

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

NATIONAL MENTOR, INC.

Employer<sup>1</sup>

and

Case 4-RC-20655

MENTOR EMPLOYEES ASSOCIATION,  
LOCAL 191

Petitioner

**REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION**

The Employer, National Mentor, Inc., provides services and community-based programs for adults and children with developmental disabilities, emotional and behavioral challenges, and brain injuries. The Petitioner, Mentor Employees Association, Local 191, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of Coordinators I, Coordinators II, Treatment Foster Care Coordinators, Service Coordinators, Recruiters, Utilization Review Coordinators, Intake Coordinators, and Direct Service Employees who work out of the Employer's Norristown, Pennsylvania field office.<sup>2</sup> The Employer takes the position that the petitioned-for-unit may include both professional and non-professional employees and therefore a self-determination election is required for the professional employees. The Employer has declined to take a position as to which, if any, of the classifications are professional, other than asserting that the Direct Service Employees are not professional employees. The Petitioner did not take a position as to whether any of the classifications are professional or non-professional. A hearing officer of the Board held a hearing, and the Employer filed a brief with me.

I have considered the evidence and the arguments presented by the parties concerning whether the classifications of employees in the petitioned-for unit are professional employees. As discussed below, I have concluded that the Coordinators II, Utilization Review Coordinators, and Intake Coordinators are professional employees within the meaning of Section 2(12) of the

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<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> The petition erroneously indicates that the Employer's office is in Philadelphia rather than Norristown.

The petition refers to Coordinators I, Coordinators II, and Treatment Foster Care Coordinators collectively as Clinical Coordinators. The petition also refers to Utilization Review Coordinators as Utilization Reviewers. While the record at times uses different titles for these positions, this Decision will use the titles set forth above.

Act, that the Coordinators I, Treatment Foster Care Coordinators, Service Coordinators, and Direct Service Employees are not professional employees, and that therefore a self-determination election is required. Accordingly, I have directed an election in the professional and non-professional units as set forth below.

To provide a context for my discussion concerning the issues, I will first present a brief overview of the Employer's operations. Then, I will review the factors that must be evaluated in determining professional employee status. Thereafter, I will outline the qualifications and job responsibilities for each of the classifications in the petitioned-for unit and set forth the reasoning that supports my conclusions.

## **I. OVERVIEW OF OPERATIONS**

### *The Employer's Programs*

The Employer's Norristown office, one of eight field offices in the Commonwealth of Pennsylvania, serves adults and children in the metropolitan Philadelphia area. The Employer runs two primary programs: the Mental Retardation/Developmental Disability Program (MR/DD), which serves both children and adults, and the Children's Mental Health Program (the Children's Program). The Employer provides services for about 170 children and an unspecified number of adults. Its programs are generally funded by outside organizations including state agencies or municipalities.

Within MR/DD, there are two sub-programs, the Family Living (FL) program, in which client adults or children are referred to live in mentor homes, and the Home-Based Services (HBS) program, in which the Employer provides services for clients living in their natural family homes.<sup>3</sup> The Coordinators I and Direct Service Employees (DSEs) provide services to clients in both MR/DD programs.

Within the Children's Program, there are two sub-programs: Community Residential Rehabilitation (CRR) and Treatment Foster Care (TFC). In the CRR program, the Employer provides "mentor homes" and trains the host families to work with children with emotional and behavioral problems which are too severe for foster homes or their natural family homes but not so severe that the child requires inpatient or residential treatment. The TFC program provides mentor homes for children that require a lower level of care than the children in the CRR program. The Coordinators II and Service Coordinators provide services to children in the CRR program, while the TFC Coordinator provides services to children in the TFC program.

The Employer provides about 25 mentor homes in the FL program and about 120 mentor homes in the CRR and TFC programs. Mentor families supply housing, day-to-day care, and transportation for clients with special needs. The clients vary in their needs; some are relatively high functioning while others are nonverbal or have medical problems or disabilities. The Employer expects that the client will be treated as a member of the mentor's family. Some

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<sup>3</sup> There are 23 to 25 homes in the HBS program.

mentor homes are used for placement of new referrals or for “respite” coverage, that is, providing a temporary break for a mentor family. The Employer’s employees, as described below, recruit, train, supervise, assist, and support mentors.

