UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

PACIFIC CLINICS

Employer

and Case 21-RC-20860

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL NO. 660[1]

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, hereinafter referred to as the 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[2] in this proceeding, the undersigned makes the following findings and conclusions.[3]

I. SUMMARY

The Employer, Pacific Clinics, is a California nonprofit corporation engaged in the provision of community-based programs and services to people at risk and those with severe psychiatric disabilities. The Employer's principal offices are located in

[1] The Petitioner's name appears as amended at the hearing.
[2] The Employer and Petitioner timely filed briefs, which were duly considered.
[3] The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 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. The labor organization involved claims to represent certain employees of the Employer and 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.

Arcadia (in Los Angeles County), California, and it has facilities and operations at numerous locations in Los Angeles, Orange, Ventura, San Bernardino and Riverside counties. The Petitioner filed the instant petition seeking to represent all professional and nonprofessional employees at the Employer's Los Angeles County facilities, excluding all business office clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.[4] At hearing, the parties stipulated to the inclusion and exclusion of a number of different classifications in separate professional and nonprofessional voting groups.

As for the issues in dispute,[5] the Employer contends that in addition to the petitioned-for employees, the unit must also include professional and non-professional employees at its facilities in the neighboring counties of Orange, Ventura, San Bernardino and Riverside. In addition, the Employer contends that psychology interns should be included in the professional voting group and that quality assurance assistants, quality assurance specialists and per-diem therapeutic behavioral services (TBS) workers should be included in the nonprofessional voting group. Finally, while the Petitioner asserts that data entry clerks, data entry specialists, reconciliation clerks and revenue specialists should be included in the nonprofessional voting group, the Employer

[4] The parties agreed at hearing that the appropriate unit would consist of professional and nonprofessional voting groups.

[5] The classification of transportation attendants was initially in dispute at hearing, but the undisputed record evidence discloses that the Employer no longer employs any such employees.

contends that these classifications should be excluded as business office clerical employees.[6]

Based on the record as a whole and the parties' briefs, I find the petitioned-for multi-facility unit is inappropriate and conclude that an appropriate multi-facility unit must include voting groups of professional and nonprofessional employees working for the Employer in Los Angeles, Orange, Ventura, San Bernardino and Riverside counties. In addition, I find that the data entry clerks, data entry specialists, reconciliation clerks, revenue specialists, quality assurance assistants, quality assurance specialists, and per-diem TBS workers share community of interest sufficient to require their inclusion in the unit's nonprofessional voting group. Finally, I conclude that the psychology interns do not share a sufficient community of interest with the unit employees and shall exclude them from the unit.

Below, I have set forth the record evidence concerning the Employer's operations and, more specifically, the evidence concerning the factors the Board considers when determining unit appropriateness for the issues in dispute. Following the presentation of the evidence for each issue in dispute, I have applied the Board's legal standards to the evidence. The decision concludes with a direction of election and the procedures for requesting review of this decision.

[6] At the hearing, the Employer stated there are approximately 193 professional employees and 365 nonprofessional employees in Los Angeles County. The Employer stated that there are 16 professional employees and 43 nonprofessional employees in the other counties. Among the classifications in dispute, the Employer estimated that there are 10 psychology interns, one quality assurance assistant, four quality assurance specialists, 25-28 TBS per-diem employees, eight data entry clerks, two data entry specialists, three reconciliation clerks and eight revenue specialists.

II. RECORD EVIDENCE

A. The Employer's Operations

The Employer provides a wide array of mental health and preventive behavioral services at its various facilities in Los Angeles, Orange, Ventura, San Bernardino and Riverside counties, as well as at client homes, schools and other community locations. The Employer also provides field-based services at client homes, schools and other community locations. Most of the Employer's clients are referred from county agencies. Some of the Employer's programs, such as the Asian Pacific Family Center, are targeted towards a particular culture or language. Other services, like after-school programs designed to address behavioral issues and to diagnose potentially serious mental illnesses, are directed at specific age groups. The Employer's various programs are funded primarily by its contracts with the counties where the programs are provided, but a small portion of its funding comes from other sources.

B. Scope of the Multi-facility Unit - Los Angeles County or Los Angeles, Orange, Ventura, San Bernardino and Riverside Counties

The petitioned-for unit seeks only those professional and nonprofessional employees at the Employer's Los Angeles County facilities. The Employer asserts that the appropriate unit must include the professional and nonprofessional employees working at and out of its facilities in Los Angeles, Orange, Ventura, San Bernardino and Riverside counties.

In deciding whether a multi-facility unit is appropriate, the Board analyzes the following factors: centralized control of management and supervision; terms and conditions of employment; employee skills and duties; functional integration; employee

interchange; geographic proximity; and bargaining history. See, e.g., Stormont-Vail Healthcare, 340 NLRB 1205, 1207 (2003).

Centralized control of management and supervision

The Employer's Board of Directors oversees all operations in all five counties where the Employer provides services. The Employer has six divisions that are organized by geography or program. The Employer's West Valley, East Valley, Asian Pacific Services and Children's divisions are in Los Angeles County. The Northeast Valley division includes programs in Los Angeles County, as well as those in San Bernardino and Riverside counties. The other two divisions are the Orange and Ventura county divisions. These divisions are headed by divisional directors, who report to the Employer's president/chief executive officer, Susan Mandel.[7] The divisional directors oversee the various programs in their divisions,[8] which are typically supervised by program directors.

There are approximately 36 facilities in Los Angeles County, four in Orange County, two in Ventura County, five in San Bernardino County and one in Riverside County. While there are many job classifications in Los Angeles County that do not exist in the other counties, there are no programs or job classifications in Orange, Ventura, San Bernardino or Riverside counties that do not also exist in Los Angeles County.

The corporate director of human resources, Tiffany Tsuchiyama, oversees the human resource functions in all five counties and must approve decisions to hire, fire,

[7] The Employer's president/chief executive officer has the ultimate authority to terminate a program in any county.

