

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

**INTEGRO, LLC**

Employer

and

**CASE 7-RD-3401**

**KRIS HEGEDUS, An Individual**

Petitioner

and

**LOCAL 2098, MICHIGAN COUNCIL 25,  
AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES  
(AFSCME), AFL-CIO<sup>1</sup>**

Union

APPEARANCES:<sup>2</sup>

Robert M. Grover, Esq. of Jackson, Michigan for the Employer.  
Kris Hegedus, of Jackson, Michigan, pro se.

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before 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 record in this proceeding,<sup>3</sup> the undersigned finds:

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<sup>1</sup> The name of the Union appears as set forth on the signature page of the current contract between the Employer and Union.

<sup>2</sup> While the Union was initially present, it did not remain for the hearing.

<sup>3</sup> The Employer and Petitioner waived the filing of briefs. The Union did not file a brief.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. 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.

## Overview

The Petitioner seeks a decertification election in a unit of approximately 17 full-time and regular part-time employees employed by the Employer at its facility located at 1200 Northwest Avenue, Suite 300, Jackson, Michigan. The Employer and Petitioner agree that the only issue is which employee classifications in the bargaining unit are professional employees for the purpose of conducting a *Sonotone*<sup>4</sup> election.<sup>5</sup> The Employer contends that its full-licensed psychologists, limited-licensed psychologists, registered nurses, registered occupational therapists, social workers, case managers, and registered dieticians are professional employees. It asserts that the remaining unit employees, receptionists, medical records clerks, billing clerks, and support staff employees are non-professional employees. The Petitioner took no position on this issue. I find that a *Sonotone* election is required. Further, I agree with the Employer's position on each employee classification.

## Operations

The Employer is a limited liability company formed in approximately 1996 or 1997. About that time, LifeWays, a community mental health board acting as a

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<sup>4</sup> *Sonotone Corp.*, 90 NLRB 1236 (1950).

<sup>5</sup> The parties present at the hearing stipulated, and I find, that there is no contract bar to the instant petition. The petition was filed on July 10, 2003. The then-existing agreement between the Employer and Union expired on September 30, 2003. The Region dismissed the petition on July 24, 2003, concluding the petition was untimely filed because it was not filed within the 90-120 day window period prior to the expiration date of the agreement required for contracts involving health care institutions. Subsequently on May 12, 2004, the Board reversed the Region's dismissal of the petition, finding that the petitioner, in filing outside the appropriate window period for health care institutions, had relied on erroneous advice from a Board agent. The Board reinstated the petition. Thus, the current agreement between the Employer and the Union effective from September 30, 2003 through October 1, 2004 is not a bar.

managed care organization for Jackson and Hillsdale counties, converted from providing mental health services to subcontracting those services. The Employer was formed in response to LifeWays' request for proposals. The Employer took over two of the operations previously performed by LifeWays: (1) outpatient mental health services for outpatient therapy, and (2) specialized outpatient residential services. The Employer performs these services out of its facility located in Jackson, Michigan. At its inception, the Employer hired former employees of LifeWays, and assumed LifeWays' obligations under its collective bargaining agreement with the Union. The Union had represented employees at LifeWays at least since 1983 or 1984.

The Employer's organizational structure is headed by Donna Marilyn Meadowcraft, chief executive officer and owner. Reporting to her is Tracy Sherman, executive director. Sherman is responsible for the day-to-day operations, and she and Meadowcraft supervise the bargaining unit employees. Janet Schutte is the Employer's administrative assistant and is not part of the bargaining unit.

### **Professional Employees**

The Employer employs 13 bargaining unit employees whom it considers to be professionals as defined in Section 2(12) of the Act. There are two full-licensed psychologists, Leonard Balunas, Ph.D, and Edward Oxer, Ph.D. Balunas and Oxer are part-time employees, working approximately 20 hours a week. Balunas primarily performs jail assessments of inmates for suicidal tendencies and to determine if they are mentally ill. On occasion, Balunas performs intake assessments and some outpatient therapy. Oxer performs intake assessments, ongoing therapy services, and crisis evaluations. The contract with the Union provides that employees are paid according to a pay grade assigned to their job classification. However, the full-licensed psychologists are paid at a negotiated rate which is above the highest pay grade of 9.