### *Management and Staffing*

Patricia Boggs has been the Program Manager for the Employer’s Norristown office for nine years and is ultimately responsible for both the MR/DD and Children’s Programs. The Employer also has a Clinical Supervisor, MR/DD Supervisor, Intake Supervisor, DSE Supervisor, Office Manager, and Recruiter Supervisor, all of whom the parties stipulated to be supervisors within the meaning of Section 2(11) of the Act.

The Employer employs approximately 66 employees in the petitioned-for classifications: 30 to 35 Direct Service Employees (DSEs), 5 Coordinators I, 13 or 14 Coordinators II, 3 TFC Coordinators, 3 Service Coordinators, 3 Recruiters, 2 Utilization Review Coordinators, and 1 Intake Coordinator.

All employees except DSEs are paid by salary. The salaries for Coordinators I, TFC Coordinators, Service Coordinators, and Recruiters range from \$26,000 to \$32,000; Coordinators II earn \$30,000 to \$35,000; and the Intake Coordinator and UR Coordinators are paid from \$30,000 to \$40,000. The DSEs earn \$9 to \$12 per hour.

### *Intake Procedures and Plans of Care*

The Employer’s intake procedures are different for each program. The Intake Coordinator handles intake procedures for clients of the Children’s Program. For the MR/DD programs, intake is performed by UR Coordinators. After a child is referred to the Employer, the determination where to refer the child is made at an Admissions meeting, which is attended by the Program Manager, the Recruiter, the Recruiting Supervisor, and the Intake Coordinator, Intake Supervisor, or UR Coordinator who handled the client’s intake.

Once a client has been assigned to a mentor home, the Employer develops a plan of care for him or her, which sets long-term and short-term objectives to further the goal of having the client lead as normal a life as possible. The goals may be very specific, such as providing a client with meaningful day-to-day activity, helping a client find employment, or establishing detailed medication requirements and daily activity levels.<sup>4</sup>

In MR/DD, the Coordinator I prepares the plan of care based on information taken during an initial interview and information provided by the client and the client’s family. The Coordinator I also works with an employee of the municipality that provides funding for the service. DSEs who provide direct care for the client typically attend plan of care meetings. The DSEs provide information to the team to assist in the development of the plan, but they do not have authority to change the plan. Coordinators I update the plans of care quarterly, sometimes without holding other meetings.

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<sup>4</sup> The plan of care is called a “service plan” for MR/DD clients and a “treatment plan” in the Children’s Program.

In the Children's Program, the Coordinator II is in charge of developing the plan of care, after receiving input from the child, the natural family, the mentor, and other treatment providers. Typically DSEs do not attend the Children's Program plan of care meetings.

### *Training*

All employees attend four-day in-service training programs, and there are additional training programs for each department. Employees receive training from outside organizations, and they also train each other. Some of the Employer's funding organizations require that employees receive training in first aid and CPR, and DSEs also receive training in fire safety, anger management, infectious disease control, clients' rights, and other topics. One DSE testified that she received 28 hours of training last year.

## **II. THE RELEVANT LEGAL STANDARDS**

Section 9(b)(1) of the Act precludes the Board from finding appropriate a unit that includes professional employees with nonprofessional employees unless a majority of the professional employees vote to be so included.<sup>5</sup> The definition of a professional employee is set forth in Section 2(12) of the Act as follows:

The term "professional employee" means-- (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or