[8] Peter Lopez, Divisional Director of the Northeast Valley Division, is the only divisional director with authority over employees in different counties.

suspend or issue written discipline to employees. Before an employee in any county can be terminated, it must be reviewed and approved by human resources. Three human resources generalists work under the corporate director of human resources and are assigned divisions across county lines. The human resources generalists visit facilities in their areas of responsibility twice per month to handle human resource issues for employees. Employees must speak with the Employer's sole employee relations specialist if they have benefits questions.

The number of employees in the various classifications in all five counties is determined at the corporate offices in Arcadia. Open job positions for all five counties are posted on a website and responses are directed to human resources. New hires go to human resources in Arcadia to complete documentation such as W-4 and I-9 forms. Within about one month after employees are hired, irrespective of the county where they will work, they must attend an orientation program at an Employer facility in Pasadena (Los Angeles County). Personnel files for employees in all five counties are maintained in Arcadia and employees must go to the Arcadia offices if they wish to review their personnel files.

Employees are generally paid out of funds from contracts with counties that are specific to their respective programs, but they are governed by the same Employer-wide pay scale regardless of the county.

Terms and conditions of employment

All employees are governed by the same policies and there are no personnel policies or procedures in effect that do not apply to employees in all five

counties.[9] Employees in all five counties have the same medical requirements and employees in all five counties who work with children must get fingerprint clearances.

Access to training run by the Employer's Pacific Clinics Institute in Pasadena is not limited by county. Employees in all counties may also attend various conferences held in the different counties.

Employees in all five counties record their time on the same computer-based timekeeping system and payroll for employees in all five counties is processed through the corporate offices in Arcadia. Paychecks are generated by a payroll service provider and then distributed from the corporate offices to employees in all five counties.

The same benefits structure and salary ranges apply to employees in all five counties.[10] Employee wages come from the county where they are budgeted. If funding for a particular program is cut by a county, the Employer would have to close that program. Benjamin Uminsky, a researcher with the Petitioner's Organizing Division, testified about slight disparities in the wages detailed in contracts between the Employer and various counties, but also testified that he did not know if any of the rates contained therein were current or if they were the actual rates paid to employees.

The counties with whom the Employer contracts do not set the pay rates or benefits structure for the Employer. Wage rates in the contracts may be different than those actually being paid, depending on the qualifications of the employees ultimately hired for the positions. The contracts have maximum amounts but do not take into account employee raises or the hiring of new employees to replace departing employees. Employee raises may come from contractual provisions for other operating expenses, as

[9] The Board of Directors has to approve any substantial change in the employee handbook.
[10] The Board of Directors determines the amount of performance raises, which are applicable in all five counties.

well as indirect funding sources. The $3,000 bonuses the Employer grants mental health therapists when they become licensed are not prohibited by the county contracts.

Employee skills, duties and functional integration

Other than the paperwork completed by mental health therapists and mental health workers in Los Angeles County,[11] the record does not disclose differences in employee skills, duties or functions according to the counties where they work.

Mental health therapists and mental health workers in Los Angeles County complete certain forms in connection with their cases that are designed and developed by Los Angeles County. This paperwork includes intake assessments for new clients, service or coordination plans every six months, and annual assessments. Some of these forms are filled out only by mental health therapists.

According to Mental Health Therapist Gohar Gyurjyan, mental health therapists in all the counties gather the same sort of information as that sought in the Los Angeles County paperwork. Gyurjyan estimated that she spends about 25 percent of her work time completing paperwork, while Christopher Amenson, the faculty chair of the Employer's Pacific Clinics Institute, estimated that professionals spend about 10-15 percent of their time on paperwork.

While the Employer generally uses Los Angeles County forms in its initial employee training, employees in other counties may receive additional training at their respective sites. When professionals transfer to a new program, either within the same county or to a different county, they must learn about the agencies in the area. They must also learn about the paperwork to be completed in a different county.

[11] Mental health therapists are among the included professional employees and mental health workers are among the included nonprofessional employees.

In addition, transportation functions for all five counties are centralized in Pasadena and drivers deliver the Employer's internal mail in Los Angeles, Orange and San Bernardino counties.[12] Finally, as discussed more fully below, the Employer's data entry and quality assurance employees provide services for facilities in all five counties.

Employee interchange

Corporate Director of Human Resources Tsuchiyama testified about a few transfers into and out of Los Angeles County among employees in the petitioned-for unit. In addition, the Employer provided a summary documenting the transfers of 18 different unit employees between January 2001 and August 2005, in positions such as mental health workers, mental health therapists and clerks. No documentary evidence was presented regarding transfers within Los Angeles County. Two of the three Ventura County employees transferred from Los Angeles County within about six-months of the hearing in the instant matter.[13] There is no change in employees' benefits or seniority when they transfer.

Mental Health Therapist Gohar Gyurjyan has not worked with mental health therapists or mental health workers from other counties at her location. Gyurjyan was not aware of anyone transferring to her site from another county but did see within county transfers when she worked as an intern from September 2003 to September 2004. Mental Health Worker Bert Newton estimated that 25-30 percent of the employees in his particular program came from facilities within Los Angeles County.

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[12] Internal mail for Ventura and Riverside counties is usually delivered by management staff or the Postal Service.

[13] The Employer's Ventura County operations opened in about August or September 2005.

Geographic proximity

The record discloses a wide range in the distances between Employer facilities within Los Angeles County, as well as in the distances between facilities in Los Angles County and the bordering counties of San Bernardino, Orange, Ventura, and Riverside. In this regard, the record discloses facilities in Los Angeles County located as far as 35 miles apart, and distances between Los Angeles County facilities and San Bernardino, Orange, Ventura and Riverside county facilities of approximately 10, 18, 30 and 84 miles apart, respectively.

Bargaining history

There is no evidence of any collective bargaining history concerning the petitioned-for employees or the employees at the facility locations in dispute.

Discussion

In The Boeing Company, 337 NLRB 152 (2001), the Board articulated its policy for determining appropriate units:

> The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry in the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. Overnite Transportation Co., 331 NLRB 662, 663 (2000); NLRB v. Lake County Assn. for the Retarded, 128 F.3d 1181, 1185 fn. 2 (7th Cir. 1997). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. State Farm Mutual Automobile Insurance Co., 163 NLRB 677 (1967).

