latham nurses' job description indicates that position is directly responsible to the program director. Unlike the Gilbough program, the Latham School does not currently have a medical assistant. The Petitioner stipulated to the inclusion of the position of medical coordinator in the unit, if she is not a supervisor.

Employee Sharon King testified that, while working as a SPED aide at an unspecified time in the past, she was asked by Nurse Coordinator Treanor to assume additional duties as a Latham medical assistant, primarily in the transporting of clients to medical appointments. King was told by Treanor that the assignment had been approved by Ossola.

King further testified that she was disciplined by Nurse Coordinator Treanor when King was acting as an interim residential supervisor.¹⁴ King testified that she was told by Treanor that, if she continued to make errors in dispensing medications, she could lose her privileges as an interim supervisor of dispensing medications. King understood that she was dispensing medications under Treanor's license. King did not indicate whether this caution by Treanor was considered formal discipline by the Employer or entered into her disciplinary record. Moreover, there is no evidence it was ever acted upon by the Employer

Gilbough/S.A.I.L. Nurse Coordinator: Barbara Scavarelli is the Gilbough/S.A.I.L. Nurse Coordinator. She is a licensed practical nurse and reports to Program Director Nancy Guertin. Her office is located in the Gilbough administration building that also houses two residential coordinators, a vocational counselor, the medical assistant, program assistant, and the administrative secretary. Scavarelli provides oversight of clients' medical activity, including keeping a medical file on all clients, arranging for medical appointments for clients, ordering all medications for clients, consulting with staff concerning medical emergencies, and acting as a liaison for clients with the psychiatrists. Scavarelli works in the same office as the medical assistant. Among the duties of both the nurse coordinator and the medical assistant is taking clients to medical appointments. The nurse coordinator and medical assistant both work 8:00 to 4:00 pm, Monday to Friday, though they may vary their hours to accommodate the medical appointments of clients. The nurse coordinator is a salaried position.

Scavarelli's job description states that she supervises the medical assistant. The job description for the medical assistant states that she is directly responsible to the medical coordinator, a term synonymous with the nurse coordinator. According to Guertin, the nurse coordinator does not have the authority to hire, fire or discipline the medical assistant, though her input in such decisions is valued by Guertin.

The present medical assistant, who was employed by the Employer as a counselor, was recommended for transfer to the medical assistant position by Scavarelli. According to Guertin, she and Scavarelli jointly interviewed the applicant, discussed her hiring at a team meeting, jointly decided to hire her, and jointly offered her the position. Guertin testified that when making hiring decisions, she typically asks for such input from employees who would be involved in working with the applicant, though the decision is hers.

¹⁴ The position of residential supervisor has been stipulated to be supervisory.

There is no evidence of any exercise of disciplinary authority by the nurse coordinator. Guertin testified that, if a disciplinary issue arose, she would consult with the LPN to determine what had occurred and, after consulting with human resources, she would make the decision as to what discipline to impose.

The nurse coordinator performs evaluations of the medical assistant. The Employer has two types of evaluations. There is an initial three-month evaluation for new employees and an annual evaluation thereafter. Scavarelli completes the evaluation form and submits it to Guertin. The evaluation form is not part of the record nor was it described in the record. Thus, there is no evidence as to what recommendations, if any, it requires. Under the employee handbook, failure to meet full performance expectations at the time of the initial evaluation may result in the termination of the employee. There is no evidence Scavarelli has ever completed a probationary evaluation or made such a recommendation. As to the annual evaluation, all employees receive the same annual wage increase regardless of the outcome of the evaluation. There is also no evidence Scavarelli has ever completed an annual evaluation of an employee.