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<sup>5</sup> In *Sonotone Corp.*, 90 NLRB 1236 (1950), the Board adopted a two-step voting procedure for professional employees, which includes two questions. The first question asks the professional employees if they wish to be included in a unit of professional and nonprofessional employees. The second question asks the professional employees if they wish to be represented by the labor organization or organizations listed on the ballot. If a majority of the professionals vote "yes" on the first question, their ballots are pooled with those of the nonprofessional employees voting in the election, and ballots from both groups are counted together to determine whether they wish to be represented by a labor organization. If a majority of professional employees vote "no" on the first question, then the Board will not include them in the same unit with such employees, and their votes will be counted separately to determine whether they wish to be represented by the labor organization. Consistent with this statutory scheme, the ballots for nonprofessional employees in self-determination elections ask a single question: whether the employees wish to be represented by a participating labor organization. *Pratt & Whitney, a Division of United Technologies Co.*, 327 NLRB 1213, 1217 (1999).

from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

Section 2(12) was meant to apply to small and narrow classes of employees. *The Express-News Corp.*, 223 NLRB 627, 630 (1976). Accordingly, employees must satisfy each of the four requirements set forth in Section 2(12)(a) before they qualify as professional employees within this definition. *Greenhorne & O'Mara, Inc.*, 326 NLRB 514, 517 (1998); *Arizona Public Service Co.*, 310 NLRB 477, 481 (1993).

While employee background is examined for the purpose of deciding whether the work of the group satisfies the “knowledge of an advanced type” requirement of Section 2(12)(a), it is not the individual’s qualifications but the character of the work required that is determinative of professional status. *The Express News Corp.*, supra at 628; *Western Electric Co., Inc.*, 126 NLRB 1346, 1348-1349 (1960). An employer’s requirement that all of its employees in a classification have an advanced degree in the field to which the profession is devoted would be persuasive evidence that the employees are professionals, but such evidence is not necessarily conclusive. Professional employee status turns on the degree of judgment required of the employees in applying the knowledge acquired through a prolonged course of study in specialized schooling. *Aeronca, Inc.*, 221 NLRB 326, 327 (1975). Salary is not determinative of professional status. *E.W. Scripps Co.*, 94 NLRB 227, 240 (1951).

### **III. EMPLOYEE QUALIFICATIONS AND RESPONSIBILITIES**

#### *Coordinator I*

Currently, the Employer employs five employees in this classification, and one position is vacant. The position’s job description<sup>6</sup> states that the Coordinator I must have one of the following combinations of academic degrees and experience in the field: high school degree plus six years of experience; Associates degree plus four years of experience; Bachelor’s degree plus two years of experience; or Master’s degree plus one year of experience. Typically, however, the Employer advertises for and hires employees with a Bachelor’s degree plus two years of experience for this position. In fact, four of the five Coordinators I have a Bachelor’s degree.

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<sup>6</sup> The Employer placed into evidence a series of job descriptions for the classifications in the petitioned-for unit, which it prepared for the purposes of the hearing. The job descriptions were derived from summaries of pre-existing job descriptions, copied from corporate headquarters’ job descriptions, or adapted from other offices’ job descriptions. Boggs testified that the exhibits accurately reflected current employee job duties and requirements with some additions and corrections provided through her testimony.

Coordinators I serve clients in both the FL and HBS programs. They assess newly referred clients and are primarily responsible for coordinating the development of plans of care. After a mentor is selected, the Coordinators I are responsible for overseeing the care of clients in the mentor homes. They ensure that clients receive the services set out in the plans of care, such as vocational programs, special schools, behavioral health specialists, and medical services, and they coordinate the provision of these services and act as liaisons with other agencies or organizations serving the clients. They also maintain the clients' records to document the care provided to the client, assist with all necessary legal, licensing, regulatory, and certification activities, and provide training to mentors. In this connection, they visit the mentors' homes to assure that they are following the plan of care.<sup>7</sup> They also secure and update individual mentor contracts and complete annual performance evaluations for mentors. They may recommend mentor pay adjustments and terminations, although there recently have been no such pay increases. If there is a problem in a mentor home, the Coordinator I will raise the issue at a team meeting. Coordinators I also train other employees and take turns answering emergency calls from 5:00 p.m. to 9:00 a.m. One of the Coordinators I carries half a caseload and also serves as a UR Coordinator.