In Stormont-Vail, above, the Board found the multi-facility unit sought by the petitioner inappropriate in the absence of a distinct community of interest among the employees in that unit and concluded, after evaluating the factors set forth above, that the multi-facility unit must also include the employees at the employer's other facilities.

Similarly, here, I find, contrary to the Petitioner's contention, that a multi-facility unit limited to Los Angeles County is inappropriate. In this regard, applying the factors discussed in Stormont-Vail, above, I fail to find that the Los Angeles County employees share a distinct community of interest and conclude that the appropriate multi-facility unit's voting groups must also include the other professional and nonprofessional employees working at and out of the Employer's facilities in Orange, San Bernardino, Ventura and Riverside counties.

Specifically, I note the highly centralized management, particularly with regard to human resource functions, staffing decisions and employee discipline, as well as the uniform terms and conditions of employment across county lines. While there may be some variation in wages depending on the county with whom the Employer has contracted, such variation appears to be within the same general wage range for the classifications and is not so significant to establish a distinct community of interest among the Los Angeles County employees.

I also find the evidence concerning the type of paperwork completed by mental health therapists and mental health workers insufficient to establish a distinct community of interest among the Los Angeles County employees. In this regard, it does not appear that that this distinction, however slight, applies to employees in the numerous other included classifications. Moreover, it is undisputed that the same type of information is gathered by employees in the other counties. Thus, there do not appear to be any significant differences in employee skills, duties or working conditions according to the counties in which they work.

Further, given the wide range in distances between facilities both within Los Angeles County and between Los Angeles County and the other counties, I cannot conclude that geographic proximity weighs in favor of a distinct community of interest for the Los Angeles County employees. In addition, while inter-county employee interchange is not substantial, there is no change in employee benefits or seniority when they transfer to another county.

Accordingly, I conclude that the evidence fails to establish a distinct community of interests among the Employer's Los Angeles County employees and that the appropriate multi-facility unit must include the employees working at and out of the Employer's facilities in Los Angeles, Orange, Ventura, San Bernardino and Riverside counties.

C. Data Entry Clerks, Data Entry Specialists, Reconciliation Clerks and Revenue Specialists

While the Petitioner contends that the data entry clerks, data entry specialists, reconciliation clerks and revenue specialists are nonprofessional employees who share a strong community of interests with employees in the petitioned-for unit, the Employer asserts that these employees should be excluded because they are business office clerical employees who do not share such a community of interests.

The data entry clerks and data entry specialists[14] use the clinical staff's progress notes, provided by team leaders,[15] to enter billing information into the Employer's computer database. These employees input client information from the notes provided, as well as the time, date of service and code for the type of service provided. In order to ensure the accuracy of the information they input into the computer, data entry

[14] It is undisputed that data entry clerks and data entry specialists perform the same functions.
[15] The parties stipulated to exclude team leaders because they are supervisors.

clerks and data entry specialists must review the notes before they enter information into the system. If there are errors, data entry clerks and data entry specialists identify what is wrong on a "Missing Information Sheet" and return the record to the team leader. When corrected by the clinical staff, the information is returned to the data entry clerk. Data entry employees also update client billing changes to ensure that the correct funding source is billed, and communicate these changes to the revenue specialists, their data entry manager and the affected sites.

Revenue specialists and reconciliation clerks[16] reconcile the billing information that is entered by data entry employees on a monthly basis. Revenue specialists and reconciliation clerks also make changes in the computer if a client's funding source has changed and help complete "critical error reports" when there is a problem with service codes or staff identification.

Revenue specialists and reconciliation clerks are located where data entry clerks and data entry specialists are located. The approximately 10 data entry clerks and data entry specialists work at about seven different facilities in Los Angeles, San Bernardino and Orange Counties. The approximately 11 reconciliation clerks and revenue specialists are located at about five different facilities in Los Angeles Orange counties.[17] These employees do not work at facilities where there are not also clinical programs. Within the facilities, the data entry clerks, data entry specialist, reconciliation clerks and revenue specialists are usually located in separate areas from the clinical staff, but they share common break and/or lunch rooms and may interact with other employees

[16] It is also undisputed that revenue clerks and revenue specialists perform the same functions.
[17] If there are no data entry clerks at a particular location, the information is batched out and delivered to a centralized site where there are data entry clerks.

in the agreed-upon included classifications (such as mental health workers, mental health therapists, clerks and drivers).[18]

While some of the data entry clerks, data entry specialists, reconciliation clerks and revenue specialists are supervised by a regional revenue director or the data entry manager, the record discloses that other such employees are immediately supervised by program directors who are also responsible for other unit employees. Regional Revenue Director Cecilia Duran supervises data entry clerks/data entry specialists and revenue specialists. Data entry clerks are revenue specialists in the Northeast Valley Division and are supervised by the data entry manager. Neither Duran nor the data entry manager (who is currently on maternity leave) supervise other staff. Data entry clerks at the Children's Division in Pasadena (Los Angeles County) are supervised by Regional Revenue Director Alice Liu. Liu does not supervise other employees at that location, but co-supervises the data entry clerk at another facility in Los Angeles County, along with the program director at that location.

Data entry clerks at the San Bernardino locations, as well as other unit employees at these facilities, are supervised by the program directors for those locations. The two data entry clerks at the El Camino facility (Los Angeles County) are supervised by a program director who also supervises the revenue specialist, medical records clerk, front office clerks and office supervisor at that location.

Data entry clerks, data entry specialists, reconciliation clerks and revenue specialists are subject to the same terms and conditions of employment, personnel policies and procedures and benefits structure as the other employees in the agreed-upon

[18] Data entry clerks at one facility in Los Angeles are located in a trailer but may use the building facilities at that location. The data entry clerk at the Ontario facility in San Bernardino works in a cubicle alongside other employees.

included classifications. Data entry clerks and data entry specialists are paid in the Employer's non-exempt II or III range. Reconciliation clerks are paid in the non-exempt II, III or IV range, depending on experience.[19] Agreed-upon included classifications in the non-exempt II and III range include medical records clerks, purchasing clerks, drivers and receptionists. Agreed-upon included classifications in the non-exempt IV range include program secretaries, purchasing coordinators and institute secretaries.