Conclusion regarding supervisory status

To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in Section 2(11) of the Act. Rather, possession of any one of them is sufficient to confer supervisory status. Chicago Metallic Corp., 273 NLRB 1677, 1689 (1985). Consistent with the statutory language and the legislative intent, however, it is well recognized that the disjunctive listing of supervisory indicia in Section 2(11) does not alter the requirement that a supervisor must exercise independent judgment in performing the enumerated functions. Thus, the exercise of supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner does not elevate an employee into the supervisory ranks, the test of which must be the significance of the judgment and directions. Opelika Foundry, 281 NLRB 897, 899 (1986). Additionally, the existence of independent judgment alone will not suffice, for the decisive question is whether the employee has been found to possess the authority to use independent judgment with respect to the exercise of one or more of the specific authorities listed in the Act. Advanced Mining Group, 260 NLRB 486, 506-507 (1982). The burden of proving supervisory status rests on the party alleging that such status exists. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 121 S. Ct. 1861, 167 LRRM 2164 (2001); Tucson Gas & Electric Co., 241 NLRB 181 (1979). The Board will refrain from construing supervisory status too broadly, because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. Quadrex Environmental Co., 308 NLRB 101, 102 (1992). In evaluating testimony, I am mindful that conclusionary statements made by witnesses in their testimony, without supporting evidence, do not establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193 (1991).

The Petitioner has failed to meet its burden of proving that either Janet Treanor, the Latham medical coordinator, or Barbara Scavarelli, the Gilbough/S.A.I.L. nurse coordinator, is a supervisor under the Act. There is no evidence that the Latham medical

coordinator has the authority to hire, fire or evaluate employees. The mere statement in her job description that she supervises medical related staff is insufficient to establish supervisory authority, particularly when the job description of the nurses she purportedly supervises states that they report to the program director. The testimony of employee King does not establish that the nurse coordinator assigned her the additional duties of medical assistant for it is clear that assignment had been authorized by the program director.

As to the testimony of King, I conclude that it fails to establish any authority to discipline by Treanor. The evidence is inconclusive as to whether Treanor formally disciplined King or simply cautioned her that Treanor could not allow her license to be in jeopardy by continued medication errors. There is no evidence that Treanor's comment was part of the Employer's formal disciplinary system. Moreover, I note that King was acting as a supervisor, not as an employee, at the time the statement was made. I conclude, therefore, that this incident does not demonstrate the authority to discipline and, further, that the Petitioner has not demonstrated that the Latham medical coordinator possesses supervisory authority. I therefore find that the Latham medical coordinator is eligible to vote in the election. In light of the parties' stipulation that registered nurses are professional employees, I further find that the position is professional and should be included within the professional unit.

The Petitioner has also failed to demonstrate that Scavarelli is a supervisor by virtue of her participation in the interview and hiring process of the medical assistant, in the absence of evidence that she effectively recommended her hire. The Board has held that individuals who interview job applicants are not supervisors where the applicants are also interviewed by an admitted supervisor. Ryder Truck Rental, 326 NLRB 1386 fn. 9 (1998); California Beverage Co., 283 NLRB 328 (1987). See also North General Hospital, 314 NLRB 14, 16 (1994). The evidence establishes that, while Guertin consults others, conducts joint interviews, and accepts input in hiring applicants, she retains the final decision to hire. Thus, Scavarelli's participation in the interview alone does not establish her supervisory status.

As to Scavarelli's authority to evaluate employees, the annual evaluations performed on employees have no effect on the wage increases they receive, and there is no evidence that they have any effect on any employee's job status. There is also no evidence that the nurse coordinator makes any recommendation of specific personnel action in the evaluation. The Board has long found that supervisory status will be found where the individual independently performs evaluations of other employees that directly lead to personnel action that affect these employees and that supervisory status will not be found where such evaluations do not themselves affect other employees job status. Ten Broeck Commons, 320 NLRB 806, 813 (1996); Vencor Hospital-Los Angeles, 328 NLRB 1136, 1139 (1999); Harborside Healthcare, Inc., 330 NLRB 1334 (2000).

As to the probationary evaluations, while the record indicates such evaluations are performed, there is no evidence Scavarelli has ever completed one, that any recommendation as to job status is part of the evaluation, or that such a recommendation

has been acted upon. Thus, there is no evidence that there is a direct link between the probationary evaluation, as purportedly completed by Scavarelli, and a decision to retain a probationary employee or to extend the employee's probationary period. See Elmhurst Extended Care Facilities, 329 NLRB 535 (1999); Harborside Healthcare, supra at 1335; Coventry Health Center, 332 NLRB 52 (2000).

The Petitioner's reliance on Passavant Health Center, 284 NLRB 887, 891 (1987) does not warrant a contrary result. In fact, Passavant supports the proposition that the authority to simply evaluate employees without the ability to affect the employee's job status does not establish supervisory authority under the Act.