#### *Treatment Foster Care (TFC) Coordinators*

In the Children's Program, the Employer employs three TFC Coordinators, who have essentially the same duties and responsibilities as the Coordinators I who work in the MR/DD program. The qualifications for a TFC Coordinator are a Bachelor's degree in a human services field and two years of relevant job experience. All three of the TFC coordinators had a Bachelor's degree in a human services field and two years of experience at the time they were hired.

#### *Coordinator II*

There are 13 or 14 Coordinators II in the Children's Program. The qualifications for this position are a Master's degree in a human services field and two years of experience. The Coordinators II perform duties similar to those of the Coordinators I, ensuring that client children receive the care they need and overseeing the mentor homes. In addition, they provide individual and family therapy to clients.

Coordinators II participate in psychiatric evaluations of their clients and prepare most of the information concerning these evaluations to funding organizations. They are responsible for gathering the client's history, and they also confer with the psychiatrists regarding medication and any crises precipitating the need for the child to see the doctor.

#### *Service Coordinator*

The Employer employs three Service Coordinators for the Children's Program. They report to the Clinical Supervisor. The listed qualifications for this position are a Bachelor's

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<sup>7</sup> The Coordinator I job description states that the employees conduct mentor group meetings. Boggs testified that the Employer no longer has mentor support groups, and accordingly these mentor group meetings are seldom held.

degree, with two years of experience in human services preferred. Only one of the three Service Coordinators, however, had two years of experience at the time of hire.

The Service Coordinator is responsible for arranging respite coverage when a primary mentor needs a break. Respite coverage may be planned in advance or may occur on an emergency basis, when a child's behavior requires that the child temporarily move out of the mentor's home. Upon a request made by a Coordinator II, the Service Coordinator makes temporary arrangements to place the child in another home. The Coordinator II provides background information regarding the child's needs, and the Service Coordinator matches the child with an appropriate temporary mentor home.

The Service Coordinator also performs a variety of other duties, generally at the request of a Coordinator II. They observe children in their classrooms and report to the Coordinator II about their behavior in connection with funding requests to outside agencies. They also testify at court proceedings about safety issues in the mentor home.<sup>8</sup> A Service Coordinator sometimes supervises a family visitation, when the natural family visits a client child pursuant to a court order requiring supervision. They also attend "Individual Education Plan" (IEP) meetings at the child's school to determine the services needed in the school setting. The school's special education employees prepare the IEP, and the Service Coordinator provides input regarding the behavioral and mental health needs of the child and may advocate for the child to be placed in an appropriate classroom. Additionally, when a child is transferred from the CRR program to the TFC program, the Employer no longer prescribes medication for the child or provides individual or family therapy. If the child continues to need these services, the Service Coordinator will refer the client to an outpatient clinic by locating an appropriate clinic, scheduling an appointment, and providing the clinic with the information about the child's medical needs.<sup>9</sup>

#### *Intake Coordinator*

The qualifications for this position are a Master's degree, plus two years of experience in mental health, child or adult services, or the equivalent, and experience in psychosocial assessment.

The Intake Coordinator interviews children referred to the Employer, gathers information from the agencies providing services to the client, and assesses if the child is appropriate for the level of care offered by the Employer's programs. The Intake Coordinator determines whether to place the child in the CRR or TFC program, or at a lower level of care. In making this assessment, the Intake Coordinator may consult with the Intake Supervisor, the Program Manager, the Utilization Review Coordinator, and the Recruiters, and will consult with a psychiatrist as needed. The Intake Coordinator also must verify the funding and insurance coverage arrangements and complete the client and mentor reporting requirements consistent with the applicable corporate and regulatory standards.

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<sup>8</sup> Typically, the Coordinator II testifies about issues related to the child's long-term goals.

<sup>9</sup> The Service Coordinator generally makes the determination based on the client's location and insurance, and the availability of services at the neighborhood clinic.

### *Recruiters*

The Employer employs three Recruiters, who are responsible for locating mentor homes for the Employer's clients.<sup>10</sup> The incumbent Recruiters possess the required qualifications of a Bachelor's degree and one year of human services or marketing experience.

