

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

**VISITING NURSE SERVICES OF MICHIGAN,
d/b/a BAY VISITING NURSE AND HOSPICE¹**

Employer

and

Case 7-RC-22450

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKER OF AMERICA (UAW), AFL-CIO**

Petitioner

APPEARANCES:

Rozlyn E. Kelly, Attorney, of Flint, Michigan, for the Employer
John G. Adam, Attorney, of Southfield, Michigan, for the Petitioner

DECISION AND DIRECTION OF ELECTION

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

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

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

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

² The Employer and Petitioner filed briefs, which were carefully considered.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

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

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit of approximately 72 full-time, regular part-time, and per diem registered nurses, and other professional employees, including physical therapists, occupational therapists, social workers, and spiritual counselors; but excluding all other employees, including office clerical employees, physicians, and guards and supervisors as defined in the Act. The Employer asserts that the unit is inappropriate inasmuch as it includes about 10 professional employees who provide private care service. I find the petitioned-for unit to be appropriate. Professional employees in private care service are subject to the same hiring criteria, employee manual, benefits, and centralized labor relations as the other employees in the unit, and provide direct care to patients. I reject the Employer's assertion that professional employees who provide private care services constitute a separate unit because their jobs do not entail the complexities or require the same skill level; because of the temporary nature of their assignments; or because of the manner in which the services are paid to the Employer.

Additionally, the Employer asserts that the spiritual counselor appropriately belongs in the nonprofessional unit³ and should be excluded from the professional unit because an advanced degree is not a requirement for the position. I find that the record evidence is insufficient to establish the appropriate placement of the spiritual counselor, and that classification may vote subject to challenge.

Services and Facilities

The Employer provides three service lines - certified home care, hospice, and private care. It provides these services out of six facilities in the Bay service area: certified home care through Visiting Nurse & Hospice in Essexville and Pinconning; hospice through Brian's House, a residential hospice facility in Essexville; certified home care and hospice through Huron Memorial Home Care & Hospice in Bad Axe; certified home care through Associated Home Care in Marlette; and private care through Bay Visiting Nurse & Hospice in Essexville. The proposed unit employees are employed at and out of each of the sites set forth above.

³ The Petitioner has petitioned to represent the Employer's nonprofessional employees in Case 7-RC-22451.

Management Hierarchy

Christine Root is the Employer's president and CEO. Pat de Rose is the director of the certified division, and Jeannie Barcia is the director of the hospice and private care divisions. de Rose and Barcia report to Root. In the certified division, there is a manager at each location where there is a physical site. These managers report to de Rose. Jill Roby, manager for hospice, and Kathy Jenkins, manager for private care, report to Barcia.

Centralized Labor Relations

Labor relations, payroll, and administration services are centralized at the Employer's offices located in Flint. All employees are subject to the same employee handbook. The employee handbook makes no distinction between certified home care employees and private care employees.⁴ All prospective professional employees are given the same application form when applying for a job. All full-time and regular part time employees have a base hourly wage and benefits, and receive overtime for hours in excess of 40 per week.⁵ Part-time employee benefits are prorated for hours actually worked. Per diem employees do not have benefits. The Employer provides mileage reimbursement to certified home care and hospice employees, and to private care employees when it negotiates for the same with the patient.

The Employer schedules employees with one or two patients a day, often advising employees of the assignment through telephone contact, although apparently there are schedules posted and schedule books at the facilities. The Employer does not require employees in certified home care and private care to report to their corresponding facilities, but many do so to check their schedules and complete paperwork. Employees in private care may decline an assignment, whereas employees in certified home care do not have that option. All employees, except the school nurses, provide care in the patient's homes.⁶

Certified Home Care and Private Care

Certified home care (or home care) handles medical care services paid through a third party payer, i.e., Medicare, Medicaid, or a commercial insurer. Provision of care is heavily regulated by state and federal agencies. An attending physician prescribes the care, while a registered nurse is required to have oversight responsibility for patient care

⁴ The handbook also does not use the term "per diem" for employees who are on-call or contingent, but instead refers to casual and temporary employees.

⁵ Apparently some private care employees are paid by the visit depending upon the assignment, but the basis and frequency for such payment is unclear.

⁶ Even those professional employees assigned to Brian's House are providing care at the patient's home, inasmuch as Brian's House is a resident facility, and it serves as the patient's home for the duration.

pursuant to the Medicare or Medicaid provisions. Patients in certified home care are generally elderly (Medicare patients) and/or seriously ill or disabled (Medicaid patients). Care in a certified home care situation can involve wound care, infusion, feeding tubes, and intravenous therapies. Length of care in certified home care is generally prescribed by the attending physician, or limited by terms of the third party payer.