Data entry clerks, data entry specialists, reconciliation clerks and revenue specialists do not handle information regarding payroll, employee raises, or management strategy.

Discussion

The Board's primary means of evaluating the appropriateness of a unit is determining whether the proposed unit shares a community of interest. The Board examines several factors to determine whether the proposed unit shares a community of interest, including: functional integration; frequency of contact with other employees; interchange with other employees; degree of skill and common functions; commonality of wages, hours, and other working conditions; and shared supervision. Publix Supermarkets, Inc., 343 NLRB No. 109 (2004).

The Board has distinguished business office clerical employees from other office clericals. In the Healthcare Rulemaking, 284 NLRB 1528, 1562 (1988), the Board found that business office clericals are primarily responsible for financial and billing functions, are generally required to have more education, training and a higher level of

[19] The staring rate for non-exempt II employees is $10 per hour. The starting rate for non-exempt III and IV employees is $11 per hour.

skills than non-professional service and maintenance employees, receive higher wages than other service and maintenance employees, and have separate supervision.

Contrary to the Employer's contention, I fail to find these employees to be business office clericals and conclude that they share a community of interests with the other employees sufficient to require their inclusion in the unit's nonprofessional voting group.

The Employer contends that the data entry employees at issue herein are similar to the data entry employees the Board found to be business office clericals in Rhode Island Hospital, 313 NLRB 343, 359-361 (1993). However, unlike the data entry employees in Rhode Island Hospital, the data entry employees herein are not centralized in a single, isolated department but work at numerous facilities where clinical programs are also located. Further, while the Employer's data entry employees are usually located in areas separate from clinical staff at these facilities, they may still interact with the other employees present and share common break and/or lunch rooms. In addition, the data entry employees herein input information from the clinical staff's notes and interact with those employees, albeit primarily in writing, when they find errors or have questions about the notes.

While some data entry employees are separately supervised, many others share supervision with employees in other included classifications. Data entry clerks, data entry specialists, reconciliation clerks and revenue specialists are paid in the same range as other employees in the agreed-upon included classifications and, in some cases, share the same supervision. The record also discloses that the work of data entry clerks, data entry specialists, reconciliation clerks and revenue specialists is functionally

integrated. If there are no data entry clerks at a particular facility, the information is batched out and sent to facilities where data entry clerks are located. Finally, there is no evidence that these employees perform any telephone, mail or payroll duties and the billing functions these employees do perform appear to be indirect inasmuch as they merely enter data from the clinical staff's notes into the computer system.

Accordingly, I conclude that the data entry clerks, data entry specialists, reconciliation clerks and revenue specialists are not business office clericals and that they share a community of interest sufficient to require their inclusion in the unit's nonprofessional voting group.

D. <u>Quality Assurance Assistants and Quality Assurance Specialists</u>

The Employer asserts that the quality assurance assistants and the quality assurance specialists share a sufficient community of interests with the unit employees to warrant their inclusion in the nonprofessional voting group. At hearing, the Petitioner took the position that these employees should be excluded from the unit.[20]

Corporate Director of Quality Improvement and Compliance George Holbrook manages the staff of three quality assurance specialists and two quality assurance assistants.[21] One quality assurance specialist works in Pasadena and two work in Irwindale,[22] along with the two quality assurance assistants.[23] The quality assurance specialists and quality assurance assistants provide quality assurance functions for the Employer's facilities in all five counties.

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[20] The Petitioner did not discuss this issue in its brief.
[21] At hearing, the Employer estimated that there were four quality assurance specialists and one quality assurance assistant.
[22] The Pasadena and Irwindale facilities are in Los Angeles County.
[23] Other employees who provide client services go to the Irwindale office, but see their clients in the field.

Quality assurance specialists train the clinical staff on charting paperwork and review clinical records to ensure they meet the standards of their funding sources (such as the various counties that also dictate the information that goes into those records). Quality assurance specialists train the clinical staff in person on an almost weekly basis. This training is done in Irwindale, Pasadena and Covina, but can also be done at other locations upon request. In that case, the quality assurance specialist travels to the requested location. The clinical records reviews are performed on an ongoing basis and quality assurance specialists go to facilities in all five counties to conduct these reviews.

Quality assurance specialists review all charts, including those of the mental health workers. They do not report errors directly to the workers but to Corporate Director of Quality Improvement and Compliance George Holbrook, who, in turn, reports the errors to the appropriate program directors. Quality assurance specialists use a "chart review tool" to review clinical records and ensure that they are properly filled out. There is a different such tool for each county

As for quality assurance assistants, one performs revenue review functions by comparing the billing in the charts to what is in the computer system. The other quality assurance assistant prepares training materials and helps coordinate external audits where charts have to be moved from one location to another.

There are no educational or licensing requirements for quality assurance assistants or quality assurance specialists.

Quality assurance assistants are paid in the non-exempt IV range, which has a starting rate of about $11 per hour, in the same range as other agreed-upon included

classification such as program secretaries, purchasing coordinators and institute secretaries.

Discussion

The Board routinely includes quality control employees when a community of interests with the other employees has been established. See, e.g., Keller Crescent Co., 326 NLRB 1158 (1998); Blue Grass Industries, 287 NLRB 274 (1987).

I find that the quality assurance specialists and quality assurance assistants share a community of interest sufficient to require their inclusion in the unit's nonprofessional voting group. In this regard, I note their similar wages and working conditions, functional integration and frequency of contact with other employees. While separately supervised, these employees provide quality assurance functions for all five counties, and have regular contact with the clinical staff they train on an ongoing basis. They are paid in the same hourly range and subject to the same personnel policies and procedures as other unit employees.

Accordingly, I find that the quality assurance specialists and quality assurance assistants share a community of interests with the other employees and will include them in the unit's nonprofessional voting group.

E. Per-Diem TBS Workers

Contrary to the Employer, the Petitioner contends that the per-diem therapeutic behavioral services (TBS) workers should be excluded from the unit because they do not share a sufficient community of interests with the other full-time and regular part-time employees.