Recruiters advertise and search for members of the community who are willing and able to open their homes to clients in the mentor programs. They coordinate the screening and training process to determine if a mentor is appropriate for the Employer's programs. They also provide information sessions for potential mentors and help them through a screening process, which includes home inspections, application forms, references, and other documentation or licensing requirements.

A Recruiter makes home visits during the initial recruiting process to determine if the mentor is appropriate for the Employer's programs, for example to see if the neighborhood is dangerous or if the mentor's other children in the home are properly clothed and fed. To assess if a mentor is appropriate for the Employer's programs, the Recruiter must determine that the individual is not serving only for the money involved and would be able to understand the plan of care and meet the needs of the referred client. He or she then performs annual updates to keep the mentor homes licensed.<sup>11</sup> The Recruiter attends Admissions meetings, where the Employer decides whether a child will be placed in a mentor home. The Recruiter also is in charge of maintaining records and statistics necessary to measure the effectiveness of the recruitment efforts and to ensure the Employer's continued funding and licensing for the mentor programs.<sup>12</sup>

### *Utilization Review Coordinator<sup>13</sup>*

In the Children's Program, there are two part-time UR Coordinators. One of them also performs intake functions, and the other serves half the time as a Coordinator I. UR Coordinators must have a Master's degree in a human services or social services field and a minimum of three years of directly related clinical experience, preferably in the mental health field. A registered nurse is preferred for the position. Currently, one of the two UR Coordinators is a registered nurse certified in psychiatry, and the other has a Master's degree in Human Services with 15 years of experience. The job description indicates that the UR Coordinator must, among other things, have the ability "to read, analyze, and interpret general business periodicals, professional journals, technical procedures, or governmental regulations," "to write reports, business correspondence and procedure manuals," and "to effectively present information and respond to questions from groups of managers, clients, customers, and the general public." The position reports directly to the Program Manager.

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<sup>10</sup> Two Recruiters are officially assigned to the Children's Program, and the third is assigned to the MR/DD program. In practice, however, all three Recruiters work for the Children's Program.

<sup>11</sup> Only the Recruiting Supervisor is permitted to perform state Office of Mental Health inspections.

<sup>12</sup> Recruiters assist the mentors in preparing the documentation needed to fulfill requirements for funding organizations and licensing through public agencies, including Philadelphia's Department of Human Services and Pennsylvania's Office of Mental Health and Department of Public Welfare.

<sup>13</sup> The job description refers to this position as Utilization Review Coordinator/Managed Care Liaison.

With the assistance of the Coordinators II and a psychiatrist, the UR Coordinators prepare funding packets and seek authorization from funding agencies for clients to participate in the Employer's programs.<sup>14</sup> The UR Coordinators communicate with the staff from the funding organizations to ensure that the funding packets are complete and adequately prepared, and they analyze and maintain familiarity with the funding organizations' periodically changing requirements. In preparing funding packets, a UR Coordinator must determine if a client meets the medical necessity criteria and other standards necessary for funding authorization.

UR Coordinators are responsible for dealing with insurance and funding problems, such as when a client's medical assistance is terminated, and ensuring that the client remains eligible for insurance during the entire authorized period. They must provide updated clinical information to guarantee that insurance payments continue. If the insurance is not paid, the UR Coordinators must appeal that determination.

### *Direct Service Employees*

The Employer employs approximately 30 to 35 Direct Service Employees.<sup>15</sup> About 23 to 24 DSEs work in the MR/DD program and about 7 or 8 DSEs work in the Children's Program. Some DSEs work part-time, and others work only when school is in session. A single MR/DD client may be assigned three or four DSEs for round-the-clock care.

The published educational and experiential qualifications for this position are a high school diploma or G.E.D. and a minimum of one year of human service delivery experience. However, the Employer accepts applicants with no experience in the field and trains them on the job.