Carrie Dashner, Kris Hegedus and Linda Larkey are limited-licensed psychologists (LLPs). Diana Jennings is a limited-licensed chief behavioral psychologist. Dashner, Hegedus, and Larkey work part-time, while Jennings works full-time. Dashner, Hegedus and Larkey are classified at pay grade 8, while Jennings is classified at pay grade 9. LLPs perform outpatient services, such as intake assessments and ongoing therapy with clients. Jennings, in addition to her duties as an LLP, develops behavior treatment plans for both children and adults. LLPs are required to have a master's degree in either art or science, and are required to have fulfilled the requirements to be licensed by the State of Michigan as an LLP. This includes an internship under a licensed psychologist, a specified number of hours of supervision, and ongoing supervision by a full-licensed

psychologist. Balunas currently oversees the clinical work of the LLPs pursuant to the State of Michigan's licensure requirements.<sup>6</sup>

The Employer employs two full-timed registered nurses with associate degrees, Eugene Chapel and Carol Rier, at pay grade 6. RNs with bachelor's degree are classified at pay grade 8. However, the Employer does not currently employ any RNs with a bachelor's degree. One of the RNs is under contract with LifeWays' physician unit, which is comprised of MD specialists. That RN provides support services to the physicians approximately 18 hours a week. These support services include performing brief exams of patients, asking patients questions about compliance with medical issues, reviewing charts for current medications, consulting with the doctors, and reviewing prescriptions. Both RNs go into the homes of mental health consumers. They perform assessments and evaluations for nursing needs or monitor doctors' orders.

Barbara Ferguson is employed full-time as the Employer's registered occupational therapist (OTR). The OTR must be licensed by the State of Michigan. Generally, the educational requirements to become licensed as an OTR include the completion of a five-year master's program. Ferguson is responsible for performing occupational therapy services, such as establishing programs to aid individuals in developing working skills. This includes working with them regarding exercise patterns, and wheelchairs and wheelchair fittings. The OTR position is classified in pay grade 8.

Vicki Lewis and Mary Ann Rojek are master's degree social workers (MSWs) who work full-time providing clinical outpatient services. They perform intake assessment services, write treatment plans, maintain medical records, document progress notes for medical records, and perform discharge planning. Lewis and Rojek are classified at pay grade 7.

Tami Scott is a full-time case manager/bachelor's degree social worker. She provides more intensive services for patients than what is provided through outpatient therapy. Specifically, she sees patients outside the facility and helps them manage their day-to-day life problems. This includes accessing outside services for employment skills, accessing Medicare, and interacting with community services to help stabilize their life. Scott is the patient's primary therapist, and gathers together other people who should be a part of the patient's support team. She is not licensed by the State of Michigan, and, as such, does not

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<sup>6</sup> No party contends, and the record does not support a finding, that Balunas is a supervisor within the meaning of Section 2(11) of the Act.

provide individual psychotherapy. However, Scott is currently working to become a registered social worker.<sup>7</sup> Scott is classified at pay grade 5.

Finally, the Employer employs a full-time registered dietician, Jack Tallman, classified at pay grade 7. The registered dietician must be licensed by the State of Michigan. Tallman performs dietary assessments on patients. He establishes menus, and observes patients' ability to swallow and feed themselves. He determines whether patients need a specialized diet because of a health need, and whether they need to have a particular texture of food because of swallowing or dietary difficulties. The record does not establish the educational requirements for this position.

### **Non-Professional Employees**

The Employer employs four employees whom it considers to be non-professionals: a receptionist at pay grade 4, Brenda Bacon; a medical records clerk at pay grade 4, Susan Hardt; a billing clerk at pay grade 4, Cynthia Raymond; and a support staff employee at pay grade 2, Barbara Sexton. The record does not describe the specific job duties of the receptionist, medical records clerk, and the billing clerk. The support staff employee performs filing, maintains medical records, fills in for some receptionist duties, and acts primarily as a support staff to certain segments of the professional staff. The receptionist, medical records clerk, billing clerk, and support staff employee are not required to have professional degrees. The educational requirement for these positions is a high school diploma or its equivalent.