The TBS workers are employed in Los Angeles and Riverside counties. Of the approximately 23 TBS workers in Los Angeles County, three are full-time employees and 20 are per-diem employees. Of the seven TBS workers in Riverside County, two are part-time employees (who work about 28 hours per week) and five are per-diem employees.[24] There is no difference in terms of the actual work performed by regular TBS workers and per-diem TBS workers. Rather, the difference is found in their availability to work. The TBS employees in Los Angeles County work out of the Covina office and the TBS employees in Riverside County work out of the Palm Springs office. Northeast Valley Divisional Director Peter Lopez, who supervises the TBS program, estimated that TBS employees spend about 15 percent of their work time in the office. The bulk of TBS workers' time is spent providing services in the community. In this regard, TBS workers "shadow" clients, usually children, and intervene when they start to engage in behavior that puts them at risk of losing their placement. There are no differences in the qualifications for per-diem and regular TBS workers and their training is identical. Regular TBS workers and per-diem TBS workers have the same productivity (billable time) requirement.

TBS workers are scheduled by the clients' needs and availability. Per-diem TBS workers advise the Employer of their availability and their hours are scheduled accordingly. Regular TBS workers have regular, set schedules of 9:00 a.m. to 5:00 p.m.

TBS workers, both regular and per-diem, are immediately supervised by team leaders. The team leaders, in turn, report to program directors. Regular and per-diem TBS workers are hired by the team leaders. There are three supervisors for the 23 TBS workers in Los Angeles County, each of which handles a team of about eight TBS

[24] Estimates on the number of per-diem TBS workers varied from 25 to 28.

workers. Each supervisor has one full-time TBS workers and the rest of the team members are per-diem.[25]

The per-diem TBS workers do not get the same benefits that regular employees get, but are paid 20% more to compensate for that. Per-diem TBS workers do not receive medical or dental insurance, retirement, long-term disability, long-term care, life insurance, vacation, sick days or holiday pay. Per-diem TBS workers are, however, eligible for employee referral bonuses, membership in the Employer's credit union, recreational discounts, leaves of absence and worker's compensation benefits.

Regular and per-diem TBS workers use the same computer-based timekeeping system and are on the same payroll system. The record also reflects that per-diem TBS workers may work as many or more hours than regular TBS workers during any given pay period.

While new per-diem TBS workers go to the orientation program and receive the same employee handbooks as other employees, the per-diem TBS workers do not have an orientation period. The employee handbook's grievance-arbitration procedure applies to all employees, including per-diem TBS workers.

Discussion

Contrary to the Petitioner's contention, I find that the per-diem TBS workers share a strong community of interest with the other unit employees. The Board has long held that per-diem employees are eligible to vote if they are regularly employed by the employer and share a community of interest with other unit employees. See, e.g.,

[25] The few full-time TBS workers were previously per-diem TBS workers.

Brattleboro Retreat, 310 NRLB 615, 627 (1993), citing Sisters of Mercy Health Corp., 298 NLRB 483 (1990).

Here, it is undisputed that the per-diem TBS workers perform the same functions as the regular TBS workers. While per-diem TBS workers are paid 20% more than regular TBS workers to compensate for the benefits they do not receive, they are subject to the same working conditions and personnel policies as other unit employees, and have the same supervision as the regular TBS workers. In addition, per-diem TBS workers have the same training, qualifications and productivity requirements as the regular TBS workers.

Thus, I conclude that per-diem TBS workers who are regularly employed by the Employer share a community of interests with the other unit employees and should be included in the nonprofessional voting group.[26]

F. Psychology Interns

The Employer contends that psychology interns should be included in the unit's professional voting group, while the Petitioner asserts that they should be excluded because they do not share a community of interests with the unit employees sufficient to warrant their inclusion.

Psychology interns participate in internship programs as part of their doctoral programs. In this regard, after these doctoral students have completed their educational institution's coursework and comprehensive examinations, they must write a dissertation and complete an internship in order to earn a doctoral degree. Since psychology interns are required to have completed their coursework and comprehensive

[26] For purposes of voting eligibility, I find appropriate the Board's most widely used formula, set forth in Davison-Paxon Co., 185 NLRB 21, 24 (1970), holding that those unit employees who average four or more hours per week during the quarter prior to the election eligibility date are eligible to vote.

exams before they begin the internship program, they do not attend university classes while in the program.

The internship process begins when prospective interns decide which internships they want to apply for and send in their applications. After the Employer receives applications for its internship program, it determines if the applicants have completed their coursework and comprehensive examinations. The Employer then reviews the applications with an eye towards who it might like to hire when the internships are completed. The Employer then narrows the field to 50 finalists and interviews them to assess to what degree the prospective interns' interests match the Employer's. The Employer then submits its rankings of the applicants to the American Psychological Association (APA). The interns, in turn, also submit their rankings of internship programs to the APA, and a computer system uses the parties' ranking to match prospective interns with internship programs.

The Employer's internship program, which is overseen by Director of Psychology Beth Jenks, is one-year in duration. The Employer usually has about nine psychology interns per year and generally hopes to hire about 50% of the interns upon completion of their internships. Psychology interns get preference in hiring upon completion of the program.

Psychology interns have the same duties as mental health therapists in that they perform individual and group therapy, psychological testing and intake assessments. Psychology interns work 40 hours per week, while mental health therapists work 37.5 hours per week.

Psychology interns receive an annual stipend of $18,000, while the starting rate for mental health therapists is $42,000 per year. The money for interns is provided by the Employer, not the interns' respective educational institutions. The interns are paid every 2 weeks, like the other employees. Interns receive health insurance, 2 weeks vacation, sick leave and educational leave. However, unlike other employees, the psychology interns do not get dental coverage, life insurance, retirement benefits, long-term disability or holiday pay.