In the MR/DD programs, the DSE works with the Coordinator I in developing the plan of care for a client, determining the services that the client needs, ensuring that the services are provided, and assisting if there are problems. For example, a DSE would report to the Coordinator I about a client's behavioral concerns or about a problem taking a client to a medical appointment. In the Children's Program, there is no regularly scheduled communication between the DSE and the Coordinator I; the DSE reports to the DSE Supervisor for any administrative issues or concerns. They assist clients with daily living, personal care, financial management, and job skills development, and they may also assist with light housekeeping and meal preparation. They are additionally responsible for maintaining progress notes and other documents.

A DSE in the MR/DD program, Felicia Lezette Scott, has been providing services for one elderly mentally retarded diabetic client for a year and a half. Scott has been employed by the Employer for about two years and previously worked as a mentor for eight years. She works a full schedule of 35 hours per week at a rate of \$10 per hour plus overtime and performs the

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<sup>14</sup> The placement of children in the Employer's CRR program is funded through Pennsylvania's Office of Medical Assistance. The children must meet certain medical necessity criteria in order for the state to fund their placement.

<sup>15</sup> DSEs are classified as I, II, III, or IV, depending on their job performance and experience.

following duties: procuring medications and medical supplies; accompanying the client to psychiatric and medical appointments; keeping the client active; and dealing with the client's insurance company. Scott decides what activities are appropriate for her client, for example, visiting parks, pet stores, and churches, and accompanies her at these activities.

James Walker, a DSE in the Children's Program, has been working with one child, age 8, for about two months. This child has Attention Deficit Disorder (ADD) and behavioral issues and takes some medication. Walker sits in the classroom with the child, observes his behavior, accompanies him to lunch, redirects negative behavior, and assists with schoolwork. He testified that he uses common sense to create needed behavior modifications.

#### **IV. ANALYSIS**

##### *Coordinators I and TFC Coordinators*

The primary responsibility of the Coordinators I and TFC Coordinators is to oversee the clients in their natural homes or mentor homes. They assess new clients and coordinate the development of plans of care, ensure that clients receive the services set forth in the plan, coordinate with outside agencies, maintain records, train and monitor mentors, and provide on-call support during the night. Coordinators I are not required to have Bachelor's degrees. Although they are typically hired with Bachelor's degrees, plus at least two years of relevant experience, they also can be hired with a high school or Associate's degree, if they have sufficient experience in the field. In fact, one of the five current Coordinators I does not have a Bachelor's degree. TFC Coordinators are required to have a Bachelor's degree in a human services field and two years of relevant job experience.

Based on the statutory requirements, as applied by the Board in previous cases, I find that the Coordinators I and TFC Coordinators are not professional employees within the meaning of Section 2(12) of the Act. The Coordinator I and TFC Coordinator positions are critical to the appropriate care of the clients, but employees in these classifications do not need to complete the types of advanced educational programs that are characteristic of professional employees, as found by the Board. Although most of them have Bachelor's degrees, there is no evidence that these degrees are in any specialized field, and the Board has not found employees with similar qualifications and responsibilities to be professional. In particular, in *Community Health Services, Inc.*, 259 NLRB 362 (1981), the Board found the mental health workers to be technical employees, not professionals. In that case, the mental health workers determined what types of services were necessary for the clients and worked with psychiatrists and other public and private agencies to help determine the best course of treatment for the client, but they did not provide any counseling services themselves. Moreover, the Board emphasized that, as in this case, entry-level employees were encouraged, but not required, to have Bachelor's degrees and were not required to have state licensing. Accordingly, I find that the Coordinators I and TFC Coordinators are not professional employees within the meaning of Section 2(12) of the Act. See also *Butler Hospital*, 250 NLRB 1310 (1980); *The Express-News Corp.*, 223 NLRB 627 (1976).

## *Coordinators II*

Coordinators II perform many of the same duties as Coordinators I. However, they additionally provide therapeutic counseling services to clients and assist with psychiatric evaluations. These responsibilities require the Coordinators II to use a level of educated judgment that goes beyond the requirements of the Coordinator I and TFC Coordinator positions. Significantly, unlike the Coordinators I and TFC Coordinators, they are also required to have attained Master's degrees.