### **Analysis**

#### **Appropriate Unit**

The existing unit consists of a mix of professional and non-professional employees. In decertification elections, the voting unit generally must be coextensive with the certified or recognized unit. *Corporacion de Servicios Legales de Puerto Rico*, 289 NLRB 612, 613 (1988). However, the professional employees have never had an opportunity to vote in a self-determination election as authorized by Section 9(b)(1) of the Act. In those circumstances, the Board has held that an exception to the general rule is warranted, and professionals are entitled to vote separately on continued representation, and it is not necessary that the election be conducted in the existing, all-inclusive unit. *Utah Power & Light Co.*, 258 NLRB 1059 (1981). While *Utah Power* involved a decertification

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<sup>7</sup>The State of Michigan requires that Scott work under a registered social worker to obtain her license. Lewis oversees Scott in this respect. No party contends, and the record does not support a finding, that Lewis is a supervisor within the meaning of Section 2(11) of the Act.

petition for only the professional employees of a mixed unit, its principle applies to a decertification election for the entire unit. Thus, a *Sonotone* election is required.

### **Professional Employees**

Section 2(12)(a) of the Act defines professional employees as those who meet four conjunctive criteria: employees must be engaged in work that is: (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 from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

The Board has long held that a professional employee is defined in terms of the work performed, not in terms of individual qualifications. *Western Electric Co.*, 126 NLRB 1346, 1348 (1960); *Avco Corp.*, 313 NLRB 1357 (1994). Thus, if an employee performs work of a predominantly intellectual and varied character involving the consistent exercise of discretion and judgment, and 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, then that employee qualifies as a professional. *Id.* In addition, although educational background does not control, the Board looks to educational background “for the purpose of deciding whether the work of the group satisfies the 'knowledge of an advanced type requirement of Section 2(12)(a).’” If a group consists primarily of employees with professional degrees, the Board may presume that the work requires “knowledge of an advanced type.” Conversely, if few in the group possess the appropriate degree, it follows that the work does not require the utilization of advanced knowledge. *Id.*, quoting *Westin Electric*; supra.

The psychologists employed by the Employer exercise their professional judgment to assess patients and determine if they are suicidal or mentally ill. They perform intake assessments, provide ongoing therapy services, and develop treatment plans. The full-licensed psychologists have Ph.D.s, while the LLPs have master’s degrees. All psychologists are required to be licensed by the State of Michigan and exercise independent judgment in the performance of their work. Based on these factors and the advanced knowledge required, I conclude that full-time and limited-licensed psychologists are professional employees. See *Mental*

*Health Center of Boulder County, Inc.*, 222 NLRB 901, 902-903 (1976);  
*Malcom X Center for Mental Health, Inc.*, 222 NLRB 944, 945-946 (1976).

The Board has traditionally held that registered nurses are professional employees. *Centralia Convalescent Center*, 295 NLRB 42 (1989), citing *Mercy Hospitals of Sacramento*, 217 NLRB 765 (1975). The Employer's registered nurses hold associate nursing degrees and are required to be licensed by the State of Michigan. The RNs perform patient evaluations, evaluate patient compliance with medical issues and doctor's orders, review charts for current medications, consult with doctors, and review prescriptions. I find, based on established Board law and work performed, that the registered nurses are professional employees within the meaning of the Act.