Accordingly, I conclude that the Petitioner has failed to establish that the Gilbough/S.A.I.L. nurse coordinator is a supervisor under the Act and further that she is eligible to vote in the election. As this position is not occupied by a registered nurse or other stipulated professional, and the record does not contain evidence which would establish that the position is professional in nature, I further conclude that the Gilbough/S.A.I.L. nurse coordinator shall be included in the unit with the non-professional employees.

Accordingly, based on the foregoing and the record as a whole and in view of the statutory requirement that the Board may not join professional and non-professional employees in a single unit without the desires of the professional employees being determined in a separate vote, I shall direct separate elections in voting groups 1 and 2. The employees in group 1, the professional employees, will be asked the following two questions on their ballots:

1. Do you desire to be included in the same unit as non-professional employees employed by the Employer for the purposes of collective bargaining?
2. Do you desire to be represented for the purposes of collective bargaining by Service Employees International Union, Local 509 a/w Service Employees International Union, AFL-CIO

If a majority of the professional employees in voting group 1 vote yes to the first question, indicating their desire to be included in a unit with non-professional employees, they will be so included. Their vote on the second question will then be counted with the votes of the non-professional employees in voting group 2 to decide the representative for the combined bargaining unit. If, on the other hand, a majority of the professional employees in voting group 1 do not vote for inclusion, they will not be included with the non-professional employees, and their votes on the second question will be separately counted to decide whether or not they wish to be represented by the Petitioner in a separate professional unit.

The ultimate determination as to the appropriate unit or units is based upon the results of the election. However, I make the following findings with regard to the appropriate unit:

1. If a majority of the professional employees vote for inclusion in a unit with non-professional employees, I find that the following employees will 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 professional and non-professional employees engaged in the provision of direct care services, including teachers, registered nurses, Latham social service therapist, Latham social service case managers, Latham medical coordinator, Gilbough case worker, Gilbough social services coordinator, Gilbough/S.A.I.L. nurse coordinator, child care workers, case workers, case managers, classroom aides, cooks, residential counselors, residential floats, nurses, medical assistants, program assistants, therapists, SPED aides, substitutes, and vocational counselors, and also including per diem employees who average 4 hours of work per week in the quarter immediately preceding the election, employed by the Employer at its group homes and at its Brewster and Dennis, Massachusetts locations, but excluding all other employees, accounts payable manager, accounts receivable manager, payroll manager, accounting specialist, Gilbough administrative secretary, Latham administrative secretary, information system specialist, maintenance employees, housekeeping employees, human resources administrative secretary, summer interns, confidential employees, managers, guards, and supervisors as defined in the Act.

2. If a majority of the professional employees do not vote for inclusion in the unit with the non-professional employees, I find the following two units to be appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

UNIT 1:

All full-time and regular part-time professional employees engaged in the provision of direct care services, including teachers, registered nurses, Latham social service therapist, Latham social service case managers, Latham medical coordinator, Gilbough case worker and Gilbough social services coordinator and also including per diem employees who average 4 hours of work per week in the quarter immediately preceding the election, employed by the Employer at its group homes and at its Brewster and Dennis, Massachusetts locations, but excluding all other employees,

confidential employees, managers, guards, and supervisors as defined in the Act.

UNIT 2:

All full-time and regular part-time non-professional employees engaged in the provision of direct care services, including Gilbough/S.A.I.L. nurse coordinator, child care workers, case workers, case managers, classroom aides, cooks, residential counselors, residential floats, nurses, medical assistants, program assistants, therapists, SPED aides, substitutes and vocational counselors, and also including per diem employees who average 4 hours of work per week in the quarter immediately preceding the election, employed by the Employer at its group homes and at its Brewster and Dennis, Massachusetts locations, but excluding all other employees, accounts payable manager, accounts receivable manager, payroll manager, accounting specialist, Gilbough administrative secretary, Latham administrative secretary, information system specialist, maintenance employees, housekeeping employees, human resources administrative secretary, summer interns, confidential employees, managers, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTIONS

Separate elections 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 voting groups 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. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. 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 Service Employees International Union, Local 509 a/w Service Employees International Union, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the 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 Co., 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, two 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 Regional Director, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before August 14, 2003. 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.

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, DC 20570. This request must be received by the Board in Washington by August 21, 2003.

/s/ Ronald S. Cohen _____
Ronald S. Cohen, Acting Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street - Room 601
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 7th day of August, 2003.

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