In previous cases, the Board has found employees with comparable responsibilities and educational requirements to be professional employees. Thus, in *Catholic Bishop of Chicago*, 235 NLRB 776, 779 (1978), the Board found social workers at day care centers to be professionals where they had Bachelor's degrees, provided counseling services, prepared case reports, worked with psychologists, and were qualified to provide therapeutic treatment.<sup>16</sup> In *The Buffalo General Hospital*, 218 NLRB 1090, 1092 (1975), the Board found Counselor Consultants with a Bachelor's degree plus two years of experience to be professionals, where they saw clients at a community mental health center and also had oversight responsibilities for counselors who worked directly with the clients. See also *Resident Home for the Mentally Retarded of Hamilton County, Inc.*, (Liaison Educator) 239 NLRB 3, 8 (1978). Accordingly, I find that the Coordinators II are professional employees within the meaning of the Act.

## *Service Coordinators*

The Service Coordinators work closely with the Coordinators II providing a variety of services for clients and arranging respite coverage for mentor homes. When requested by a Coordinator II, they attend IEP conferences, perform classroom observation, supervise family visitation, testify in court regarding safety issues, and refer clients to outpatient services. These employees are required to have a Bachelor's degree with two years of experience in human services.

Similar to the Coordinators I and TFC Coordinators, the Service Coordinators are not required to have a Master's degree, and they do not need a Bachelor's degree in a specialized field. Many of their duties are determined at the behest of the Coordinators II, and these responsibilities do not require the type of educated judgment and discretion characteristic of professional employees, as determined by the Board. Accordingly, I find that they are not professional employees.

## *Intake Coordinator*

There is one Intake Coordinator, who assesses the appropriate placement of children for the CRR and TFC programs. This employee is responsible for gathering funding and insurance coverage information from other agencies that serve the client, making treatment recommendations to the clinical team, and maintaining essential records. The classification

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<sup>16</sup> For other cases in which the Board found social workers to be professional employees, see *Mount Airy Psychiatric Center*, 253 NLRB 1003 (1981) and *Child and Family Service of Springfield, Inc.*, 220 NLRB 37, 38 (1975).

requires a Master's degree plus two years of experience in the mental health field, as well as experience in psychosocial assessment.

I find that the Intake Coordinator is a professional employee as defined in Section 2(12) of the Act. The position requires a Master's degree, and the employee must use significant discretion and judgment in placing the child in the appropriate program and recommending the proper treatment.

#### *Utilization Review Coordinators*

There are two UR Coordinators who also perform other duties for the Employer. These employees prepare packets to submit to the agencies that fund the Employer's programs, to ensure funding authorization for each client. They must maintain contact with the staff and familiarity with the regulations of the respective funding agencies, gather information from the Employer's employees to prepare the funding packets, maintain records and documents, and troubleshoot when there are problems associated with funding authorization or insurance. UR Coordinators are expected to have a Master's degree in human services/social services and a minimum of three years of direct clinical experience. One of the current UR Coordinators is a registered nurse who does not have a Masters degree.

I find that the UR Coordinators are professional employees as defined in the Act. Although one of them does not have a Master's degree, she is a registered nurse, a position which itself is generally found by the Board to be professional. The UR Coordinator position requires extensive use of judgment, based on a significant amount of training and experience, to ensure that clients receive proper funding.<sup>17</sup>

#### *Recruiters*

The three Recruiters are responsible for locating mentors and assisting them with the application process. The Recruiters visit potential mentors' homes to evaluate them, attend Admissions meetings to help place clients, maintain paperwork and files, and assist in training mentors. The Recruiters are required to have a Bachelor's degree and one year of human services or marketing experience.

Similar to the other classifications found not to be professional, Recruiters are required to hold only a Bachelor's degree, and their work experience requirements are lower than those of the other classifications. Their responsibilities do not require the use of judgment that is based on advanced intellectual instruction. I find, therefore, that they are not professional employees within the meaning of the Act.

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<sup>17</sup> In hospitals, the Board has generally determined whether utilization review employees should be included in a registered nurse unit based on whether they are licensed as registered nurses. *Salem Hospital*, 330 NLRB 560 (2001).