Psychology interns are afforded more time than mental health therapists for supervision, research and training. Interns spend about 4 hours per week discussing cases with their supervisors and have another 4 hours per week to work on their dissertations or for other research. The research/dissertation time does not have to be performed at work. Mental health therapists do not get this research/dissertation time. Psychology interns also receive weekly training of about 3 hours per week, compared to about one hour per week for mental health therapists. In addition to that training time, psychology interns meet with the training director about once per week to discuss their internships.

The productivity requirement for mental health therapists is about 26.5 hours per week, while the productivity requirement for psychology interns is about 19 hours per week. In addition, the record discloses that interns are evaluated three times per year, primarily on the development of their knowledge in the field, while mental health therapists are evaluated twice per year, with an emphasis on their productivity.

Finally, while caseloads may vary according to Employer sites and programs, it appears that mental health therapists may have larger caseloads then

psychology interns because they have less training time, less supervision time and no dissertation/research time. In this regard, Mental Health Therapist Gohar Gyurjyan testified that she had about half the caseload of a mental health therapist when she worked as an intern from September 2003 to September 2004.

Discussion

In St. Claire's Hospital, 229 NLRB 1000 (1977), the Board described four situations in which the issue of student eligibility to vote is presented:

1. Students employed by a commercial employer in a capacity unrelated to the students' course of study are eligible to vote if they otherwise meet the community of interest test.
2. Students employed by their own educational institution in a capacity unrelated to their course of study are generally excluded, but they will be found eligible if they share a community of interest with the other employees.
3. Students employed by a commercial employer in a capacity related to the students' course of study are excluded because the relationship is primarily educational.
4. Students who perform services at their educational institution that are directly related to their educational program, such as medical interns and graduate assistants.

While the Employer contends that the psychology interns herein are similar to the hospital medical interns found eligible in Boston Medical Center, 330 NLRB 152 (1999), I find that the psychology interns fall squarely under the third category of St. Claire's Hospital and that they should therefore be excluded from the unit. In this regard, it is undisputed that the psychology interns participate in the internship program related to their course of study and that interns must complete that program in order to receive a Ph.D. Unlike the medical interns in Boston Medical Center, the psychology interns are not performing services at their educational institution. Rather, the psychology interns herein are employed by a commercial employer in the internship program in an effort to complete their doctoral degrees. As the Board discussed in St.

Claire's Hospital, such students are excluded from the unit because "their interest in their employment is primarily educational…" and their "long-term interest in the employment relationship, including wages, hours and conditions of employment, is necessarily minimized." St. Claire's Hospital, supra, at 1001-1002.

The psychology interns' distinct differences in wages, benefits, hours, terms and conditions of employment, training and supervision further demonstrate a diminished long-term interest in the employment relationship. Psychology interns earn less than half what starting mental health therapists earn. Psychology interns work 40 hour weeks that include additional training and research time, have lower productivity requirements and separate supervision, and are not eligible for many of the benefits other employees receive. Accordingly, I conclude that the psychology interns should be excluded from the unit.

III. CONCLUSION

On the basis of the foregoing and the record as a whole, I find the petitioned-for multi-facility unit limited to Los Angeles County inappropriate and conclude that the multi-facility unit must include employees in the professional and nonprofessional voting groups in Los Angeles, Orange, Riverside, San Bernardino and Ventura counties. In addition, I find that the data entry clerks, data entry specialists, reconciliation clerks, revenue specialists, quality assurance specialists, quality assurance assistants and per-diem TBS workers share a community of interests with the other unit employees sufficient to require their inclusion in the unit's nonprofessional voting group. Finally, I find that the psychology interns do not share a sufficient community of interests and shall exclude them from the petitioned-for unit.

Since the Board is prohibited by Section 9(b)(1) of the Act from including professional employees in a unit with nonprofessional employees unless a majority of professional employees vote for inclusion in such a unit, the desires of the professional employees must be ascertained as to inclusion in a unit with nonprofessional employees. Accordingly, I shall direct an election in the following voting groups:

Voting Group A

All full-time and regular part-time professional employees, including mental health therapists, nurse practitioners, psychiatrists and CD (clinician desktop) support specialists employed by the Employer at and out of its facilities in Los Angeles County, Orange County, Ventura County, San Bernardino County and Riverside County; **excluding** all other employees, nonprofessional employees, guards, mini mart cashiers, clerk apprentices, junior clerks, interns other than psychology interns (ART, BSW, GER, MSW1, MSW2 and MFT trainees), and psychology interns; business office clerical employees - accounting clerks, administrative secretaries, administrative support employees, audit clerks, contracts assistants, contracts specialists, database administrators, divisional assistants, divisional secretaries, help desk assistants, public relations assistants, public relations coordinators, and software support specialists; confidential employees - accountants, directors of grant writing, directors of special projects, employee relations specialists, executive assistants, HISS benefits analysts, human resources assistants, human resources clerks, human resources generalists, management analysts, office assistants and recruitment coordinators; managerial employees – administrative directors, associate divisional directors, chief compliance officers, chief financial officers, chief operating officers, controllers, corporate directors, corporate directors of EV services, corporate directors of human resources, corporate directors of Latino programs, corporate directors of older adult programs, corporate directors of public relations, corporate directors of quality assurance, directors of data management, directors of divisional administrative services, directors of facilities, directors of HISS, directors of housing, directors of human resource services, "directors of human resources, training and policy development", directors of operations, directors of psychology, directors of social work, directors of support services, directors of training, directors of transportation, divisional directors, IS directors, president/chief executive officers, program directors, program director/grant writers, regional revenue directors, senior vice presidents, vice presidents and vice presidents of operations; and supervisors as defined in the Act - assistant directors of contracts, call center coordinators, coordinator/supervisors, data entry supervisors, front office supervisors, mental health therapist supervisors, office managers, office supervisors, program directors, QA specialist supervisors,

revenue managers, support services supervisors, team leaders, team supervisors and transportation supervisors.