The Board has also held that occupational therapists are professional employees. *Sutter Community Hospitals of Sacramento*, 227 NLRB 181, 187 (1976); *The Mason Clinic*, 221 NLRB 374, 375-376 (1975). The occupational therapists in *Sutter Community Hospitals* were responsible for planning treatment goals with a therapeutic team, administering and evaluating individual or group treatments of assigned patients, and determining appropriate activities as indicated by the patient needs. The occupational therapists were required to "possess a thorough knowledge of the theory and practice of mental and physical rehabilitation of mentally and physically handicapped persons; normal development and learning theory; and therapeutic techniques, including prevocational exploration, perceptual-motor evaluation and treatment, arts and crafts, and self-care activities, in addition to possessing the skills required in the application of such techniques." *Id.* They were also required to hold a bachelor's degree in occupational therapy and be registered with the National Registry of the American Occupational Therapy Association or eligible for such registration. Similarly, the occupational therapists employed by the Employer establish programs to aid patients in developing working skills, are required to hold a master's degree in occupational therapy, and must be licensed by the State of Michigan. I find that the work performed by the registered occupational therapist is not routine and requires the use of independent judgment and advanced knowledge. Thus, she is a professional employee.

In *Catholic Bishop of Chicago*, 235 NLRB 776 (1978), the Board held that three social workers who held bachelor's of social work degrees were professional employees within the meaning of the Act. The social workers provided some counseling services, prepared case reports, were qualified to provide therapeutic treatment, and had social work experience under qualified supervision. Similarly, here, the master's degree social workers perform intake services, write treatment plans, maintain medical records, document progress notes for medical records, and perform discharge planning. The case manager/bachelor's degree social worker

meets with patients and helps them manage their problems and stabilize their life. The case manager does not provide individual psychotherapy, but works under the supervision of a registered social worker. I find that the work performed by the social workers and case manager is not routine and requires the use of independent judgment and advanced knowledge. In addition, the social workers all have advanced degrees in their field, and the master's degree social workers are licensed by the State of Michigan. The case manager is not licensed as are the remaining professional employees, but nonetheless she works under the supervision of a licensed social worker. Accordingly, they are professional employees. *Mental Health Center of Boulder County, Inc.*, supra; *Malcom X Center for Mental Health, Inc.*, supra; *Child and Family Services of Springfield, Inc.*, 220 NLRB 37, 38-39 (1975).

Finally, the Board has consistently found dieticians to be professional employees. *The Mason Clinic*, supra at 376; *San Jose Hospital & Health Center, Inc.*, 228 NLRB 21 (1977); *Kaiser Foundation Hospitals*, 219 NLRB 325 (1975). The dietician exercises independent judgment by assessing patients, establishing menus, observing the patients' ability to swallow and feed themselves, and determining whether a patient needs a specialized diet because of a health need or need to have a particular texture of food because of swallowing or dietary difficulties. The dietician is required to be licensed by the State of Michigan, which licensure requires some form of higher, specialized education. I find that the work performed by the registered dietician is not routine and requires the use of independent judgment and advanced knowledge. Thus, the dietician is a professional employee. See *The Mason Clinic*, supra.

### **Non-Professional Employees**

Contrary to the professional employees, the receptionist, medical records clerk, billing clerk, and support staff employee are not required to hold an advanced degree. Rather, they must only have a high school diploma or its equivalent. Further, their work does not require the utilization of advanced knowledge. Based on Board law and the evidence in the record, I conclude that the receptionist, medical records clerk, billing clerk, and support staff employee are not professional employees.

5. In view of the foregoing, I find that the following employees may constitute a unit appropriate for 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 employed by the Employer at its facility located at 1200 Northwest Avenue, Suite 300,

Jackson, Michigan; but excluding all temporary employees, casual employees, contract employees, confidential employees, and guards and supervisors as defined in the Act.

The unit set out above includes professional and non-professional employees. However, the Board is prohibited by Section 9(b)(1) of the Act from including professional employees in a unit with non-professional employees unless a majority of the professional employees vote for inclusion in such a unit. Accordingly, the desires of the professionals must be ascertained as to inclusion in a unit with non-professional employees.

I shall, therefore, direct separate elections in the following voting groups:

**Voting Group A:**

All full-time and regular part-time non-professional employees, including receptionists, medical records clerks, billing clerks, and support staff employees, employed by the Employer at its facility located at 1200 Northwest Avenue, Suite 300, Jackson, Michigan; but excluding all professional employees, temporary employees, casual employees, contract employees, confidential employees, and guards and supervisors as defined in the Act.