Private care is almost always arranged and paid directly by the patient or family. In some circumstances an automobile insurance company or possibly a commercial health insurer may make the arrangements for private care, and pay for it. Length of care in private care is generally determined by the patient and finances.⁷ As in home care, an RN manages patient care in private care. However, unlike home care, this is not regulated by an outside agency, but is the Employer's own internal policy. In addition to one part-time registered nurse, four per diem RNs and one per diem physical therapist, private care service also includes four part-time registered nurses who provide services to the Bay City Public Schools pursuant to a contract with the Employer. The responsibilities of these school nurses include health education for parents and students alike, health screening coordination, immunization status screening, nursing diagnosis, intervention, and referral for the student populations. The schedules for these nurses coincide with the school schedules, inasmuch as the school nurses do not work during the summer, unless they request reassignment. School nurses are paid hourly and receive mileage reimbursement.

Hospice nurses and certified home care nurses, as well as the physical therapists, are on call, and rotate weekends. Private care nurses are not on call, and do not rotate weekends, although some job assignments can require 24-hour service and weekend work, which entails scheduling with other private care nurses. There is also some form of weekend coverage in the event someone calls off work.

Although the Employer does not transfer employees between service lines, there is cross-over between home care, private care and hospice, as coverage is needed and employees seeking to increase hours volunteer for additional work in service areas other than their usual assignments. In the case of certified home care, the employee must have the skill level and certification to work in that division.

RN Ann Maria Prime, who works primarily in home care, regularly sees patients in home care, hospice, private care, and Brian's House, as the Employer's only certified woundostomy nurse. She makes one or two private care visits a week, one or two hospice visits a week, and the balance of her time is in home care. Further, if her hours are short, she will augment them by volunteering to see private care patients.

⁷ The record is silent with regard to payment arrangements for the hospice division.

The Spiritual Counselor

The record evidence is vague regarding the position of spiritual counselor. The Employer does not require an advanced degree in the spiritual counselor job description. Although the payroll provided by the Employer indicates there is a person classified as a spiritual counselor in the hospice division, there is no evidence of what the person's job responsibilities are, how the spiritual counselor is assigned to a patient (if she is), and what if any interaction she has with the professional employees.

Analysis

It is well settled that in reviewing a bargaining unit the Board does not require the "most appropriate unit," but only that the unit be appropriate to insure to employees "the fullest freedom in exercising the rights guaranteed by this Act." *Overnight Transportation Co.*, 322 NLRB 723 (1996); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), enfd. 190 F.2d 576 (7th Cir.1951). The petitioned-for bargaining unit is a relevant consideration, but it is not dispositive. *Marks Oxygen Co.*, 147 NLRB 228 (1964); *Airco, Inc.*, 273 NLRB 348 (1984). A major determinant in an appropriate unit finding is the community of interests of the employees involved. That two or more groups of employees engage in different processes does not by itself render a combined unit inappropriate if there is a sufficient community of interest among all the employees. *Berea Publishing Co.*, 140 NLRB 516, 518 (1963). Factors the Board considers in determining community of interest are common supervision, nature of employee skills and functions, general working conditions, and fringe benefits. *Associated Milk Producers*, 250 NLRB 1497 (1970).

In the instant matter the private care employees and the other petitioned-for professional employees are subject to the same employee manual, employment application, and base job requirements. There exists centralized labor relations, and hospice and private care managers report to the same director. While the patient base may differ, from terminally ill in hospice, to critically ill in certified home care, to chronically ill and parent and student populations in private care, all professional employees are engaged in direct patient care and/or education regardless of the service line.

The manner in which the Employer is paid for the services provided by the different service lines is not a valid basis for carving out a separate unit for the private care nurses, and is more a matter of an accounting consideration than labor relations. Additionally, although the Employer is not an acute care hospital, the Employer's position is in conflict with the Board's policy against unnecessary proliferation of bargaining units in the health care industry. See *Charter Hospital of St. Louis, Inc.*, 313 NLRB 951, 952 (1994). Accordingly, I find that the private care employees are

appropriately included with the certified home care and hospice employees in the petitioned-for unit.

With regard to the inclusion of the spiritual counselor in the petitioned-for unit, the record is insufficient to make a determination. Accordingly, any persons holding the classification of spiritual counselor may vote in the petitioned-for unit, subject to challenge by any party.

The parties agree that the eligibility of the per diem employees herein shall be governed by the formula set forth in *Marquette General Hospital*, 218 NLRB 713 (1975). Accordingly, all per diem professional employees who have worked at least 120 hours within either of the two, three-month periods immediately preceding the issuance of this Decision and Direction of Election are eligible to vote.

For the above reasons, and based on the record as a whole, the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time, regular part-time, and per diem registered nurses and other professional employees including physical therapists, occupational therapists, and social workers employed by the Employer at and out of its facilities located in the Bay service area, but excluding office clericals employees, physicians, guards and supervisors, as defined in the Act, and all other employees.

Those eligible shall vote as set forth in the attached Direction of Election.⁸

Dated at Detroit, Michigan, this 3rd day of June 2003.

(SEAL)

/s/ Stephen M. Glasser
Stephen M. Glasser, Regional Director
National Labor Relations Board
Seventh Region
Patrick V. McNamara Building
477 Michigan Avenue-Room 300
Detroit, Michigan 48226-2569

⁸ The Petitioner requests a mail ballot election and the Employer opposes. This is an administrative matter and will be determined at the time election arrangements are made.

Classification Numbers:

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