### *Direct Service Employees*

The DSEs employed by the Employer in the MR/DD programs are responsible for personally providing various necessary services to the client. They take clients to medical appointments and accompany them in their day-to-day activities. They may also provide transportation, housekeeping, and meal preparation services as needed. In the Children's Program, the DSEs assist children in the schools, accompany them in class, counsel them on their behavior, and provide day-to-day companionship and care. The DSEs are required to have a high school diploma or G.E.D. Although experience is preferred, the Employer will accept individuals with no experience.

I find that the DSEs are not professional employees as defined in the Act. The position does not require a college degree or significant advanced training, and there has been no showing that their work is predominantly intellectual in character. The Board has not found employees with similar job requirements and duties to be professionals. In *Menninger Foundation*, 219 NLRB 690 (1965), child care workers and psychiatric aides were not found to be professional where they accompanied clients on a day-to-day basis and were responsible for their feeding, health and, hygiene, as well as providing companionship, offering advice, and ensuring that they attended medical and therapy appointments, meetings, school and jobs. In *St. Joseph Home for Children, Inc.*, 224 NLRB 1616 (1976), child care workers, who were required to have an Associates degree and were responsible for working with children in residential homes were not found to be professional. Similarly, in *Child and Family Service of Springfield, Inc.*, 220 NLRB 37 (1975), social work assistants and associates, who were required respectively to have a high school diploma and a Bachelor's degree, and were responsible for interviewing clients, transporting and escorting clients to appointments, assisting with day-to-day activities and making contact with community resources were not found to be professional employees. Moreover, no party to this proceeding contends that DSEs are professionals. Accordingly, I shall not include the DSEs in the professional unit.

## **V. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

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 in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

***Unit A***

All full-time and regular part-time Coordinators II, Utilization Review Coordinators, and Intake Coordinators employed by the Employer at its One Montgomery Plaza, Norristown, Pennsylvania field office, excluding all other employees, office clerical employees, administrative assistant, guards and supervisors as defined in the Act.

***Unit B***

All full-time and regular part-time Coordinators I, TFC Coordinators, Service Coordinators, Recruiters, and Direct Service Employees employed by the Employer at its One Montgomery Plaza, Norristown, Pennsylvania field office, excluding all other employees, office clerical employees, administrative assistant, guards and supervisors as defined in the Act

The ballot for employees in Unit A will ask the following two questions:

1. Do you wish to be included with the employees in Unit B in a single unit for purposes of collective bargaining?
2. Do you wish to be represented for the purposes of collective bargaining by Mentor Employees Association, Local 191?

If a majority of the employees voting in Unit A votes “Yes” to the first question, indicating their desire to be included in a unit with Unit B employees, they will be so included, and their votes on the second question will be counted together with the votes of the employees in Unit B to decide the question concerning representation for the overall unit consisting of the employees in Units A and B. If, on the other hand, a majority of the employees voting in Unit A do not vote “Yes” to the first question, their ballots will be counted separately to decide whether they wish to be represented by the Petitioner in a separate unit.

**VI. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the units found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by Mentor Employees Association, Local 191. The date, time, and place of the election will be specified in the Notice of Election that the Board’s Regional Office will issue subsequent to this Decision.

**A. Eligible Voters**

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, 2) 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 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office election eligibility lists, containing the **full** names and addresses of all the eligible voters in Unit A and Unit B. *North Macon Health Care Plant*, 315 NLRB 359, 361 (1994). The lists must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the lists should be alphabetized (overall or by department, etc.). Upon receipt of the lists, I will make them available to all parties to the election.

To be timely filed, the lists must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **July 25, 2003**. No extension of time to file these lists shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file these lists. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The lists may be submitted by facsimile transmission at (215) 597-7658. Since the lists will be made available to all parties to the election, please furnish a total of **two** copies, unless the lists are submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

**C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

**VII. 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, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EDT on **August 1 2003**.

at Philadelphia, PA

/s/

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JOHN D. BREESE

Acting Regional Director, Region Four

355-2201  
355-2270  
177-9329  
177-9350  
177-9375

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