Voting Group B

All full-time and regular part-time nonprofessional employees, including administrative assistants, assistant drivers, call center specialists, clerk/drivers, clerks, clinical desk (CD) specialists, drivers, house monitors, education coordinators, facilities coordinators, housing coordinators, housing secretaries, information services technicians, institute secretaries, job coaches, licensed psychiatric technicians, licensed vocational nurses (LVNs), mail run and supplies coordinators, mailroom clerks, maintenance employees, maintenance workers, medical records clerks, mental health assistants, mental health professionals, mental health worker substitutes, mental health workers, office secretaries, office support employees, program secretaries, purchasing clerks, purchasing coordinators, receptionists, systems administrators, TBS workers, transportation coordinators, van drivers, vocational specialists, data entry clerks, data entry specialists, reconciliation clerks, revenue specialists, quality assurance specialists, quality assurance assistants and per-diem TBS workers employed by the Employer at and out of its facilities in Los Angeles County, Orange County, Ventura County, San Bernardino County and Riverside County; **excluding** all other employees, professional employees, guards, mini mart cashiers, clerk apprentices, junior clerks, interns other than psychology interns (ART, BSW, GER, MSW1, MSW2 and MFT trainees), and psychology interns; business office clerical employees - accounting clerks, administrative secretaries, administrative support employees, audit clerks, contracts assistants, contracts specialists, database administrators, divisional assistants, divisional secretaries, help desk assistants, public relations assistants, public relations coordinators, and software support specialists; confidential employees - accountants, directors of grant writing, directors of special projects, employee relations specialists, executive assistants, HISS benefits analysts, human resources assistants, human resources clerks, human resources generalists, management analysts, office assistants and recruitment coordinators; managerial employees – administrative directors, associate divisional directors, chief compliance officers, chief financial officers, chief operating officers, controllers, corporate directors, corporate directors of EV services, corporate directors of human resources, corporate directors of Latino programs, corporate directors of older adult programs, corporate directors of public relations, corporate directors of quality assurance, directors of data management, directors of divisional administrative services, directors of facilities, directors of HISS, directors of housing, directors of human resource services, "directors of human resources, training and policy development", directors of operations, directors of psychology, directors of social work, directors of support services, directors of training, directors of transportation, divisional directors, IS directors, president/chief executive officers, program directors, program director/grant writers, regional revenue directors, senior vice presidents, vice presidents and vice presidents of operations; and supervisors as defined in the Act

- assistant directors of contracts, call center coordinators, coordinator/supervisors, data entry supervisors, front office supervisors, mental health therapist supervisors, office managers, office supervisors, program directors, QA specialist supervisors, revenue managers, support services supervisors, team leaders, team supervisors and transportation supervisors.

The employees in nonprofessional Voting Group B will be asked if they wish to be represented by the Petitioner. The employees in professional Voting Group A will be asked the following two questions on their ballot:

(1) Do you desire to be included with nonprofessional 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 Service Employees International Union, Local No. 660?

If a majority of the professional employees in Voting Group A vote "Yes" to the first question, indicating their wish to be included in a unit with nonprofessional employees, they will be so included. Their votes on the second question will then be counted together with the votes of the nonprofessional Voting Group B to determine whether the employees in the overall unit wish to be represented by the Petitioner. If, on the other hand, a majority of professional employees in Voting Group A vote against inclusion, they will not be included with the nonprofessional employees. Their votes on the second question will then be separately counted to determine whether they wish to be represented by the Petitioner 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 professional employees vote for inclusion with nonprofessional employees, I find the following group of employees will constitute an

appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time professional employees, including mental health therapists, nurse practitioners, psychiatrists and CD (clinician desktop) support specialists, and all full-time and regular part-time nonprofessional employees, including administrative assistants, assistant drivers, call center specialists, clerk/drivers, clerks, clinical desk (CD) specialists, drivers, house monitors, education coordinators, facilities coordinators, housing coordinators, housing secretaries, information services technicians, institute secretaries, job coaches, licensed psychiatric technicians, licensed vocational nurses (LVNs), mail run and supplies coordinators, mailroom clerks, maintenance employees, maintenance workers, medical records clerks, mental health assistants, mental health professionals, mental health worker substitutes, mental health workers, office secretaries, office support employees, program secretaries, purchasing clerks, purchasing coordinators, receptionists, systems administrators, TBS workers, transportation coordinators, van drivers, vocational specialists, data entry clerks, data entry specialists, reconciliation clerks, revenue specialists, quality assurance specialists, quality assurance assistants and per-diem TBS workers, employed by the Employer at and out of its facilities in Los Angeles County, Orange County, Ventura County, San Bernardino County and Riverside County; **excluding** all other employees, guards, mini mart cashiers, clerk apprentices, junior clerks, interns other than psychology interns (ART, BSW, GER, MSW1, MSW2 and MFT trainees), and psychology interns; business office clerical employees - accounting clerks, administrative secretaries, administrative support employees, audit clerks, contracts assistants, contracts specialists, database administrators, divisional assistants, divisional secretaries, help desk assistants, public relations assistants, public relations coordinators, and software support specialists; confidential employees - accountants, directors of grant writing, directors of special projects, employee relations specialists, executive assistants, HISS benefits analysts, human resources assistants, human resources clerks, human resources generalists, management analysts, office assistants and recruitment coordinators; managerial employees – administrative directors, associate divisional directors, chief compliance officers, chief financial officers, chief operating officers, controllers, corporate directors, corporate directors of EV services, corporate directors of human resources, corporate directors of Latino programs, corporate directors of older adult programs, corporate directors of public relations, corporate directors of quality assurance, directors of data management, directors of divisional administrative services, directors of facilities, directors of HISS, directors of housing, directors of human resource services, "directors of human resources, training and policy development", directors of operations, directors of psychology, directors of social work, directors of support services, directors of training, directors of transportation, divisional directors, IS directors, president/chief executive officers, program directors, program

director/grant writers, regional revenue directors, senior vice presidents, vice presidents and vice presidents of operations; and supervisors as defined in the Act - assistant directors of contracts, call center coordinators, coordinator/supervisors, data entry supervisors, front office supervisors, mental health therapist supervisors, office managers, office supervisors, program directors, QA specialist supervisors, revenue managers, support services supervisors, team leaders, team supervisors and transportation supervisors.