**Voting Group B:**

All full-time and regular part-time professional employees, including full-licensed psychologists, limited-licensed chief behavioral psychologists, limited-licensed psychologists (LLPs), registered nurses (RNs), registered occupational therapists (OTR), master's degree social workers (MSWs), case manager/bachelor's degree social workers, and registered dietitians, employed by the Employer at its facility located at 1200 Northwest Avenue, Suite 300, Jackson, Michigan; but excluding all non-professional employees, temporary employees, casual employees, contract employees, confidential employees, and guards and supervisors as defined in the Act.

The employees in the non-professional voting group (A) will be polled to determine whether they wish to be represented by the Union. The employees in the professional voting group (B) will be asked the following two questions on their ballot:

(1) Do you desire to be included with non-professional employees in a single unit for the purposes of collective bargaining?

(2) Do you desire to be represented for the purposes of collective bargaining by Local 2098, Michigan Council 25, American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO?

If a majority of the professional employees in voting group (B) vote “Yes” to the first question, indicating their wish to be included in a unit with non-professional employees, they will be so included. Their votes on the second question will then be counted together with the votes of the non-professional voting group (A) to determine whether the employees in the overall unit wish to be represented by the Union. If, on the other hand, a majority of professional employees in voting group (B) vote against inclusion, they will not be included with the non-professional employees. Their votes on the second question will then be separately counted to determine whether they wish to be represented by the Union in a separate unit.

Thus, the unit determination is based, in part, upon the results of the election among the professional employees. However, I make the following findings in regard to the appropriate unit:

If a majority of the professional employees vote for inclusion in the unit with non-professional employees, I find the following will constitute a unit appropriate for the purpose 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 employed by the Employer at its facility located at 1200 Northwest Avenue, Suite 300, Jackson, Michigan; but excluding all temporary employees, casual employees, contract employees, confidential employees, and guards and supervisors as defined in the Act.

If a majority of the professional employees do not vote for inclusion in the unit with non-professional employees, I find the following two groups of employees will constitute separate 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 non-professional employees, including receptionists, medical records clerks, billing clerks, and support staff employees, employed by the Employer at its facility located at 1200 Northwest Avenue, Suite 300, Jackson, Michigan; but excluding all professional employees, temporary employees, casual employees, contract employees, confidential employees, and guards and supervisors as defined in the Act.<sup>8</sup>

**Unit B:**

All full-time and regular part-time professional employees, including full-licensed psychologists, limited-licensed chief behavioral psychologists, limited-licensed psychologists (LLPs), registered nurses (RNs), registered occupational therapists (OTR), master's degree social workers (MSWs), case manager/bachelor's degree social workers, and registered dieticians, employed by the Employer at its facility located at 1200 Northwest Avenue, Suite 300, Jackson, Michigan; but excluding all non-professional employees, temporary employees, casual employees, contract employees, confidential employees, and guards and supervisors as defined in the Act.<sup>9</sup>

Those eligible shall vote whether they wish to be represented for the purposes of collective bargaining by Local 2098, Michigan Council 25, American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO.

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

Dated at Detroit, Michigan, this 29<sup>th</sup> day of June 2004.

\_\_\_\_\_/s/[Stephen M. Glasser].” \_\_\_\_\_  
Stephen M. Glasser  
Regional Director, Region Seven  
National Labor Relations Board  
Patrick V. McNamara Federal Building  
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<sup>8</sup>Wage schedule, Attachment D, of the contract between Employer and Union lists positions that the Employer asserts were carried over from LifeWays and no longer exist. These positions are mental health techs, maintenance engineers, job technicians, resident crisis technicians, social work monitors, certified occupational therapists (COTAs), licensed practical nurses (LPNs), clinical specialists, licensers, and temporary-licensed psychologists. However, as these classifications are listed in the contract and there is no stipulation to exclude them from the appropriate unit(s), if there are any employees in these classifications, they may vote subject to challenge by any party.

<sup>9</sup> See footnote 8.