If a majority of professional employees do not vote for inclusion in the unit with nonprofessional 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 professional employees, including mental health therapists, nurse practitioners, psychiatrists and CD (clinician desktop) support specialists employed by the Employer at and out of its facilities in Los Angeles County, Orange County, Ventura County, San Bernardino County and Riverside County; **excluding** all other employees, nonprofessional employees, guards, mini mart cashiers, clerk apprentices, junior clerks, interns other than psychology interns (ART, BSW, GER, MSW1, MSW2 and MFT trainees), and psychology interns; business office clerical employees - accounting clerks, administrative secretaries, administrative support employees, audit clerks, contracts assistants, contracts specialists, database administrators, divisional assistants, divisional secretaries, help desk assistants, public relations assistants, public relations coordinators, and software support specialists; confidential employees - accountants, directors of grant writing, directors of special projects, employee relations specialists, executive assistants, HISS benefits analysts, human resources assistants, human resources clerks, human resources generalists, management analysts, office assistants and recruitment coordinators; managerial employees – administrative directors, associate divisional directors, chief compliance officers, chief financial officers, chief operating officers, controllers, corporate directors, corporate directors of EV services, corporate directors of human resources, corporate directors of Latino programs, corporate directors of older adult programs, corporate directors of public relations, corporate directors of quality assurance, directors of data management, directors of divisional administrative services, directors of facilities, directors of HISS, directors of housing, directors of human resource services, "directors of human resources, training and policy development", directors of operations, directors of psychology, directors of social work, directors of support services, directors of training, directors of transportation, divisional directors, IS directors, president/chief executive officers, program directors, program director/grant

writers, regional revenue directors, senior vice presidents, vice presidents and vice presidents of operations; and supervisors as defined in the Act - assistant directors of contracts, call center coordinators, coordinator/supervisors, data entry supervisors, front office supervisors, mental health therapist supervisors, office managers, office supervisors, program directors, QA specialist supervisors, revenue managers, support services supervisors, team leaders, team supervisors and transportation supervisors.

Unit B

All full-time and regular part-time nonprofessional employees, including administrative assistants, assistant drivers, call center specialists, clerk/drivers, clerks, clinical desk (CD) specialists, drivers, house monitors, education coordinators, facilities coordinators, housing coordinators, housing secretaries, information services technicians, institute secretaries, job coaches, licensed psychiatric technicians, licensed vocational nurses (LVNs), mail run and supplies coordinators, mailroom clerks, maintenance employees, maintenance workers, medical records clerks, mental health assistants, mental health professionals, mental health worker substitutes, mental health workers, office secretaries, office support employees, program secretaries, purchasing clerks, purchasing coordinators, receptionists, systems administrators, TBS workers, transportation coordinators, van drivers, vocational specialists, data entry clerks, data entry specialists, reconciliation clerks, revenue specialists, quality assurance specialists, quality assurance assistants and per-diem TBS workers employed by the Employer at and out of its facilities in Los Angeles County, Orange County, Ventura County, San Bernardino County and Riverside County; **excluding** all other employees, professional employees, guards, mini mart cashiers, clerk apprentices, junior clerks, interns other than psychology interns (ART, BSW, GER, MSW1, MSW2 and MFT trainees), and psychology interns; business office clerical employees - accounting clerks, administrative secretaries, administrative support employees, audit clerks, contracts assistants, contracts specialists, database administrators, divisional assistants, divisional secretaries, help desk assistants, public relations assistants, public relations coordinators, and software support specialists; confidential employees - accountants, directors of grant writing, directors of special projects, employee relations specialists, executive assistants, HISS benefits analysts, human resources assistants, human resources clerks, human resources generalists, management analysts, office assistants and recruitment coordinators; managerial employees – administrative directors, associate divisional directors, chief compliance officers, chief financial officers, chief operating officers, controllers, corporate directors, corporate directors of EV services, corporate directors of human resources, corporate directors of Latino programs, corporate directors of older adult programs, corporate directors of public relations, corporate directors of quality assurance, directors of data management, directors of divisional administrative services, directors of facilities, directors of HISS, directors of housing, directors of human resource services, "directors of human resources, training and policy development", directors of

> operations, directors of psychology, directors of social work, directors of support services, directors of training, directors of transportation, divisional directors, IS directors, president/chief executive officers, program directors, program director/grant writers, regional revenue directors, senior vice presidents, vice presidents and vice presidents of operations; and supervisors as defined in the Act - assistant directors of contracts, call center coordinators, coordinator/supervisors, data entry supervisors, front office supervisors, mental health therapist supervisors, office managers, office supervisors, program directors, QA specialist supervisors, revenue managers, support services supervisors, team leaders, team supervisors and transportation supervisors.

There are approximately 209 professional employees and 462 nonprofessional employees in Voting Groups A and B, respectively.[27]

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit 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 unit who are 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 any 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 that have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the

[27] Inasmuch as I have found a unit different than that requested by the Petitioner, in accordance with established Board practice, I shall allow the Petitioner fourteen (14) days from the date of the Decision and Direction of Election in which to perfect its 30-percent showing of interest in the unit. In the event the Petitioner does not establish a proper showing of interest in the unit within the 14-day period, I shall dismiss the petition unless it is withdrawn. Should the Petitioner not wish to participate in an election in the unit found appropriate herein, it may withdraw its petition, without prejudice, by giving notice to that effect to the Regional Director within ten (10) days from the date of this Decision and Direction of Election.

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 the **Service Employees International Union, Local No. 660.**

LIST OF VOTERS

In order 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, two copies of an alphabetized election eligibility list, containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, 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 in Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017, **on or before February 1, 2006**. No extension of time to file the list shall be granted, excepted in extraordinary circumstances, nor shall the filing of a request for review operate to stay

the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (213)894-2778. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

NOTICE OF POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.21, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three (3) working days prior to the day of the election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least five (5) full 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 nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. The Board in Washington must receive this request by **5 p.m., EST, on February 8, 2006**. This request may **not** be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents

that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site:**www.nlrb.gov.**

DATED at Los Angeles, California, this 25th day of January 2006.

/s/ [James F. Small]
James F. Small
Actino Regional Director, Region 21
National Labor Relations Board